

2008

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Citation Information

Mossman, Mary Jane. "'Contextualizing' Bertha Wilson: Wilson as a Woman in Law in Mid-20th Century Canada." *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* 41. (2008). DOI: <https://doi.org/10.60082/2563-8505.1133>
<https://digitalcommons.osgoode.yorku.ca/sclr/vol41/iss1/3>

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“Contextualizing” Bertha Wilson: Wilson as a Woman in Law in Mid-20th Century Canada

Mary Jane Mossman*

I. INTRODUCTION: BERTHA WILSON AS A WOMAN IN LAW

In trying to sort out the reasons for professional women’s successes or failures, it is far too facile to say that there were prejudices against women that they had to overcome. The ways in which the prejudice manifested itself were extremely complex and insidious. ... As determined, aspiring professionals, women were not easily deterred. They found a variety of ways to respond to the discrimination they faced. ...¹

Glazer and Slater offered this assessment in their study of women who entered the professions in the United States between 1890 and 1940. Although they did not examine women in the legal profession, their assessment clearly confirms that women’s experiences as aspiring professionals often reflected complex circumstances, and resulted in different kinds of responses from individual women at different times in their lives. Moreover, even though Bertha Wilson became a woman in law in the 1950s, after the period that was the primary focus of this American study of women professionals, the authors’ assessment of women professionals as “determined, aspiring professionals [who were] not easily deterred ...”² may similarly reflect the experiences of many women lawyers in mid-20th century Canada, including Wilson. In my view, these women lawyers were always engaged in negotiating the gender issue, even when they chose resolutely to ignore it — and Wilson was no exception.

* Professor, Osgoode Hall Law School. The author acknowledges the research assistance of Claudia Schmeing, OHLS class of 2010, and the support of numerous archivists, particularly Susan Lewthwaite at the Law Society of Upper Canada, in the preparation of this paper.

¹ P.M. Glazer & M. Slater, *Unequal Colleagues: The Entrance of Women into Professions, 1890-1940* (New Brunswick and London: Rutgers University Press, 1987), at 12-14 [hereinafter “*Unequal Colleagues*”].

² *Id.*

Thus, it is important to examine her story *in context*: the context of mid-20th century Canada, in which ideas about gender and about professionalism in law were shaped, and sometimes challenged by, a tiny minority of women lawyers.³

As a judge, particularly in the Supreme Court of Canada, Justice Wilson was especially attentive to context; indeed, as her biographer, Ellen Anderson suggested, “Wilson’s characteristic stance [was] one of principled contextuality.”⁴ Thus, it seems appropriate to explore the *context* in which Wilson became a lawyer in the late 1950s, and practised at the Osler firm until her appointment to the judiciary, since these experiences initially shaped her understanding of law and legal professionalism.⁵ Clearly, looking at Wilson’s career overall, it was an outstanding success: she was awarded a Q.C. in Ontario in 1973, and became the first woman appointed to the Ontario Court of Appeal in 1975 and then the first woman appointed to the Supreme Court of Canada in 1982. On her retirement from the Court in 1991, Wilson was selected to take part in both the Canadian Bar Association’s Task Force on Gender Equality and the Royal Commission on Aboriginal Peoples.⁶ As Anderson concluded, Wilson’s achievements were especially significant, not only because she was female, but also because she was an immigrant to Canada and the child of working-class parents.⁷

Yet, although Justice Wilson’s story is often told now as if her successes in law and in the judiciary were foreordained, a classic “Portia’s Progress”,⁸ an important aspect of her story concerns the social and

³ This paper is based in part on research undertaken for M.J. Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Oxford: Hart Publishing, 2006) [hereinafter “*The First Women Lawyers*”], especially chapter 2, and is linked to my current project on the history of women lawyers in Canada.

⁴ Ellen Anderson, *Judging Bertha Wilson: Law as Large as Life* (Toronto: University of Toronto Press, 2001) [hereinafter “*Judging Bertha Wilson*”], at 135. Anderson, at 139, attributes Wilson’s interest in context, at least in part, to Professor William Lederman’s course at Dalhousie Law School.

⁵ Anderson’s biography, *id.*, demonstrates how Justice Wilson’s understanding of law seemed to grow and thrive in her years as a judge. For my view on some of these issues, see M.J. Mossman, “Bertha Wilson: ‘Silences’ in a Woman’s Life Story” in Kimberley Brooks, ed., *One Woman’s Difference: The Contribution of Justice Bertha Wilson* (Vancouver: UBC Press, forthcoming).

⁶ See *Canadian Who’s Who*, 1994, at 1213; and *Judging Bertha Wilson*, *supra*, note 4.

⁷ *Judging Bertha Wilson*, *id.*, at 134.

⁸ The idea of “Portia’s Progress” has been used as a metaphor for women in law on many occasions, although it remains controversial, since Portia was successful in the trial scene of Shakespeare’s *The Merchant of Venice* only because she was disguised as a man. For some examples, see M.J. Mossman, “Portia’s Progress: Women as Lawyers — Reflections on Past and

professional context within which she forged her outstanding accomplishments. For example, how significant was it that Wilson began to study law at a time when women represented a tiny minority of the legal profession and an even more negligible representation in the judiciary, but that by the time she retired as a judge of the Supreme Court of Canada nearly four decades later, half of new entrants to the legal profession in Canada were women? In "contextualizing" Wilson's achievements, it seems important to explore how women lawyers, many of whom were "determined, aspiring pro-fessionals"⁹ like Wilson, confronted, ignored or circumvented gender issues to attain success in the profession of law in mid-20th century Canada.

In fact, the story of Justice Wilson's entry to the legal profession is quite similar to the experiences of other women who were seeking admission to the bar in the decade of the 1950s. Like many of these other women, she was one of a small number of women law students in a graduating class of 58 at Dalhousie University in 1957. Nonetheless, with six women students at graduation, Wilson's class represented a modest increase from previous years, since the 1956 graduating class had included only two women, while the lone female student in the 1955 class was Constance Glube (later Chief Justice of Nova Scotia).¹⁰ In addition to being a woman student, however, Wilson was unusual because she entered law school as a married woman who was 31 years old; as her close friend and classmate, Lilius Toward, later explained, "mature students were very rare on any campus in those days".¹¹ Wilson and Toward had become friends immediately on entering their first class, passing through "air [that] was blue with smoke and the corridor ... filled with young men and not a woman in sight".¹² Three years later, having

Future" (1988) 8 Windsor Y.B. Access Just. 252; C. Menkel-Meadow, "Portia in a Different Voice: Speculations on a Women's Lawyering Process" (1985) 1 Berkeley Women's L.J. 39; and C. Menkel-Meadow, "Portia Redux: Another Look at Gender, Feminism and Legal Ethics" in S. Parker & C. Sampford, eds., *Legal Ethics and Legal Practice: Contemporary Issues* (Oxford: Clarendon Press, 1995).

⁹ *Unequal Colleagues*, *supra*, note 1.

¹⁰ Christian Wiktor, ed., *Dalhousie Law School Register* (Halifax: Dalhousie Law School, 1983), at 39. Significantly, another member of the 1955 class at Dalhousie Law School was Purdy Crawford, who was also a partner at the Osler firm and an important "gatekeeper" in the legal profession in Canada: see *post*. For a description of Dalhousie Law School while Justice Wilson was a student, see John Willis, *A History of Dalhousie Law School* (Toronto: University of Toronto Press, 1979), at 170-93.

¹¹ Lilius M. Toward, Q.C., "The Class of 1982 Honors Madame Justice Bertha Wilson" (*Hearsay*: Dalhousie Alumni Magazine) Summer 1982, at 7.

¹² *Id.*

graduated near the top of her class, with a prize and a graduate scholarship to Harvard, and as co-winner of the Smith Shield for mootings, Wilson nonetheless faced a major challenge in finding an articling position in Halifax. As Anderson reported, “all the women graduates, no matter how well they had done, had some difficulty getting articles; because of her age and her lack of local connections, Bertha found it even harder than the others.”¹³ Eventually, with the support of a faculty member, Wilson found an articling position with F.W. Bissett, Q.C., who practised “low end divorce law and criminal work, including prostitution cases, buggery charges, and drunk and disorderlies...”.¹⁴ Apparently, she was successful as an articling student and gained considerable experience of court work; a year later in 1958, Wilson was called to the bar of Nova Scotia.¹⁵

However, Justice Wilson and her husband relocated in 1958 to Toronto, where Rev. John Wilson had accepted a new position; and because she had not practised law in Nova Scotia, Bertha Wilson needed to article again in order to be called to the bar in Ontario. As a result of a telephone inquiry to the Osler firm, she became the firm’s first woman articling student, although her position there began inauspiciously when the firm agreed to hire her reluctantly — and only to enable her to complete the Ontario articling requirement.¹⁶ Yet, Wilson’s legal expertise and her initiative in developing new ways of organizing the firm’s legal research resulted in her becoming the firm’s first woman associate after she was called to the bar of Ontario in 1959, and its first woman partner in 1968.¹⁷ Many years later, in the context of her work with the Canadian Bar Association’s Task Force on Gender Equality in the early 1990s, Wilson provided glimpses of the problems which women lawyers had often faced in her early years in practice. Commenting that sexual discrimination in the legal profession had become more subtle and systemic by the 1990s than it had been in the

¹³ *Judging Bertha Wilson*, *supra*, note 4, at 48.

¹⁴ *Id.*, at 49.

¹⁵ *Id.*, at 49-50.

¹⁶ *Id.*, at 52-53.

¹⁷ *Id.*, at 58, reported that Wilson’s progress to partnership was rather slower than other lawyers at the Osler firm; in addition, she never achieved senior partnership or appointment to the firm’s management committee: see *id.*, at 63-64.

1950s, she reminisced about her experiences as a young woman associate.¹⁸

[Wilson remembered] some of the people she met when she started practising law in Toronto in the late 1950s. She especially remembers the man who told her, "I don't want any bloody woman drafting my will." And she recalls the boardroom consultations with corporate clients — invariably male. "There was no question that their faces fell when I came through the door."¹⁹

Such experiences prompted Justice Wilson to be totally frank when she talked to women law students after she became a judge, advising women that they would have to prove themselves *again and again* in their careers. As she explained, "all your life as a woman you are proving yourself ... proving ... that you can do it. And you get tired of it."²⁰

This paper explores the context for women lawyers like Justice Wilson in Ontario in the 1960s and 1970s: before her initial appointment to the judiciary in 1975 and her subsequent elevation to the Supreme Court of Canada in 1982. By situating Wilson as one of a small minority of women lawyers in the decades prior to the mid-1970s (when the numbers of women in law first began to increase dramatically),²¹ it is possible to explore the kinds of opportunities and choices available to women in law, particularly in a time of transition. To provide a context for Wilson's career, the paper first examines three other women in law, all of whom achieved considerable distinction in practice (including a K.C. or Q.C. designation), although none of them were appointed to the judiciary: Vera Parsons, Margaret Hyndman and Laura Legge. In addition, the paper explores the appointment of the other two "first women judges" in Ontario: Helen Kinnear, the first woman in the British Empire to be appointed to the County Court in 1943, and Mabel Van Camp, the first woman appointed to the Supreme Court of Ontario in 1971. In exploring the experiences of some of Wilson's contemporaries,

¹⁸ David Shoalts, "Women Lawyers Face Dual Struggle, Wilson Says", *Globe and Mail*, August 20, 1991.

¹⁹ "Wilson to Lead Status of Women Probe" *London Free Press*, August 20, 1991.

²⁰ *Judging Bertha Wilson*, *supra*, note 4, at 200.

²¹ Law Society of Upper Canada, "List of Women Barristers and Solicitors in Ontario". According to Eileen Mitchell Thomas, this list (1897-1975) was maintained by Eileen Huckle in the office of Earl Smith, Q.C., Secretary of the Law Society of Upper Canada: see Eileen Mitchell Thomas, Q.C., "Women Lawyers in the Association, One Century" in William C.V. Johnson, ed., *The First Century: Essays on the History of the County of Carleton Law Association* (Ottawa: County of Carleton Law Association, 1988) 107, at 112.

all of whom were prominent women lawyers and judges, the paper concludes with some brief reflections on the context in which women like Wilson were first appointed to the judiciary, and “the ways [that they chose] to respond to the discrimination they faced”²² in the legal profession.

II. BERTHA WILSON AND WOMEN LAWYERS IN ONTARIO

The majority of women lawyers in Canada feel there is no special discrimination against them by the public and any prejudice against women in the legal profession can be offset if they do not expect any special privileges or prerogatives because of their sex. They must necessarily be well trained to persevere in the profession, thus assuring that they can compare favorably with men in their undertakings. Most all agree that the problems facing women are the same as those facing men at the outset and the answer to most difficulties is hard work.²³

This comment appeared in an article about women lawyers in Canada in 1952, lauding the fact that women had by then entered “almost every branch of the Law”; as the article noted, however, while a number of women had gained admission to the bar in Canada, only three women were practising law in Nova Scotia in the early 1950s.²⁴ Indeed, there were just 80 women practising law in Ontario at that time, and these numbers were not significantly higher by 1959, when Justice Wilson was admitted to the bar of Ontario.²⁵ Thus, the entry of women to the legal profession in Canada had not increased dramatically in the six decades after Clara Brett Martin, Canada’s first woman lawyer, had gained admission to the legal profession in Ontario in 1897.²⁶ For example, even though women had achieved eligibility for admission to the bar everywhere in Canada (except Quebec) by the end of the First

²² *Unequal Colleagues*, *supra*, note 1.

²³ Dorothy F. Coyle, “Women in the Legal Profession in Canada” (1952) 38:3 *Women Lawyers Journal* 14, at 17 [hereinafter “Women in the Legal Profession”].

²⁴ *Id.*, at 15.

²⁵ As “Women in the Legal Profession”, *supra*, note 23, at 14, noted, 159 women had been admitted to the Ontario bar, but only 80 were practising. In 1959, Wilson was no. 202 on the list of women admitted to the Ontario bar; and even though she had been married more than a decade earlier, the list reported her admission as “Bertha Wernham (Mrs Wilson)”.

²⁶ *The First Women Lawyers*, *supra*, note 3, at 67-68. See also C. Backhouse, “‘To Open the Way for Others of My Sex’: Clara Brett Martin’s Career as Canada’s First Woman Lawyer” (1985) 1 *C.J.W.L.* 1; and T. Roth, “Clara Brett Martin — Canada’s Pioneer Woman Lawyer” (1984) 18 *L. Soc’y Gaz.* 323.

World War, the 1941 census reported only 129 women lawyers in practice, out of a total of 7,920 members of the legal profession in Canada: that is, less than two per cent of the total profession.²⁷

In this context, when Justice Wilson began to article and then to practise law at the Osler firm, she was not just the only woman lawyer at her firm; she was also one of a tiny minority of women members of the legal profession in Ontario. In spite of their small numbers, however, some women lawyers in Ontario considered that "the only battle that needed to be won by women lawyers [had been] won by Clara Brett Martin ... in 1897...".²⁸ As Laura Legge, who was admitted to the Ontario bar a decade before Wilson, and who became the first woman Treasurer of the Law Society of Upper Canada in 1983, explained:

You know, these older women [lawyers] had shown men that women could be effective lawyers.... They were an example, and [the] attitude always was: "You're a lawyer, get on with it and do it. [And] we did it."²⁹

According to these views, Clara Brett Martin's success in making women eligible for admission to the bar created a context in which women could succeed as members of the legal profession just as men did; as the 1952 article concluded, "the [simple] answer to most difficulties [was] hard work".³⁰ In this context, Justice Wilson's meticulous legal research and carefully crafted memos of law at the Osler firm clearly represented a good deal of "hard work"; moreover, it seems that her hard work resulted in her becoming increasingly indispensable to the firm and the needs of its major clients.³¹

Yet, for some years before Justice Wilson joined the Osler firm, a number of women lawyers had achieved some prominence as members of the legal profession in Ontario. One was Vera Parsons, who had

²⁷ Canada Department of Labour, *Occupational Trends in Canada 1931-1961* (1963), at 45. In Quebec, legislation was enacted in 1941 to permit women to become lawyers: *An Act Respecting the Bar*, S.Q. 1941, c. 56, s. 1. See also G. Gallichan, *Les Québécoises et le Barreau: L'Histoire d'une Difficile Conquête, 1914-1941* (Quebec: Septentrion, 1999).

²⁸ See Marina Strauss, "61 Years of Practicing Law" *Globe and Mail*, February 14, 1987, B1 at B4 [hereinafter "'61 Years'"]. Laura Legge attributed this comment to Margaret Hyndman.

²⁹ Laura Legge, Transcript of interview, Archives of the Law Society of Upper Canada, July 29, 2004, at 123 [hereinafter "Legge transcript"].

³⁰ "Women in the Legal Profession", *supra*, note 23.

³¹ Angela Fernandez & Beatrice Tice, "Bertha Wilson's Practice Years (1958-1975): Establishing a Research Practice and Founding a Research Department in Canada" in Kimberley Brooks, ed., *One Woman's Difference: The Contributions of Justice Bertha Wilson* (Vancouver: UBC Press, forthcoming).

graduated from Osgoode Hall in 1924 with the silver medal.³² She had earlier obtained a B.A. in comparative languages from the University of Toronto and then the M.A. degree from Bryn Mawr in Pennsylvania; she also studied briefly at the University of Rome in a doctoral program. On her return to Toronto, she became actively involved in providing assistance to the Italian immigrant community, and eventually decided that she would be better able to assist these working-class immigrants with a law degree. Thus, she enrolled at Osgoode and upon graduation, articulated and then worked with W.B. Horkins, Q.C., a distinguished criminal lawyer.³³ Although she engaged in general practice, her greatest interest was criminal law; and she was actively involved in defence work, both at trial and in the Ontario Court of Appeal. In 1945, Parsons became the first woman lawyer in Canada to be retained for the defence in a murder trial, which took place before Justice McFarland and a jury.³⁴ Her client, who was charged with the murder of a guard at the Don Jail during an attempted escape, was convicted of the lesser charge of manslaughter and thus escaped hanging.³⁵ In addition, she appeared for the defence in both the Ontario Court of Appeal and the Supreme Court of Canada on behalf of Mickey MacDonald, in his unsuccessful appeals against a 15-year sentence for kidnapping and armed hijacking of a \$35,000 truckload of liquor; shortly after the Supreme Court of Canada rejected MacDonald's appeal, however, the press reported that MacDonald "escaped jail and hasn't been heard from since".³⁶ As these examples suggest, Parsons' professional work involved high-profile, often controversial, criminal law advocacy.³⁷ In this context, moreover,

³² E.P. Hartt, "The Bench and the Bar" (1952) 26:2 *Obiter Dicta* 23 [hereinafter "The Bench and the Bar"].

³³ "Vera Parsons, 83, Criminal Lawyer" *Toronto Star*, February 20, 1973 (obituary) [hereinafter "Parsons obituary"].

³⁴ The trial was covered extensively in newspaper reports. It began in September 1944, with Parsons representing Baldwin and J.C. Boland for O'Sullivan, a co-accused. Eventually, when the jury was unable to reach a decision, a new trial was ordered before Justice McFarland in February 1945: see reports in the *Globe and Mail*, September 8, 1944, October 19, 1944, and February 28, 1945. The verdicts for both accused were manslaughter. There is also some press reporting about Parsons as the first woman to appear in a jury trial in a civil matter in 1926, but the judge in the case suggested that she was the second (there was no indication who was the first): see "Lawyer to the Rescue of Fair Opponent" *Toronto Star*, March 12, 1925.

³⁵ Max Rosenfeld, "The Lady and the Crooks", *Maclean's Magazine*, March 3, 1956, 16 at 48 [hereinafter "The Lady and the Crooks"].

³⁶ Parsons obituary, *supra*, note 33.

³⁷ Parsons was fluent in French and Italian, and she was also partly crippled, as a result of childhood polio; she enjoyed music, art and theatre, and often spent the summer months at an island retreat on Lake Temagami: Parsons obituary, *id.*

an article in *Obiter Dicta* (the newspaper of Osgoode Hall Law School) in 1952 identified Parsons as "the most capable woman barrister practising at the Ontario Bar".³⁸

Although Parsons' cases were more often reported in the newspapers in the 1940s and 1950s, she still featured quite prominently in news stories in the 1960s, at a time when Justice Wilson was beginning her practice at the Osler firm. For example, the *Globe and Mail* published a lengthy article in 1963 on the subject of professional women, in which it compared the cost and length of training for different professions, including medicine, architecture, law, engineering, dentistry and veterinary medicine; the article concluded that the rather limited entry of women into the professions was chiefly due to three causes: "money, marriage and duration of training".³⁹ Significantly, the article described Parsons as "one of the leading women lawyers", and quoted her statement, "I'm a trial lawyer because I'm interested in the courts, not in sitting at a desk all day."⁴⁰ If Wilson had occasion to read this article and Parsons' comment, it seems likely that these two women lawyers would have agreed to disagree. Not only did Wilson eschew litigation and courtroom appearances, she had few clients of her own, apparently preferring a minimum of client contact in her legal work; as Anderson explained, "at Oslers [Wilson] was free to consider herself an academic lawyer, immersed in the intellectual challenges she would have enjoyed had she pursued postgraduate studies ...".⁴¹

Yet, in spite of their quite different choices in terms of legal work, Justice Wilson might have agreed with Parsons' comment in an interview with the press in which she confirmed that "law is hard work and calls for long hours and plenty of study",⁴² and there are numerous reports about Parsons' extensive preparation for trials and appeals, and her enjoyment of these intellectual and strategic challenges.⁴³ Similarly, Wilson's biographer concluded that Wilson's aspirations to be good at her work meant that she too "worked very hard ... [sustaining] a crisp professionalism on the job which left no ambiguity about the standard

³⁸ "The Bench and the Bar", *supra*, note 32, at 24.

³⁹ Eric Haworth, "The Bright Promise of the Professions" *The Woman's Globe and Mail*, May 9, 1963 [hereinafter "'The Bright Promise'"].

⁴⁰ *Id.*

⁴¹ *Judging Bertha Wilson*, *supra*, note 4, at 72.

⁴² "The Bench and the Bar", *supra*, note 32, at 24.

⁴³ "The Bright Promise", *supra*, note 39.

which she expected ...”.⁴⁴ Indeed, both Wilson and Parsons seem to have espoused strong principles about professionalism in legal practice. As a young articling student in her firm explained, Parsons was a role model (ungendered) within the criminal defence bar:

It’s pretty disheartening to come out of Osgoode, where you’ve learned the high principles of law, and immediately get into what most young lawyers must: the messy dirty business of petty crime and vice. Then you come in contact with Miss Parsons’ high-principled approach to the law, even in the most sordid cases, and it gives you new courage to go out and become a good lawyer too.⁴⁵

Parsons died at the age of 85 in 1973,⁴⁶ two years before Justice Wilson’s appointment to the Ontario Court of Appeal, and there is no evidence that these two women ever met. Nor is there evidence that Parsons was ever considered for judicial appointment, in spite of her outstanding accomplishments as an advocate, particularly in criminal appellate work. For reasons that will be considered later in this paper, it seems that Vera Parsons was probably ahead of her time in relation to opportunities for judicial appointment.

In addition to Parsons, there was another prominent woman lawyer in Toronto in the 1950s and 1960s whose practice, like Justice Wilson’s, focused on corporate and commercial law: Margaret Hyndman. Hyndman had graduated from Osgoode and was then called to the bar in January 1926,⁴⁷ just two years after Parsons. Hyndman had supported herself with secretarial work and tutoring, and had experienced a somewhat eclectic succession of articling positions before her call to the bar. However, she completed the final stage of her articles with F.W. Wegenast, K.C., and she continued to practise in partnership with him for several years; significantly, she assisted him in writing an influential book on company law, initially published in 1931.⁴⁸ Although she engaged in general practice, Hyndman’s work focused particularly on company law and insurance, and she was apparently quite careful in her choice of clients; as she explained in an interview many years later:

⁴⁴ *Judging Bertha Wilson*, *supra*, note 4, at 72.

⁴⁵ “The Lady and the Crooks”, *supra*, note 35.

⁴⁶ Parsons obituary, *supra*, note 33.

⁴⁷ Margaret Paton Hyndman, Archives of the Law Society of Upper Canada.

⁴⁸ Margaret Paton Hyndman, transcript of oral history, Osgoode Society for Canadian Legal History, Archives of Ontario, at 25-29. The treatise is Franklin W. Wegenast, *The Law of Canadian Companies* (Toronto: Burroughs, 1931) [hereinafter “Hyndman transcript”].

... Mine has never been a ... promoters' business. I have never acted for promoters. I have acted for solid business people who are out to manufacture something and sell it to the public, or to gather capital and discover something. But not to play high-jinks. And I have had a great many private companies, although I have been associated with public companies [too].⁴⁹

Over several decades, Hyndman established a flourishing career as a company lawyer, becoming the first Canadian woman appointed to the Board of a trust company, the London and Western Trust Company Ltd., in 1945.⁵⁰

Yet, Hyndman was never just a company lawyer, and some of her work actively promoted the interests of Canadian women. For example, she assisted Wegenast in the 1930s in his defence of Dorothea Palmer after Palmer was charged with the *Criminal Code* offence of providing information about birth control,⁵¹ and Hyndman represented the Consumers Association of Canada in its case challenging the ban on the sale of margarine; in the latter case, Hyndman appeared in the Supreme Court of Canada and then in the appeal to the Privy Council in the late 1940s.⁵² In addition, as President of the Business and Professional Women's Club, Hyndman provided important leadership in the struggle to gain Ontario's first equal pay legislation in 1951,⁵³ and she also provided representation to some Aboriginal women in the cases of *Lavell* and *Bedard* in the 1970s.⁵⁴ More generally, Hyndman initiated a program during the Second World War, by which the Canadian Bar

⁴⁹ Hyndman transcript, *id.*, at 58.

⁵⁰ *Id.*, at 108.

⁵¹ *R. v. Palmer*, [1937] 2 D.L.R. 609 (Ont. Mag. Ct.); [1937] O.J. No. 82, [1937] 3 D.L.R. 493 (Ont. C.A.). In both courts, F.W. Wegenast, K.C. is listed among counsel for Ms Palmer. See also Hyndman transcript, *supra*, note 48, at 74-78.

⁵² *Reference re Dairy Industry Act (Canada) S. 5(a)*, [1948] S.C.J. No. 42, [1949] S.C.R. 1 (S.C.C.), *affd* [1950] J.C.J. No. 1 (J.C.P.C.); *Canadian Federation of Agriculture v. Quebec (Attorney General)*, [1950] J.C.J. No. 1, [1951] A.C. 179 (J.C.P.C.). Hyndman appeared in the Supreme Court of Canada as counsel to the Canadian Association of Consumers; although the record of the case indicates that no Canadian counsel participated in the Privy Council, it seems that Hyndman was present: see Hyndman transcript, *supra*, note 48, at 92-102.

⁵³ Shirley Tillotson, "Human Rights Law as Prism: Women's Organizations, Unions, and Ontario's Female Employees Fair Remuneration Act, 1951" (1991) 72 Canadian Historical Review 532, at 545-49. In relation to Hyndman's later involvement in the 1967 Bell Canada equal pay case, see Christine J.N. Kates, "'Identical or Substantially Identical': Bell Canada and the Struggle for Equal Pay 1967-1976" (1990-1991) 4 C.J.W.L. 133.

⁵⁴ *Lavell v. Canada (Attorney General)*; *Isaac v. Bédard*, [1973] S.C.J. No. 128, [1974] S.C.R. 1349 (S.C.C.). Hyndman and Frances Smookler appeared as counsel for Rose Wilhelm, Alberta Committee on Indian Rights for Indian Women Inc. See also Hyndman transcript, *supra*, note 48, at 149-53.

Association provided free legal services to military personnel and their spouses,⁵⁵ the beginning of legal aid services in Canada, and she received the City of Paris Medal for helping to publicize in Canada the cause of the Free French movement during the war.⁵⁶ Much later, Hyndman was present when a group of prominent women met at the University Women's Club in 1966 to formulate plans to request the Prime Minister to establish a Royal Commission on the status of women; and when its Report was released in 1970, Hyndman was among the women who lobbied continuously for the implementation of its recommendations.⁵⁷ After Helen Kinnear became the first woman in the British Empire to be named King's Counsel in 1934, Hyndman was the second in 1938.⁵⁸

Partly as a result of Hyndman's involvement with international Business and Professional Women's Clubs, she also acquired many women friends and legal colleagues outside Canada. One was Helena Normanton, who became the first woman admitted to the Middle Temple in London in 1922.⁵⁹ When Normanton decided to retire in 1947, plans were made to hold a party in her honour with the Lord Chief Justice and other dignitaries from the Inns of Court in attendance. Hyndman's recollections of her unique contribution to this celebration in post-war London clearly reveal her national and international legal prominence at that time, as well as her well-known social acumen and generosity:

[I]t was going to be a great big splash. But I knew that one thing that they wouldn't have much of would be cake, and I have a recipe for a wonderful light fruit cake ... and I sent it over to a firm of confectioners in London ... famous for [their] icings on cakes. ... So I wrote to them about it and they said, ... they couldn't possibly do their best, they needed so many pounds of icing sugar ... and so many pounds of butter, and they couldn't possibly get that, and so many eggs to make

⁵⁵ Hyndman transcript, *id.*, at 102-105.

⁵⁶ *Id.*, at 161-64.

⁵⁷ Kay Macpherson, *When in Doubt, Do Both: The Times of My Life* (Toronto: University of Toronto Press, 1994), at 150-52. Macpherson described the meeting chaired by Laura Sabia, which took place at the University Women's Club in 1966, and identified Margaret Hyndman as one of a small group of women who then contacted government leaders to arrange for the group's brief, calling for the establishment of a Royal Commission, to be presented to the government.

⁵⁸ "61 Years", *supra*, note 28. Vera Parsons was the third woman K.C. in Ontario in 1944: Vera Parsons file, Archives of the Law Society of Upper Canada.

⁵⁹ Normanton, like other aspiring women lawyers in Britain, had completed her law studies some years before women were permitted to become barristers and solicitors after the First World War. She was called to the bar in 1922, and was the first woman to be briefed at both the High Court of Justice and the Central Criminal Court: Obituary notice for Helena Normanton, Q.C., *The Times*, October 16, 1957.

the icing. So I sent them all over by airmail, and ... they decorated them. And the Lord Chief Justice was asked to cut the cake, with the Sword of Justice, and they found it didn't have any edge to it, it couldn't cut. And they had to bring the chef in from the kitchen with his big knife to cut the cake. And that just brought down the house. ...⁶⁰

Although hampered by blindness in old age, Hyndman continued to practise law until her death at the age of 89 in 1991.⁶¹ However, in spite of their overlapping years in practice in Toronto, and the similarity in their focus on corporate law, there is no evidence that Hyndman and Justice Wilson ever met. Clearly, one explanation may be that their practices involved quite different kinds of corporate clients. In addition, however, it is possible that differences between the social lives of married and single women in mid-20th century Canada, or at least the social patterns adopted by these two women, may have diminished their chances of any such meeting. It is clear, for example, that although Hyndman never married, her social life was extraordinarily active, not only in relation to her professional work but also because of her extensive volunteer activities, both in Canada and beyond.⁶² By contrast, Wilson was married, and although she too was active in a variety of committees and volunteer activities, many of them were linked to her husband's role as a Minister of the United Church of Canada. Moreover, as Anderson reported, the Wilsons did not engage in an extensive amount of social activity, preferring to retreat with their music and books on summer weekends to the quiet peacefulness of a rented boathouse on the Trent Canal.⁶³ In this context, however, it is important to recognize that, in a context in which so many women lawyers had "give[n] up practice for matrimony",⁶⁴ Wilson's

⁶⁰ Hyndman transcript, *supra*, note 48, at 128.

⁶¹ Alan Barnes, "Lawyer Margaret Hyndman was a Women's Rights Pioneer" *Toronto Star*, January 21, 1991, at A11 (obituary).

⁶² Hyndman's social activities, and parties for large numbers, were well known, as was her humorous quip that she regretted not having married every time she had to queue up in the liquor store, rather than having a husband to do this job for her: *id.*

⁶³ According to Ellen Anderson, *Judging Bertha Wilson: Law as Large as Life* (Toronto: University of Toronto Press, 2001), at 77, the Wilsons headed north every summer weekend for 27 years to the boathouse, beginning in 1962.

⁶⁴ Ruby Wigle, "Sisters in Law" (1927) 5 Can. Bar Rev. 419. Although this comment was made in the 1920s, there is some evidence that women lawyers continued to choose either marriage or the practice of law well into the 1960s: for examples, see "The Bright Promise", *supra*, note 39; and Cecelia Morgan, "'An Embarrassingly and Severely Masculine Atmosphere': Women, Gender and the Legal Profession at Osgoode Hall, 1920s-1960s" (1996) 11 C.J.W.L. 19, at 54-55. *Judging Bertha Wilson*, *id.*, at 62, described Justice Wilson's efforts to overcome the prohibition on her travelling on client business, because she was a married woman.

involvement in full-time practice as a married woman was still quite unusual in the 1960s.

Nonetheless, although it was unusual, Justice Wilson's role as a married woman practising law in Toronto in the 1960s was not unique. Indeed, it seems that the earlier pattern, in which women became lawyers and then *either* practised law *or* married and gave up practice, was gradually beginning to change; particularly after the Second World War, some women who were being admitted to the bar in the generation after Parsons and Hyndman began to combine marriage — and sometimes even children — with the practice of law. One example was Laura Legge.⁶⁵ Legge had graduated from the University of Western Ontario, and had worked during the Second World War at the Toronto General Hospital, graduating as a nurse in 1945.⁶⁶ She then decided to attend law school and entered Osgoode Hall as one of 13 women in a class of 300 (including veterans returning from the war); when she graduated in 1948, she was one of eight women and 67 men in the graduating class. Legge married a classmate a few years later and then had three children between 1952 and 1955, while she was working as a lawyer for the provincial Ministry of Health. In the mid-1950s, she established her own practice in an office conveniently located near her home, doing real estate, estate work and commercial work for local businesses; eventually, her husband joined her in this practice and it continued to grow.⁶⁷ Although Legge fully recognized that “few women who married and had children worked [outside the home]”, she was firmly convinced that gender was not really significant to her legal practice:

You see, I never thought of myself as a woman lawyer. I always thought of myself as a lawyer. And my generation did. We were, we were just lawyers. ... [C]lients were completely unconcerned by your gender. All they cared about was the kind of work you did for them. ... My experience was you don't become obsessed with discrimination and problems: just work around them, and get on with life.⁶⁸

By 1975, when Legge's children had grown up and were pursuing their own interests, she became the first woman to be elected a Bencher

⁶⁵ Laura Legge, Transcript of interview, Archives of the Law Society of Upper Canada, July 29, 2004.

⁶⁶ *Id.*, at 29.

⁶⁷ *Id.*, at 54-58.

⁶⁸ *Id.*, at 54 and 61.

of the Law Society of Upper Canada; eight years later, in 1983, Legge became the first woman elected Treasurer of the Law Society as well.⁶⁹ Legge's accomplishment in becoming elected a Benchler was itself a significant milestone, as several women (including both Parsons and Hyndman) had been unsuccessful in ongoing efforts to become Benchers since as early as the election of 1946. Indeed, the Women's Law Association of Ontario ("WLAO"),⁷⁰ established at the end of the First World War, had regularly tried to select and then lobby to support specific women candidates in many of these earlier elections.⁷¹ Yet, although Legge had been actively involved in the WLAO, serving as its President from 1964 to 1966, she seems to have asked 10 male lawyers to sign her nomination papers for the Benchler election in 1975,⁷² and she was clearly supported by almost all male colleagues among the Benchers when she was elected Treasurer in 1983.⁷³ In this way, Legge's success in becoming a Benchler and Treasurer of the Law Society substantially reflected the support of male lawyers, although she clearly enjoyed support from many women colleagues in the profession as well. Yet, even though Legge did not regard gender as particularly significant, her later comments about her success at the Law Society suggest that it was not at all irrelevant:

[Becoming a Benchler and then Treasurer] made men realize that *just because you were female, you weren't a monster, and you weren't going to make a lot of waves*. I never thought of myself ... as a woman

⁶⁹ John Beaufoy, "First Woman Elected to Governing Council of Ontario Lawyers" *Globe and Mail*, April 25, 1975; and Jackie Smith, "First Woman Law Society Treasurer Isn't Likely to Shake Up the System" *Toronto Star*, July 11, 1983.

⁷⁰ The Women's Law Association of Ontario was established shortly after the First World War, and all women students at Osgoode Hall were automatically invited to join. The WLAO was actively involved in a number of reform activities and it also functioned as a social organization for women lawyers, whether in active practice or not. From the 1940s, the WLAO regularly tried to encourage women Benchers. For an account of the WLAO history, see Cameron Harvey, "Women in Law in Canada" (1970-71) 4 Man. L.J. 9, and the WLAO files in the Archives of the Law Society of Upper Canada.

⁷¹ The files for Benchers in the Archives of the Law Society of Upper Canada [hereinafter "Benchler files"] reveal that four women were candidates in 1946, the first time that women were candidates for Benchler elections. They were Elizabeth Newton (no. 50 with 435 votes), Vera Parsons (no. 54 with 374 votes), Margaret Hyndman (no. 57 with 303 votes) and Marjorie Henry (no. 60 with 82 votes).

⁷² Legge transcript, *supra*, note 65, at 75. According to Legge, "there was great enthusiasm amongst my male colleagues who knew me as a lawyer".

⁷³ Legge remained the only woman elected Benchler after the 1979 election, but two women, Judith Oyen from Ottawa and Mary Weaver from Sudbury, were elected Benchers in 1983; in the 1987 election, Fran Kiteley, Patricia Peters, Mary Weaver and Helen MacLeod were elected at the outset, with a number of other women quite close to being elected: Benchler files, *supra*, note 71.

lawyer. I always thought of myself as a lawyer. And when I became a bencher I thought of myself as a bencher, and I was there to do my job as a bencher. And I think that my male colleagues realized that I wasn't there with any hidden agenda, but to do my part, ... it was acceptable. But I think that [as women] are becoming the majority in the profession, there will be no problem in women being ... elected. They're going to have to be elected on their own merit, just as men have always been.⁷⁴

Was it just coincidence that Legge was elected a Bencher in 1975, the same year that Justice Wilson was appointed to the Ontario Court of Appeal, and that Legge was then elected Treasurer of the Law Society of Upper Canada in 1983, just a year after Wilson's appointment to the Supreme Court of Canada? Interestingly, there are a number of similarities in their careers. For example, even though Wilson had graduated from law school in Nova Scotia almost a decade after Legge in Ontario, they were contemporaries in terms of age; in addition, unlike Parsons and Hyndman, who remained unmarried to practise law successfully, both Wilson and Legge married, and Legge became the mother of three children. In this way, both their experiences and their career successes seem to suggest that these two women were part of a significant "pattern of transition" for women in the legal profession in the 1970s and 1980s. In some ways, moreover, it appears possible that both Wilson and Legge, by contrast with Parsons and Hyndman, benefitted from changes in Canadian society in these decades, particularly relating to the status of women,⁷⁵ and in relation to changes in legal education and legal practice, particularly because of the accelerated rate of entry on the part of women.⁷⁶ In the same way, perhaps, these issues may be helpful in understanding the context of the appointment of the first women judges.

⁷⁴ Legge transcript, *supra*, note 65, at 101 (emphasis added).

⁷⁵ In particular, the *Report of the Royal Commission on the Status of Women*, which recommended that women be appointed to positions in the public sphere, was released in 1970. See *infra*, note 120 and accompanying text.

⁷⁶ Law Society of Upper Canada, "List of Women Barristers and Solicitors in Ontario".

III. JUSTICE WILSON: ONE OF THE "FIRST THREE" WOMEN JUDGES IN ONTARIO

Some 500 Canadian lawyers, magistrates and judges ... form the biggest delegation to the eight-day first Commonwealth and Empire Law conference. ... There are 22 judges in the Canadian delegation, including the chief justices of Quebec, Ontario and Alberta and Helen A. Kinnear of Cayuga, Ont., the only woman in the Commonwealth to have been made a county court judge.⁷⁷

This report of a conference for lawyers and judges, held in London in 1955, confirms the prominent status of Judge Helen Kinnear, who had been appointed by the federal government as a County Court judge in Ontario in 1943.⁷⁸ Kinnear was the daughter of a lawyer who practised in Port Colborne and, upon graduation from Osgoode Hall in 1920, at the age of 26, she joined him, practising as "Kinnear and Kinnear". Kinnear was probably the first woman to practise law in the Niagara Peninsula, and her work increased significantly when her father died suddenly in 1924.⁷⁹ Kinnear carried on the legal practice on her own quite successfully, becoming the first woman to appear in the Supreme Court of Canada; in addition, in 1934, she became the first woman in the British Empire to be appointed King's Counsel.⁸⁰ Significantly, like her father, Kinnear was actively involved in politics as a member of the Liberal Party, serving on the executive of the Ontario Women's Liberal Association in the 1920s, and as President of the Hamilton District Women's Liberal Association from 1925 to 1935. In addition, she made repeated efforts in these years to obtain the Liberal nomination to elected office.⁸¹

⁷⁷ "Lawyers Study Fusion of Two Professions" *The Globe*, July 27, 1955, at 2.

⁷⁸ Marie Corbett & Doris Corbett, "Helen Kinnear (1894-1970)" in Rebecca Mae Salokar & Mary L. Volcansek, eds., *Women in Law: A Bio-Bibliographical Sourcebook* (Westport, Conn: Greenwood Press, 1996), at 129 [hereinafter "'Helen Kinnear'"]. See also Mary Mather, "Judge Helen Kinnear: A Woman of Many Firsts" *Canadian Lawyer*, June/July 1993, at 14 (published in honour of the 50th anniversary of Kinnear's appointment to the bench, and the commemorative stamp issued by Canada Post).

⁷⁹ "Helen Kinnear", *id.*, at 130-31.

⁸⁰ "First Woman KC is Congratulated" *The Globe*, December 22, 1934, at 4. See also "Helen Kinnear", *id.*, at 131.

⁸¹ "Liberal Women Name Officers" *The Globe*, July 25, 1935; "Tolerance Urged on Liberal Women" *The Globe*, April 7, 1937; and "Out-of-Town Delegates Lining up for Convention" *The Globe*, May 1, 1937. See also "Helen Kinnear", *supra*, note 78, at 129-31; as the authors noted, at 129, Kinnear would respond to anyone who asked her political affiliation, "Liberal by birth and Liberal by conviction."

Finally, in 1941, Judge Kinnear succeeded in gaining the Liberal nomination for Welland riding. It was a three-way race in which Kinnear was the only woman candidate. As *The Globe* reported, “Before voting took place, Miss Kinnear pleaded with the delegates not to allow the fact that she was a woman to influence the vote.”⁸² After two ballots, Kinnear succeeded in gaining the nomination, and seemed poised to win election to the House of Commons in the upcoming by-election.⁸³ However, a few months later, Kinnear withdrew as the Liberal candidate in the by-election in favour of the newly appointed Minister of Labour, the Hon. Humphrey Mitchell, who did not yet have a seat in the House of Commons; according to Kinnear, her decision was prompted by the national situation in relation to Canada’s war effort.⁸⁴ Then, as early as April 1942, a rumour began to circulate about Kinnear’s appointment to the Bench, and in June 1943 she was sworn in as County Court Judge for Haldimand County in Cayuga. For Kinnear, this appointment was “more than a personal achievement”; she regarded it as a “victory” for women, and an acknowledgment that women had a “definite place” in Canadian legal administration.⁸⁵

Judge Kinnear served as a judge for almost two decades, retiring in 1962. As a County Court judge, she was also a judge of the Surrogate Court, with jurisdiction over estates and in relation to guardianship and custody of children. County Court judges also had jurisdiction to hear criminal cases of all kinds, as well as summary trials involving landlord and tenant matters and other issues pursuant to a variety of provincial statutes. As Kinnear explained, the scope of a county judge’s jurisdiction was “the Jack of all trades in the administration of justice in Ontario”.⁸⁶ Kinnear was one of 63 County Court judges in Ontario, and one of nine who was also a Juvenile Court judge; indeed, her interest in juvenile

⁸² “Woman KC Nominated as Liberal Candidate” *The Globe*, October 27, 1941, at 13.

⁸³ *Id.* Agnes MacPhail had become the first woman elected to the House of Commons in 1921: see Rachel Wyatt, *Agnes MacPhail: Champion of the Underdog* (Lantzville, BC: XYZ Publishing, 2000); and Robert Sharpe & Patricia McMahon, *The Persons Case: The Origins and Legacy of the Fight for Legal Personhood* (Toronto: University of Toronto Press, 2007).

⁸⁴ “Refused Permission to Resign Candidacy” *The Globe*, December 24, 1941; and “Report Woman Slated for Bench” *The Globe*, April 23, 1942. See also “Helen Kinnear”, *supra*, note 78, at 131.

⁸⁵ “Helen Kinnear”, *supra*, note 78, at 132.

⁸⁶ *Id.*, at 133. See also Helen Kinnear, “The County Judge in Ontario” (1954) 32:1 Can. Bar Rev. 21; and Helen Kinnear, “The County Judge in Ontario” (1954) 32:2 Can. Bar Rev. 128. According to “Helen Kinnear”, *id.*, at 133, “county courts in Canada tried four times as many criminal cases as the Supreme Court”. The county courts were merged with the Supreme Court of Ontario in 1990: *id.*, at 135.

delinquency resulted in her becoming founding president of the Juvenile and Family Court Judges Association in the early 1950s.⁸⁷ In addition, she was appointed in 1954 to two related Royal Commissions, along with Chief Justice McRuer in Ontario and Dr. Desrochers of Quebec City, concerning insanity as a defence in criminal cases and the criminal law relating to sexual psychopaths. The final report of these Commissions, issued in 1958, pioneered arguments for the segregation and treatment of sexual offenders.⁸⁸ Kinnear died in 1970 at the age of 76; by that time, a few other women had been appointed to the County Court, but it was not until a year after Kinnear's death that Mabel Van Camp was appointed to the Supreme Court of Ontario.

Like her contemporaries, Parsons and Hyndman, Judge Kinnear never married. For most of her life, she shared a home with her sister, Jennie, with whom she travelled as well. She was active in a wide variety of organizations, including organizations of women lawyers in Canada and the United States.⁸⁹ For example, when the Local Council of Women in Toronto organized a series of presentations about law in 1945, Kinnear was the first speaker in the series; her presentation on "The Machinery of Law" drew 500 women to hear about the administration of civil and criminal law.⁹⁰ A few years later, a press report quoted her suggesting that the "judicial costume" needed renovation to replace the "antediluvian attire we wear at the moment"; noting how "it wears the fingernails to the bone to struggle daily with a judicial collar-button", she argued that women should get together and "work out some kind of feminine attire that would be dignified but easier to wear".⁹¹ Such comments reflect Kinnear's "straightforward and fair approach", an approach that was not significantly different from Justice Wilson's at the Osler firm.⁹² Yet, since Kinnear was on the verge of

⁸⁷ "Helen Kinnear", *id.*, at 133.

⁸⁸ *Id.*, at 133-34.

⁸⁹ Judge Kinnear was active in the WLAO, and there are numerous press reports of her other professional and social activities.

⁹⁰ "Machinery of the Law Theme of Judge Kinnear" *The Globe*, October 4, 1945, at 12. According to this report:

Contrary to popular belief that "anything legal is put into complicated and technical language for the express purpose of befogging the issue," Judge Kinnear affirmed that "it is a real art to be able to put a complicated matter into simple language — and lawyers and judges are always trying to master that art."

⁹¹ "Uncomfortable Court Clothing Annoys Judge Helen Kinnear" *The Globe*, April 19, 1948, at 14.

⁹² See "Helen Kinnear", *supra*, note 78, at 134, and *Judging Bertha Wilson*, *supra*, note 63, at 72.

retirement just as Wilson was beginning to practise at the Osler firm, it might seem unlikely that they ever met.

However, there is some evidence that Judge Kinnear and Justice Wilson did meet in 1958, and that Wilson probably also met Justice Mabel Van Camp on the same occasion. The event was a lunch meeting that took place when the Canadian Bar Association met in Toronto in September 1958; according to a press report, the WLAO arranged a special luncheon for women lawyers from other parts of Canada who were present for the CBA meeting. As the report explained:

Miss Mabel Van Camp, the president [of WLAO], will receive the guests and will be assisted in the duties of hostess by members of the executive, including Mrs John Clarry. Judge Helen Kinnear will come from Cayuga to be among the guests who will include Miss Diana Priestly and Miss Rendina Hossie of Vancouver, and, from the Maritime provinces, Mrs L M Toward, *Mrs B W Wilson* and Miss Enid Land.⁹³

Unfortunately, there is no further information about this occasion when it appears that Judge Kinnear, Justice Van Camp and Justice Wilson were all together. Clearly, in 1958, only Kinnear had yet been appointed to the judiciary, and it seems likely that Wilson was probably more concerned at the time about gaining admission to the bar of Ontario than in harbouring aspirations of a judicial appointment. Yet, attending this reception with a sitting judge, and meeting Van Camp as President of the WLAO, may have been important for Wilson, as she began her career at the Osler firm. However, although there are numerous reports of WLAO activities in the press in subsequent years, often prominently featuring both Kinnear and Van Camp, there are no further press reports of Wilson's presence at WLAO events.⁹⁴

By contrast, Justice Mabel Van Camp was active in the WLAO for decades.⁹⁵ She grew up in a small village between Toronto and Peterborough where her father ran a business as a garage mechanic. After finishing high school and then waiting a year until she was 17, Van Camp attended the University of Toronto, living with the Sedgwick family and providing some babysitting for them. She graduated in 1941

⁹³ "Social and Personal Notes" *The Globe*, September 12, 1958 (emphasis added).

⁹⁴ According to Laura Legge, Wilson did attend meetings of WLAO: Interview February 28, 2008.

⁹⁵ Mabel Van Camp, transcript of interview, Osgoode Society for Canadian Legal History, Archives of Ontario, at 77-78, and 152-60 [hereinafter "Van Camp transcript"].

and then began to study education so that she could earn the funds necessary to attend Osgoode Hall; however, just six weeks into her education program, she was asked to replace a teacher in a small community outside Ottawa because the teacher had fallen ill, and she taught Latin and Home Economics there for a year and a half. After another year of teaching in Norwood, Van Camp entered Osgoode Hall in the fall of 1944, one of five women in a small class just before the end of the war.⁹⁶

Interestingly, Justice Van Camp had met with Dean Falconbridge a year earlier to seek his advice about studying law, and the Dean's response to Van Camp was not so different from Dean Reed's now well-known response to Justice Wilson about going home to crochet, as Van Camp recalled:

I went to see Dean Falconbridge ... and he persuaded me in the gentlest of terms that law was no profession for a lady, and I would be much happier if I did not take it. So I went away at that time. And over the year decided that I would try it. That was the only comment at any time all the way through law school about whether you should be in law or not. ...⁹⁷

Justice Van Camp articulated with Macdonald and Macintosh, doing research, and filing and serving papers; she was the first student at the firm who did not pay for the privilege of being a student.⁹⁸ Eventually, she was called to the bar in September 1947; Mackenzie King was also called to the Ontario bar that day, and spoke in Convocation, a situation that was somewhat trying for Van Camp's father, who was a longtime Conservative.⁹⁹ Following her call to the bar, however, Van Camp experienced great difficulty finding a job — although she obtained interviews, she could not find employment because she was a woman. Some months later, with Sedgwick's help, she joined the firm of Gerard (Gerry) Beaudoin, a lawyer from Penetang who provided legal services to the French Canadian community in Toronto. Van Camp was useful to Beaudoin because he was not permitted, as a Catholic, to do divorces for

⁹⁶ *Id.*, at 2-47.

⁹⁷ *Id.*, at 48-49. *Judging Bertha Wilson*, *supra*, note 63, at 38, reports Justice Wilson's meeting with Dean Reed and his advice to her about staying home to crochet.

⁹⁸ Van Camp transcript, *supra*, note 95, at 62-70.

⁹⁹ *Id.*, at 73-74.

Catholic clients; as Van Camp explained, “it was handy when I came in, because I now could act for Roman Catholics who wanted a divorce.”¹⁰⁰

Justice Van Camp worked in Beaudoin’s firm, doing primarily family law, particularly counsel work in family law, until 1962, when Beaudoin became ill; eventually, she and another lawyer took over Beaudoin’s practice together, and Van Camp continued her family law work, including advocacy in the courts.¹⁰¹ Years later, she vividly recalled the problems of inadequate robing rooms for women barristers: it was not just that the space was about “twice the size of a clothes closet”, but also that male lawyers often discussed their cases and negotiated settlements in their own robing rooms. Indeed, as Van Camp recalled, Judy LaMarsh tried to overcome this problem when she was appearing in cases in Toronto by “[robing] in the men’s robing room and that caused great furor”.¹⁰² Although Van Camp was involved in general practice, including some criminal law and negligence work, the Beaudoin firm became particularly well known for its family law activity, and the firm did a lot of separation agreements for spouses who did not divorce, as well as divorce litigation.¹⁰³ In addition, Van Camp became active in a variety of social service organizations, including the YWCA. According to Van Camp, it was the “Y” which submitted her name for judicial appointment, even though she claimed to have no expectation of appointment because of her lack of political involvement.¹⁰⁴

Nonetheless, in spite of her lack of political connections, Justice Van Camp was appointed to the Supreme Court of Ontario in November 1971. Years later, Van Camp recalled her first meeting with Chief Justice Gale, and their telephone consultation with judges in England and Australia about what to call her; eventually, they rejected “Miss Justice Van Camp” and several other possibilities, and decided on “Madam Justice” — without an “e”. As Van Camp noted, “And that has caused trouble ever since for every lawyer.”¹⁰⁵ Van Camp’s appointment also raised new issues about washroom facilities for women judges and

¹⁰⁰ *Id.*, at 86-93.

¹⁰¹ Justice Van Camp recollected, *id.*, at 95, that the firm did “almost nothing but counsel work” in family law. Her transcript also provides details about the practice of family law: see 95-123. Van Camp also participated in leading Practice Group sessions at Osgoode Hall after the departure of Dean Wright in 1949: see *id.*, at 147.

¹⁰² *Id.*, at 174.

¹⁰³ *Id.*, at 108-11 and 134-44.

¹⁰⁴ *Id.*, at 240-42.

¹⁰⁵ *Id.*, at 246-47.

she later laughed about the challenges for Harcourts when she needed to be measured for judicial robes: "they had never measured a woman for a gown".¹⁰⁶ Thus, even though Justice Wilson was to experience similar problems with washroom facilities as a member of the Court of Appeal, Van Camp's appointment four years earlier meant that at least some of the issues about women judges had been addressed prior to Wilson's arrival in 1975.¹⁰⁷

Justice Van Camp retired at age 75 in 1995; like Judge Kinnear, she never married,¹⁰⁸ and both Kinnear and Van Camp were actively involved in numerous legal and other organizations. Both these women lawyers were also highly competent practitioners. Thus, in seeking to explain why Kinnear was appointed a judge so many years earlier, it appears that her political connection, especially her willingness to step aside in the public interest to permit the Minister of Labour to obtain a Parliamentary seat in 1941, was a key factor. All the same, in a context in which Kinnear had clearly demonstrated women's competence as judges, it is important to ask why it was almost 30 years before Van Camp was appointed to the Supreme Court in 1971, and then Justice Wilson to the Court of Appeal in 1975. Even assuming that Kinnear's appointment in 1943 may have resulted (even in part) from her political connections, how do we explain the failure to appoint women to higher courts in Ontario for nearly three decades? More significantly, what then explains the decisions to appoint women to the Supreme Court and to the Court of Appeal in Ontario, for the first time, in the early 1970s, and then to appoint Wilson to the Supreme Court of Canada in 1982? And in the context of a number of prominent women in law, why was it Bertha Wilson, a "lawyer's lawyer" at the Osler firm, who had few clients of her own and who was content to provide research for litigators rather than appear in court herself, who was the first woman appointed to the Ontario Court of Appeal and then, just seven years later, to the Supreme Court of Canada?

¹⁰⁶ *Id.*, at 250.

¹⁰⁷ According to Justice Van Camp, *id.*, at 248, there was no room for a woman's washroom on the second floor "because it had never been anticipated that there would be a woman on the Court of Appeal. ... And so she [Wilson] had to take over one of the usher's washrooms, I think."

¹⁰⁸ Thomas Claridge, "Retiring Ontario Judge, 75, Ready for the Next Course" *Globe and Mail*, May 13, 1995, at A5. Justice Van Camp sometimes described herself as having had "many marriages" because of her work in family law: see Van Camp transcript, *id.*, at 124.

IV. JUSTICE WILSON AND THE APPOINTMENT OF WOMEN JUDGES

The general proposition ... is that the number of women judges will increase as the pool of eligible women and the number of positions in the opportunity structure increase, and *to the extent that the gatekeepers recognize the presence of eligible women for the positions and the legitimacy of their claims for those positions. ... Without a women's movement and specialized organizations of women lawyers and judges, the pool of women eligible for law jobs would not increase and the gatekeepers would not be reminded of their claims. ...*¹⁰⁹

This assessment concerning the factors relevant to the appointment of women judges in the United States was published in 1984.¹¹⁰ According to its author, Beverly Cook, three (unrelated) variables were necessary to overcome the historic exclusion of women from the judiciary: an increase in the pool of women candidates for appointment; an increase in the number of judicial positions available; and an increase in the number of “gatekeepers” who were positively inclined to give women fair consideration.¹¹¹ In addition, as the quotation from her assessment reveals, an active and successful women’s movement is crucial for creating aspirations among the pool of women candidates, as well as for exerting pressure on gatekeepers to consider appointing women judges. Cook also argued that there is no necessary relationship between these factors and the growth of the legal system, concluding that “it was serendipitous that the movement for women’s equality coincided with the expansion of law jobs during the period of the mid-1960’s into the 1980’s” in the United States.

Although Cook’s analysis did not focus on the Canadian context, there are obvious similarities in the intersection of these three variables in Ontario in the same period. In the first place, the pool of women lawyers began to increase significantly in the late 1960s and early 1970s.

¹⁰⁹ Beverly B. Cook, “Women Judges: A Preface to their History” (1984) 14 *Golden Gate U.L. Rev.* 573, at 575 (emphasis added) [hereinafter “Women Judges”]. See also Beverly B. Cook, “Will Women Judges Make a Difference in Women’s Legal Rights? A Prediction from Attitudes and Simulated Behaviour” in Margherita Rendel, ed., *Women, Power and Political Systems* (London: Croom Helm, 1981), at 216; and Linda Silver Dranoff, “Women as Lawyers in Toronto” (1972) 10 *Osgoode Hall L.J.* 177.

¹¹⁰ See also Beverly B. Cook, “Women as Supreme Court Candidates: From Florence Allen to Sandra O’Connor” (Dec-Jan 1982) 65:6 *Judicature* 315.

¹¹¹ Cook defined “gatekeepers” as “those who select among candidates for law jobs”. It may also be important to include as “gatekeepers” those who substantially influence such selection processes: see “Women Judges”, *supra*, note 109, at 574 (note 4).

According to Law Society records, only a few women were being admitted to the Ontario bar in the early decades; indeed, even in the period 1960 to 1968, fewer than a dozen women gained admission in each of these years.¹¹² Then, quite rapidly, these numbers began to change: 32 women were admitted to the bar in 1969; 19 in 1970, 33 in 1971, and 20 in 1972. In 1973, however, the numbers began to increase even more substantially: 51 women were admitted to the bar in 1973, 50 more gained admission in 1974, and then 85 women were called to the bar in 1975.¹¹³ Indeed, overall, it is significant that slightly more women were admitted to the Ontario bar between 1969 and 1975 than had been admitted to the same bar between 1897 and 1968.¹¹⁴ To some extent, these increasing numbers reflected the expansion of university law schools in the 1960s and 1970s. Yet, as Richard Abel noted, the rate of expansion for women law students across Canada greatly exceeded that of males in these years: while the number of male law students doubled nationally between 1962-1963 and 1980-1981, the number of female law students increased 24 times in the same period.¹¹⁵ As Abel concluded, the highly accelerated rate of women's entry to the legal profession was "nothing short of revolutionary".¹¹⁶

Second, there is evidence that most law graduates in this period had little difficulty obtaining employment in the profession, as law jobs increased in number and variety, particularly as the economy prospered, the rate of legislative activity increased, new roles for governmental intervention resulted in the creation of an array of agencies and tribunals, and programs for legal aid and assistance for the poor and disadvantaged were established.¹¹⁷ In this context, the number of judicial appointments

¹¹² Law Society of Upper Canada, "List of Women Barristers and Solicitors in Ontario".

¹¹³ *Id.*

¹¹⁴ According to the Law Society list, *id.*, there were 273 women lawyers admitted to the Ontario bar up to the end of 1968; between 1969 and 1975, 279 women lawyers were called to the Ontario bar.

¹¹⁵ Richard L. Abel, "Comparative Sociology of Legal Professions: An Exploratory Essay" (1985) 1 American Bar Foundation Research Journal 5, at 23 and Table 3.

¹¹⁶ Richard L. Abel, "United States: The Contradictions of Professionalism" in R. Abel & P. Lewis, eds., *Lawyers in Society: The Common Law World*, vol. 1 (Berkeley: University of California Press, 1988), 186, at 202.

¹¹⁷ See Harry Arthurs, Richard Weisman & Frederick Zemans, "Canadian Lawyers: A Peculiar Professionalism" in R. Abel and P. Lewis, eds, *id.*, at 123; D. Stager with H. Arthurs, *Lawyers in Canada* (Toronto: University of Toronto Press, 1990), at 157; and Graham White, "Lawyers in Government: A Preliminary Study" in Roy J. Matas & Deborah J. McCawley, eds., *Legal Education in Canada* (Montreal: Federation of Law Societies of Canada, 1987), at 764.

also seems to have started to increase.¹¹⁸ And third, and perhaps most significantly, it appears that some of the traditional gatekeepers changed their attitudes (at least in public) about women on the Bench.

As Cook argued, however, the critical factor was *the presence of a women's movement that exerted pressure on the gatekeepers*. In this context, Mabel Van Camp's later recollections of her appointment to the Bench in 1971 identified the feminist movement as a significant factor in creating pressure for the appointment of a woman to the Supreme Court of Ontario, as she reflected:

There was pressure. There had been pressure, I think, of about maybe two years. I have forgotten what [exactly] was happening in the feminist movement at that time. But many [feminist] groups were not so much [determined] to have a woman on the Court, as to have women in public life in some way or other. And Trudeau was very receptive to it. Chief Justice Gale would have liked it to commence somewhere else. ... And in some other court. But they were going to add five [judges] and it was difficult to add five and not have one of them a woman at that time. ... And I sat down and tried to think what I wanted to do about it, but ... what influenced me was that ... all through my life I had sort of gone where things led. ... I was terrified at how I would ever prepare myself for the job. ... But I thought well, I have done everything else and I have been scared [of] doing it, so I will try this one too. ...¹¹⁹

Justice Van Camp's acknowledgment of the pressure to appoint women to public life and her sense of personal responsibility to respond positively in this context appear to be important factors to explain why women began to be appointed as judges in higher courts in Canada in the 1970s.

Moreover, her reflections are consistent with the *Report of the Royal Commission on the Status of Women in Canada* in 1970, which had noted that there were 889 judges and magistrates in Canada, of whom only 14 were women; moreover, only one, Réjane L-Colas of Quebec, was then a member of a superior court.¹²⁰ The Commission

¹¹⁸ See D. Stager with H. Arthurs, *id.*, at 299; and P. Russell, *The Judiciary in Canada: The Third Branch of Government* (Toronto: McGraw-Hill Ryerson, 1987).

¹¹⁹ Van Camp transcript, *supra*, note 95, at 245 and 243.

¹²⁰ *Report of the Royal Commission on the Status of Women in Canada* (Ottawa: Information Canada, 1970), at 342. Paragraph 33 stated the Commission's recommendation that "the federal government and the provinces name more women judges in all courts within their jurisdictions".

recommended strongly that both federal and provincial governments appoint more women judges, citing the comments of Chief Justice McRuer a few years earlier. Significantly, Chief Justice McRuer had commented that women should not be appointed *only* because they were women, but he had also pointedly suggested that "many women who are practising at the Bar of Canada ... would make better judges than some of the men that have been appointed".¹²¹ McRuer's public comments are especially important in identifying the attitudes of (some) gatekeepers in the early 1970s (although there were undoubtedly different views among his male contemporaries about the wisdom of appointing women as judges)! Yet, as Van Camp's reflections reveal, there was also political support in Ottawa for her appointment, spurred on to some extent at least by the demands of the women's movement and the recommendations of the Royal Commission.¹²² Moreover, it seems likely that these same forces encouraged the appointment of a woman to the Court of Appeal four years later, and they may have influenced the election of the first woman Benchers in 1975 as well.

In addition, it seems that after President Reagan fulfilled his election promise and appointed a woman, Sandra Day O'Connor, to the United States Supreme Court in 1981, (female) gender began to become a positive attribute in relation to judicial appointments in Canada too. In this context, there is some evidence that the federal Minister of Justice at the time, Jean Chrétien, wished to fill a vacancy in Ontario on the Supreme Court of Canada in 1982 by naming a *woman* judge, particularly because the *Canadian Charter of Rights and Freedoms* was about to take effect. As one observer noted:

The best woman candidate was Justice Bertha Wilson of the Ontario Court of Appeal. The "establishment" in the Ontario legal community

¹²¹ J.C. McRuer, "The Task Ahead", presented to the National Conference on Human Rights, Ottawa, December 1968, cited in the *Report of the Royal Commission on the Status of Women*, *id.*, at 342. McRuer was emphatic, however, that "only merit should be considered in making an appointment to the Bench".

¹²² Justice Van Camp later reflected on the circumstances of her appointment: see *supra*, note 95, at 240. In particular, she "assumed she would not be appointed because of her lack of political connection, etc." She was appointed at the same time as David Cromarty, Tom Callon, Mayer Lerner and Archie O'Driscoll. It is possible that Van Camp's appointment was influenced by a number of factors: she was an active and well-respected advocate in the courts; her expertise in family law was a particular asset in the context of the enactment of federal divorce legislation three years earlier in 1968; and her lack of personal political connection may have been useful, given her family's political allegiance to the Conservative party. Like most women lawyers of her generation, moreover, she practised law alongside men, some of whom may have been willing to support her appointment because of her competence and her legal and community service activities.

was shameless in making the case that she wasn't "ready," and that there were other (male) candidates who were better "qualified." Even Chief Justice Bora Laskin, who had his own preferred candidate at the time, made that argument very vociferously to Prime Minister Trudeau.¹²³

Nonetheless, Chrétien's view prevailed with the Prime Minister on the basis that, so long as Wilson was qualified, "it was more important, *in the context of the times*, to appoint her than to appoint someone else who was male, even though he might arguably be 'better' qualified with more experience as an appellate judge".¹²⁴

Clearly, this comment suggests that if (female) gender had been an almost insuperable barrier for women in law in previous decades, it was becoming a beneficial attribute for judicial appointment by the mid-1970s and 1980s. Moreover, such a change in gatekeepers' attitudes to gender seems helpful in explaining why Justice Wilson was appointed to the judiciary, while neither Parsons nor Hyndman, both of whom had achieved great prominence in their professional work, ever obtained judicial appointments. In the context of Cook's analysis, it seems likely that their lack of success resulted from women's small numbers in the profession before 1970, and just as importantly, the absence of a women's movement to create pressure on earlier cohorts of (male) gatekeepers. Interestingly, when Hyndman addressed a dinner in Ottawa in March 1973, challenging women to continue to fight for the implementation of the recommendations of the Royal Commission on the Status of Women,¹²⁵ she was interviewed by the press, and asked to comment on her legal career. She expressed full satisfaction with her work, but the interviewer then reported:

Asked if she is disappointed not to be a Supreme Court judge, she replied: "I have been at peace over unfulfilled ambitions for 20 years. Not appointing a woman judge has been discrimination. It was broken with the appointment of Mabel Van Camp. Again, as in most top jobs,

¹²³ Eddie Goldenberg, *The Way it Works: Inside Ottawa* (Toronto: McClelland and Stewart Ltd., 2006), at 89; *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, bring Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

¹²⁴ Goldenberg, *id.* (emphasis added).

¹²⁵ "Margaret Hyndman Still Fights for Equal Rights," *Ottawa Journal*, March 16, 1973.

a woman has to be much better than a man. This applies to women judges," she concluded.¹²⁶

At the time of this interview in 1973, of course, Hyndman was in her early 70s and thus no longer actively seeking judicial appointment, and Parsons had died the previous month.¹²⁷

Yet, Hyndman's comments about "discrimination" in relation to the appointment of women judges were nonetheless somewhat unique in 1973. Indeed, it is striking how often women who were successful in gaining appointments to the Bench and to positions of public office in the 1970s and 1980s continued to deny the relevance of gender to the practice of law. Particularly in a context in which the strength of the women's movement and its pressure on gatekeepers created opportunities for women to achieve new levels of success, it is curious that many women in law firmly distanced themselves from the women's movement. For example, Legge always avoided being identified as a "woman lawyer", declaring "I don't know what a feminist is. ... Women have had equality for all my life. It's a question of them getting on with the job. I think the fact that I'm now treasurer proves it."¹²⁸ Similarly, as Anderson reported, Justice Wilson was always firmly and "avowedly not a feminist".¹²⁹ Thus, even in the context of successes never achieved by earlier cohorts of women lawyers, including Parsons and Hyndman, and even though their successes may have resulted from pressure on the gatekeepers on the part of the women's movement, these successful women lawyers continued to deny that gender had any significance in the practice of law.

However, the views of these successful women in law are not at all curious in the *context* of ideas about legal professionalism. Indeed, they clearly prove that women lawyers, even in the transition period of the

¹²⁶ *Id.* Hyndman's comment in this 1973 interview is particularly significant for its express use of the word "discrimination" to explain the failure to appoint women to the Supreme Court in Ontario until 1971. Like other women in law before the 1970s, Hyndman had generally denied that there was any discrimination in the legal profession; indeed, in a much earlier interview in 1949, she had adamantly denied that gender was at all relevant to professional success:

Take a young man and a young woman of equal intelligence. Give them the same social background and opportunity. Put them into the same business. And there will be little to choose between them. ... Only the fact that I am a lawyer matters. That I am a woman is of no consequence. I make a point of not knowing how many women lawyers there are in Canada.

See "The Legal Lady" *Maclean's Magazine*, 1949, at 15 and 23.

¹²⁷ See "Vera Parsons, 83, Criminal Lawyer" *Toronto Star*, February 20, 1973 (obituary).

¹²⁸ *Toronto Star*, July 11, 1983, at B3.

¹²⁹ Ellen Anderson, *Judging Bertha Wilson: Law as Large as Life* (Toronto: University of Toronto Press, 2001), at 135.

1970s and 1980s, were required to work within the traditions of the “gentleman’s profession” of law,¹³⁰ and to accept gender neutrality as inherent within the ideals of modern legal professionalism.¹³¹ Put more bluntly, for a woman like Justice Wilson to succeed in the legal profession, it was fundamentally necessary for her to be a “lawyer”, not a “woman lawyer”. Or, as Legge explained when she was first elected a Benchers, it was important for a woman to demonstrate that she was not a “monster” and that she was not going to “make a lot of waves”.¹³² In such a context, the gatekeepers who were being encouraged by the women’s movement to appoint a woman to the Court of Appeal (and later to the Supreme Court of Canada) may have wished to select a woman who would not make waves, who was personally conservative,¹³³ and who accepted the need to conform to the traditional culture of legal practice.¹³⁴ That Wilson’s work as a judge of the Ontario Court of Appeal and later in the Supreme Court of Canada did not always substantially conform to these (conservative) expectations does not negative the possibility that she was selected for appointment by gatekeepers precisely because they did *not* expect her to challenge the traditions of the “gentleman’s profession” in her judicial role.

Thus, as the American researchers concluded in relation to the prejudice experienced by earlier generations of women in the professions, women lawyers like Justice Wilson, who were “determined, aspiring professionals”, were not “easily deterred”, and they utilized a number of strategies to pursue their aspirations as members of the legal

¹³⁰ R.D. Gidney & W.P.J. Millar, *Professional Gentlemen: The Professions in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1994), at 239; as the authors stated succinctly, an occupation could not be called a profession “if it was filled with women”.

¹³¹ See Nancy F. Cott, *The Grounding of Modern Feminism* (New Haven and London: Yale University Press, 1987), at 233-34. As Cott concluded, “the professional ethos, with its own promise of freedom from sex-defined constraints, was released to flourish in aspiring women’s minds.” Although Cott’s assessment was particularly directed to the 1920s and 1930s, after suffrage was achieved, it seems that these ideas continued to flourish into the 1970s and the period of transition for women in law.

¹³² Laura Legge, Transcript of interview, Archives of the Law Society of Upper Canada, July 29, 2004.

¹³³ *Judging Bertha Wilson*, *supra*, note 129, at 64.

¹³⁴ *Id.*, at 58. Even in this context, however, the selection of Justice Wilson requires some attention to the context and the gatekeepers; as Anderson reported, at 87, “When her name was released, there arose from the bench, a chorus of ‘Bertha Who?’” Yet, Wilson probably had the support of a number of influential gatekeepers, including some of her Osler partners, who greatly admired her excellent, if behind-the-scenes, work for clients. In addition, Anderson reported that Wilson had impressed John Arnup in their work together on the *Texas Gulf Sulphur* case, and Arnup was already on the Court of Appeal as well: see *Judging Bertha Wilson*, *id.*, at 65-69 and 89-90.

profession in the period of transition in the 1970s and 1980s.¹³⁵ For many of the women in law in this period of transition, changes in the status of women created by the women's movement opened up new professional opportunities, but the cultural traditions of the "gentleman's profession" continued to define them as "lawyers" (ungendered). Indeed, as Carrie Menkel-Meadow argued in the 1980s, the "success" of individual women in the legal profession still seemed to be inversely related to the extent of their (expressed) commitment to gender issues.¹³⁶ Significantly, however, by the 1990s when she had resigned from the Bench, Wilson herself emerged as a proponent of the need to transform the legal profession, by overcoming the need for "women to fit into a profession that has been shaped by and for men"; as she stated explicitly: "Equality is not achieved by including women but forcing them to emulate men."¹³⁷

However, Justice Wilson's journey to this publicly expressed view of gender and legal professionalism, as an appellate judge and in her later work on the Gender Equality Task Force, is another part of her story. In the context of her role as a lawyer in mid-century Canada and in relation to her judicial appointments, her firm stance as a lawyer (ungendered) demonstrates that she clearly understood the prevailing culture of the profession, and that she was astute in finding strategic "ways to respond to the discrimination [she] faced", which included denying its existence for women in law — and its impact on her. In doing so, her excellent legal work became recognized when her personal accomplishments coincided with the pressure of the women's movement on the gatekeepers, creating an outstanding opportunity for her and a significant achievement for women in law in Canada. Thus, the story of Wilson's appointment to the Court of Appeal in Ontario, and then to the Supreme Court of Canada, reveals not only her personal success, but also the larger context of gender and legal professionalism in mid-20th century Canada, a time of transition for women in law.

¹³⁵ P.M. Glazer & M. Slater, *Unequal Colleagues: The Entrance of Women into Professions, 1890-1940* (New Brunswick and London: Rutgers University Press, 1987).

¹³⁶ Carrie Menkel-Meadow, "The Comparative Sociology of Women Lawyers: The 'Feminization' of the Legal Profession" (1987) 24 Osgoode Hall L.J. 897, at 899-900.

¹³⁷ Report of the Canadian Bar Association Task Force on Gender Equality in the Legal Profession, *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa: Canadian Bar Association, 1993), at 11.