



Judicial Profile

by Witold Tymowski

Rt. Hon. Beverley McLachlin, P.C. Chief Justice of Canada

There is little in the early life of Chief Justice Beverley McLachlin that would foreshadow her rise to the highest judicial office in Canada. After all, she was not raised in a large cosmopolitan center, but on a modest ranch on the outskirts of Pincher Creek, Alberta, a small town in the lee of Canada's beautiful Rocky Mountains. Her parents, Eleanora Kruschell and Ernest Gietz, did not come from wealth and privilege. They were hard-working ranchers who also took care of a nearby sawmill. Chief Justice McLachlin readily admits that growing up, she had no professional female role models. And so, becoming a lawyer, let alone a judge, was never part of her early career plans. Indeed, the expectation at the time was that women would marry and remain within the home. Girls might aspire to teaching, nursing, or secretarial work, but usually only for a short time before they married. Her childhood, nonetheless, had a distinct influence on her eventual career path.

Chief Justice McLachlin proudly refers to herself as a farm girl and has often spoken of a deep affection for Pincher Creek. A Robert McInnes painting depicting a serene pastoral scene, appropriately entitled *Pincher Creek*, occupies a prominent place in her Supreme Court office and offers a reminder of her humble beginnings. That Chief Justice McLachlin maintains a deep connection with her birthplace is hardly surprising. Despite its geographical remoteness, it nurtured its youth with a culture centered on literacy, hard work, and self-reliance. It is perhaps for this reason that the town (population 1,700) has produced a disproportionate amount of notable residents, including theoretical physicist Gordon Walter Semenoff and former Chief Justice of the Ontario Court of Appeal Warren Winkler. Indeed, Chief Justice McLachlin credits her small-town, old-fashioned background as a significant source of inspiration as a judge.



It grounded her with a common-sense practicality and the importance of doing your honest best at whatever responsibility was given to you.

Just as importantly, Chief Justice McLachlin's family experience motivated her to break the gender stereotypes of the time. She recalls that her mother had always wanted to be a writer. Unfortunately, family obligations got in the way, and the lifelong dream ultimately went unrealized. Her mother's disappointment, however, con-

Witold Tymowski is a legal officer at the Supreme Court of Canada. He graduated from McGill University with a Bachelor of Law (LL.B.) and a Bachelor of Civil Law (B.C.L.). © 2014 Witold Tymowski. All rights reserved.



vinced Chief Justice McLachlin that no opportunity should be squandered. Moreover, recognizing that the opportunities given to men were different than those offered to women, she developed an early and abiding conviction that women should be able to choose what they do with their lives.

Finally, there is the family story, referred to simply as “the day Grandma met the Mounties.” Chief Justice McLachlin’s paternal grandparents were German. Like many others, they left Europe between the two world wars and immigrated to Canada to make a new life. However, with the outbreak of World War II, people of German origin were suddenly suspect. One day, two members of the Royal Canadian Mounted Police, the Mounties, knocked on Chief Justice McLachlin’s grandmother’s door. Although they didn’t have a warrant, she politely let them in. They proceeded to search the entire house from top to bottom, leaving no corner unexamined, no cupboard unopened, in their quest for evidence of treason. They found nothing. Finally, they came to the attic, where her grandmother’s trunk—the trunk in which she kept her most prized photos and records—was discovered. Upon opening it, they found not what they were looking for, but a scrapbook containing meticulously cut and pasted images and articles on the British Royal family. “We belong to Canada,” her grandmother explained in her imperfect English. The Mounties retreated. It was a simple story that imbued her early childhood with an understanding of the concepts of discrimination, fair treatment, and the power of the rule of law.

After finishing high school, she enrolled in arts at the University of Alberta, where she spent four years exploring ideas through a philosophy major embroidered liberally with courses in literature and language. However, few job prospects followed. Back on the ranch in Pincher Creek, tiring of cooking for hired hands and picking wildflowers, she sent a vague letter to Wilbur F. Bowker, then dean of the University of Alberta Law School, requesting information about the faculty. A few weeks later, a return letter arrived. “You are accepted,” it said. “We look forward to seeing you at the beginning of September.” With these brief words, her historic career in law had begun.

Chief Justice McLachlin recalls her legal studies with fondness. Classes were crowded, and the law library was tiny. The standards were high, the workload heavy, and the exams tough, but there were also good times and meaningful friendships. She was instilled in the fundamentals of legal reasoning and problem solving by legendary lecturers such as Dr. Scott, Trevor Anderson, and the inimitable Dean Bowker himself, with his raspy, powerful voice and his tendency to break into a well-honed half-hour rendition of “Casey at the Bat” on the slightest hint of an invitation. After three years, Chief Justice McLachlin emerged with the Horace Harvey Gold Medal in Law, awarded to the graduating student with the highest GPA, and a citation for “hairdo of the year.”

It is a combination of awards that no other Chief Justice of Canada can claim.

Despite these achievements, the early seventies were not easy for women who wanted to make a career in law. People still held primitive attitudes about the “feebler” sex. Hostility, doubt, and outright assertions that women were not cut out for the legal profession were prevalent. During one of her first interviews after law school, after a very positive exchange of ideas, the senior lawyer sitting across the table sat back and asked, “Why do you want to work?” Perhaps sensing her consternation, he continued, “Well, you’re married, aren’t you?” It dawned on her that in his world, the expectation was that married women did not work.

Chief Justice McLachlin found that the best way to deal with these attitudes was not to dwell on them, but to do her work to the best of her ability. The proof of a woman’s ability to do the job would lie in the fact that she did it. With some perseverance, she found a law firm that would hire her, and she excelled. She first practiced in Edmonton, Alberta, until a family move took her to British Columbia. There, she continued her practice for another three years, first in Fort St. John, and later in Vancouver. Under the mentorship of W.J. Wallace, Q.C., who would later serve on the British Columbia Court of Appeal, she developed a reputation as a tenacious litigator. In 1975, she entered academia at the University of British Columbia Faculty of Law, eventually becoming its first full-tenured female professor. She became known for her sense of humor and clarity of presentation, as well as her high-level scholarship in the fields of civil procedure, evidence, and damages for personal injuries.

In April 1981, at the age of 37, her judicial career began when she was appointed to the County Court of Vancouver. Only five months later, she was appointed to the Supreme Court of British Columbia. In 1985, she was elevated to the British Columbia Court of Appeal, and, in 1988, she was appointed Chief Justice of the Supreme Court of British Columbia. By then, Chief Justice McLachlin’s meteoric rise had attracted national attention. Only seven months later, in 1989, when Prime Minister Brian Mulroney was looking for a replacement for Justice William McIntyre, she got the nod, becoming only the third woman appointed to the Supreme Court of Canada. At her swearing-in ceremony, the president of the British Columbia Law Society remarked that she’d progressed through the court system faster than most cases. Finally, following Chief Justice Antonio Lamer’s

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retirement in 2000, she was appointed as the first female Chief Justice of Canada.

The late 1990s and early 2000s were a politically heated time for the Supreme Court of Canada. Its decisions involving the Canadian Charter of Rights and Freedoms led to accusations of judicial activism, to the point where opposition parties were calling for the establishment of a parliamentary committee that could review the Court's decisions. In this context, it is significant that members of these opposing parties congratulated Chief Justice McLachlin on her common sense and called her appointment exciting. Indeed, her appointment was widely hailed, particularly by the legal community.

As a member of the Supreme Court of Canada, she has written some of the most influential judgments in Canadian law in areas such as equality rights, criminal law, and constitutional law. For example, concerned about the vulnerability of children to sexual abuse, Chief Justice McLachlin wrote a landmark decision that began a series of major changes to the traditional hearsay rule and the rules regarding the use of children as witnesses in court.¹ In 1991, she wrote a leading decision where the Court struck down a rape shield provision of the Criminal Code that prevented those charged with sexual assault offences from cross-examining the complainant about his or her history of sexual activity. However, aware of the decision's implications, she went on to affirm that sexual conduct in itself cannot be regarded as logically probative of either the complainant's credibility or consent.²

Her jurisprudence also shows a distinct concern for gender equality. In two notable cases, she expanded traditional equitable principles to rectify inequalities. In one, she concluded that a woman who had cohabited for 12 years with her partner—performing domestic work involved in raising their blended families—should be granted a constructive trust in her partner's property.³ In the other case, in circumstances where a doctor exploited a woman addicted to prescription painkillers, Chief Justice McLachlin held that only a fiduciary duty encompasses the true relationship between the parties and the gravity of the wrong done by the doctor.⁴

But it is in cases interpreting the Canadian Charter that Chief Justice McLachlin has had the most profound influence. In 1993, in a strong dissent, she held that medically assisted suicide infringes a person's security of the person.⁵ In a 2007 case, she concluded that the Charter's guarantee of freedom of association included a constitutional right to collective bargaining.⁶ In 2009, she recognized a defense of responsible communication on matters of public interest.⁷ And, in 2012, she upheld the definition of "terrorist activity" in an anti-terror law that had been passed shortly after the 9/11 terrorist attacks.⁸

When asked about the essence of the jurisprudence she has developed over the past 25 years, she points to the influence of a vision proclaimed by Canadian Prime Minister Pierre Elliott Trudeau: the vision of a "just society." Embodied in her vision of the just society are

three values that have nourished her since becoming a judge: a respect for rights, a respect for difference, and a commitment to the resolution of differences by peaceful compromise.

Beyond her impact as a judge, Chief Justice McLachlin has also gained widespread recognition for her efforts to educate Canadians about the role of the Supreme Court of Canada and the judiciary. As the head of the judiciary, she has never shied away from identifying deficiencies in the court system. For example, she has spoken forcefully about the need to make the court system more accessible and affordable. In this context, she recognized that the issue of access to justice could only be solved through a coordinated national action plan. She thus convened the Action Committee on Access to Justice in Civil and Family Matters in 2008. Since that time, the Action Committee has produced a final report outlining how accessible justice can be achieved, the tools that can assist people in dealing with their legal needs effectively and expeditiously, and changes to the system that will improve access to justice.

Her numerous achievements have not gone unnoticed. In Pincher Creek, a street has been named in her honor. She has received 28 honorary degrees and numerous other awards. In 2007, she was named Commandeur of the National Order of the Legion of Honour, the highest decoration in France. But despite these accomplishments, Chief Justice McLachlin remains a surprisingly down to earth and humble person. She enjoys early morning walks and cooking and is a voracious reader of Canadian literature. When asked about her success, she often credits the work of her colleagues; without them, she claims, a Chief Justice can be neither happy nor successful.

Throughout most of her life, Chief Justice McLachlin has proven to be a groundbreaker. She practiced law, taught in a law school, and sat in courts at times when there were few female contemporaries, and even fewer female predecessors. Yet, after a career that has surpassed 45 years, she has no plans on slowing down. Recently, blessed with good health and a seemingly endless reserve of energy, she surpassed Sir William Johnstone Ritchie as the longest serving Chief Justice of Canada. ☺

Endnotes

¹*R. v. Khan*, [1990] 2 S.C.R. 531.

²*R. v. Seaboyer*; *R. v. Gayme*, [1991] 2 S.C.R. 577.

³*Peter v. Beblow*, [1993] 1 S.C.R. 980.

⁴*Norberg v. Wynrib*, [1992] 2 S.C.R. 226.

⁵*Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519.

⁶*Health Services and Support—Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391.

⁷*Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640.

⁸*R. v. Khawaja*, 2012 SCC 69, [2012] 3 S.C.R. 555.