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"The Power of Advocacy"

Keynote Speaker, Justice Sheilah Martin, Supreme Court of Canada at the 24th Annual Osgoode Constitutional Cases Conference

Virtual
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Good afternoon,

First, let me salute the wonderful initiative to eliminate registration fees for this year and instead invite participants who are able to contribute to legacy funds set up at Osgoode Hall Law School and UVic Law, respectively, in honour of two titans of Canadian constitutional law, Peter W. Hogg and Joseph J. Arvay, Q.C. The work of both is being highlighted and honoured at this year's conference.

Peter W. Hogg was without a doubt one of Canada's greatest legal minds, whose scholarly contributions helped countless judges, practitioners and students alike. I speak from personal experience. When I took my first constitutional law course in law school, I was quite at a loss and struggled to make sense of the principles emerging from the case law, that is, until I got my hands on Professor Hogg's first edition of *Constitutional Law of Canada*.[1] That textbook was a true life-saver back then and is still a must-have book today. Peter Hogg's work has been cited countless times in courts across the country, which speaks to the outstanding quality of his writings. His expertise translated into the courtroom as well — Professor Hogg was a brilliant advocate, appearing on several highly complex constitutional matters.

This leads me to my topic today, which is a rather broad one: The Power of Advocacy. I chose this topic because the power of advocacy becomes clear when considering the immeasurable impact outstanding advocacy can have in the area of constitutional law. The fundamental nature of the rights at play in constitutional litigation, especially in cases involving the *Canadian Charter of Rights and Freedoms*[2], goes to the core of our values as a democratic society. There is no doubt that constitutional advocacy can have a tangible impact on how those rights are developed and for whom they are developed. Indeed, Prof. Stephen Higginson argues that constitutional advocacy "foretells much of constitutional decision-

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[1] Peter W. Hogg, *Constitutional Law of Canada*, 1st ed. (Toronto: Carswell, 1977).

[2] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

making".[3] The coming into force of the Charter created a major opportunity for individual advocates to shape the constitutional landscape in this way.

Joe Arvay was one of the advocates who took up that opportunity. In addressing this topic, I am very excited to have the chance to pay tribute to such a remarkable person whose advocacy skills, in the words of Wagner C.J.C., were "second-to-none"[4] and who did more than almost any other courtroom lawyer to shape the Charter era in Canada. To list the cases he worked on is to catalogue many of the most significant Charter moments in our law. Looking at his career, one is left wondering if there are any cases in this area that he *wasn't* involved in. Of course, Joe's fight for the right to physician-assisted death is a famous one. But he has also been involved in cases covering a host of other issues, including Charter damages for wrongful conviction,[5] the right to security of the person in the context of prostitution laws,[6] access to medical information of sperm donors,[7] the proper remedy for the violation of Omar Khadr's Charter rights while detained at Guantanamo Bay,[8] same-sex marriage,[9] labour rights,[10] the right of children and youth to government action on climate change,[11] solitary confinement of prisoners,[12] the right of Little Sisters bookstore to receive expressive material,[13] and even

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[3] Stephen A. Higginson, "Constitutional Advocacy Explains Constitutional Outcomes" (2008) 60:4 Fla. L. Rev. 857, at 861 [hereinafter "Higginson"].

[4] Chief Justice Wagner, Remarks about Joseph Arvay, Q.C. at the opening of proceedings at the Supreme Court of Canada on December 8, 2020, online: https://static1.squarespace.com/static/58619081ff7c506c99486b12/t/5fd933eac8a6414ff9776a5a/1608070122541/Remarks+of+the+Chief+Justice+of+Canada.pdf.

[5] *Henry v. British Columbia*, [2015] S.C.J. No. 24, 2015 SCC 24 (S.C.C.).

[6] *Canada (Attorney General) v. Bedford*, [2013] S.C.J. No. 72, 2013 SCC 72 (S.C.C.) [hereinafter "*Bedford*"]; *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, [2012] S.C.J. No. 45, 2012 SCC 45 (S.C.C.) [hereinafter "*Sex Workers United Against Violence*"].

[7] *Pratten v. British Columbia (Attorney General)*, [2012] B.C.J. No. 2460, 2012 BCCA 480 (B.C.C.A.).

[8] *Canada (Prime Minister) v. Khadr*, [2010] S.C.J. No. 3, 2010 SCC 3 (S.C.C.).

[9] *Reference re Same-Sex Marriage*, [2004] S.C.J. No. 75, 2004 SCC 79 (S.C.C.); *Barbeau v. British Columbia (Attorney General)*, [2003] B.C.J. No. 994, 2003 BCCA 251 (B.C.C.A.).

[10] *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] S.C.J. No. 27, 2007 SCC 27 (S.C.C.); *Saskatchewan Federation of Labour v. Saskatchewan*, [2015] S.C.J. No. 4, 2015 SCC 4 (S.C.C.).

[11] *Luciuk (Guardian ad litem of) v. Canada*, [2020] F.C.J. No. 1037, 2020 FC 1008 (F.C.).

[12] *British Columbia Civil Liberties Assn. v. Canada (Attorney General)*, [2019] B.C.J. No. 1151, 2019 BCCA 228 (B.C.C.A.).

[13] *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] S.C.J. No. 66, 2000 SCC 69 (S.C.C.).

the constitutionality of the harmonized sales tax![14]

Joe devoted much of his life to social justice and taking up the cudgels for the most disadvantaged, the most marginalized, and the most vulnerable members of our society, often throwing himself into these cases pro bono. In doing so, he contributed not only to our profession and our jurisprudence but to the betterment of Canadian society as a whole. Justice Bertha Wilson said that "the true test of rights is how well they serve the less privileged and least popular segments of society".[15] Without Joe, it is unlikely that our Charter jurisprudence would pass this test to the extent it does today. In the words of the Hon. Murray Rankin, Q.C., "Joe's passion for justice was in his DNA" and he "changed the course of history for so many people facing discrimination and injustice".[16]

Before I go any further, I want to express my deepest appreciation to Catherine Boies Parker, Q.C., and Alison Latimer, one of today's panelists, for sharing insights on Joe Arvay's perspective on the work he did as well as memories and anecdotes. With their assistance, I hope to be able to do Joe justice, although it is impossible to fully convey all his accomplishments in the limited time I have with you today.

The overarching theme I would like to explore, and which Joe's career exemplifies, is the co-dependence between judges and lawyers in public interest constitutional litigation. I will rely heavily on Joe's example to illustrate this theme and as a beacon of best practice for aspiring lawyers in this area. Cutting-edge jurisprudence does not come out of the pens of judges unaided. This is why advocates like Joe can have such an outsized impact. Attorney General of British Columbia, David Eby, describes Joe as "an excellent teacher".[17] Joe used this skill to help the courts see rights from the perspective of those who are most vulnerable and to pave the way for judges to move the law in a direction that brought the Charter to life for those on the margins.

To partner with the courts in achieving jurisprudence that vindicates the rights of the most marginalized, good advocates must weave together two strands. First, the story-telling aspect of litigation involving facts and context. Second, the legal aspect that requires advocates to show the court a path to the desired result within the confines of existing law. Joe excelled in developing and tying together both these strands.

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[14] *Vander Zalm v. British Columbia (Minister of Finance)*, [2010] B.C.J. No. 1836, 2010 BCSC 1320 (B.C.S.C.).

[15] Justice Bertha Wilson, "The Making of a Constitution: Approaches to Judicial Interpretation" (Autumn 1988) Public Law 370, at 381.

[16] British Columbia, Legislative Assembly, "Tributes", *Official Report of Debates (Hansard)*, 42nd Parl., 1st Sess., No. 3 (December 8, 2020), at 14 (Hon. M. Rankin), online: https://www.leg.bc.ca/content/hansard/42nd1st/20201208am-Hansard-n3.pdf.

[17] British Columbia, Legislative Assembly, "Tributes", *Official Report of Debates (Hansard)*, 42nd Parl., 1st Sess., No. 3 (December 8, 2020), at 13 (Hon. D. Eby), online: https://www.leg.bc.ca/content/hansard/42nd1st/20201208am-Hansard-n3.pdf.

Alison Latimer says Joe had a favourite expression: whoever tells the best story wins. He knew how to tell a coherent and compelling story to make the court understand the issues at stake. As Chief Justice of Alberta Catherine Fraser has observed, "without knowledge about the real problems of real people and the world around us, it is difficult to understand how one can judge fairly."[18] The responsibility of teaching the court about the problems of real people will often fall to the lawyer.

And an advocate cannot tell a story or paint a picture for the judge without understanding their clients' realities and the social context in which judicial decisions are rendered. Joe often represented clients whose lives were very different from his own, and this is why he emphasized the importance of listening to the client and striving to understand their reality. Lawyers literally speak and act on behalf of others. Good advocates hone their listening as much as they hone their speaking, and Joe was no exception. This kind of "humility and deep listening"—to use Fay Faraday's term—is a key quality in a public interest advocate representing marginalized communities, and a necessary element in building trust and "defining the legal parameters of a case on behalf of the community."[19] In this sense, advocates seeking social change through constitutional litigation must learn from their clients,[20] and then teach the court what they have learned.

Understanding why an issue was important to his client played an enormous role in Joe's advocacy, not only in building trust with the client but in helping the court to understand the issues. It was essential to him to make sure the court understood the impact of a law on his clients' lives. Alison Latimer says he had faith in courts to do the right thing if a case was presented in a way that allowed the court to truly understand the claimant's concerns.

For example, in his submissions before the Court seeking public interest standing for the organization Sex Workers United Against Violence (or "SWUAV"),[21] Joe went out of his way to communicate that the realities of the members of SWUAV—many of whom do survival sex work at street level in the Downtown Eastside—are not the same as the realities of the sex workers involved in the *Bedford* litigation. He said:

> Why on earth would the courts prefer to have a case started by an individual who

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[18] National Judicial Institute, "Advancing Judicial Education", *Year in Review 2016-2018*, online: https://www.nji-inm.ca/index.cfm/publications/public-resources/nji-in-review-2016-2018/ at b.

[19] Fay Faraday, Tracy Heffernan & Helen Luu, "Winning the Right to Housing: Critical Reflections on a Holistic Approach to Public Interest Litigation" (2019) 90:2 Sup. Ct. L. Rev. 31, at paras. 31-34 [hereinafter "Faraday, Heffernan & Luu"].

[20] Joëlle Pastora Sala & Allison Fenske, "The Wheels of Justice: Reflections from the Public Interest Law Centre of Legal Aid Manitoba" (2019) 90:2 Sup. Ct. L. Rev. 93, at para. 8 [hereinafter "Sala & Fenske"].

[21] *Sex Workers United Against Violence*.

> is less directly affected than the members of SWUAV? To do that, is just privileging the privileged.
>
> . . .
>
> We're going to say to my clients you can have access to justice but it can't be your case. You have to have a sex worker in Toronto or West Vancouver mount your case. . .that's not just the height of formalism. . .it's insulting and patronizing to the sex workers of the Downtown Eastside. . . . For Canada to say that our case is abstract and hypothetical is also offensive to my clients. For them the issue is all too real, it is really about life and death.[22]

This point is reflected in the Court's reasons for concluding that public interest standing should be granted to SWUAV. Writing for the Court, Cromwell J. found that

> [t]he perspectives from which the challenges in *Bedford* and in this case come are very different. The claimants in *Bedford* were not primarily involved in street-level sex work, whereas the main focus in this case is on those individuals. As the claim of unconstitutionality of the prostitution laws revolves mainly around the effects it has on street-level sex workers, the respondents in this action ground their challenges in a distinctive context.[23]

Great advocates like Joe know they must build a foundation for this kind of story-telling by educating the court about the social context of a rights claim. Many judges have spoken of the importance of providing context in making persuasive submissions,[24] and nowhere is this truer than in Charter litigation. As Joe said, "context is everything".[25] Indeed, speaking about *Carter v. Canada (Attorney General)*[26], Joe predicted the case would be won not on the law but on the facts and policy issues.[27] In her reasons in *Edmonton Journal v. Alberta (Attorney General)*,

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[22] Supreme Court of Canada, "Supreme Court Hearings: *Attorney General of Canada v. Downtown Eastside Sex Workers United Against Violence Society*" (January 19, 2012), online: https://www.scc-csc.ca/case-dossier/info/webcastview-webdiffusionvue-eng.aspx?cas=33981&id=2012/2012-01-19--33981&date=2012-01-19&fp=n&audio=n, at 01h: 54m: 51s.

[23] *Sex Workers United Against Violence*, at para. 64.

[24] Richard A. Posner, *Reflections on Judging* (Cambridge, Massachusetts; London, England: Harvard University Press, 2013), at 270-71; John I. Laskin C.J.C., "What Persuades (or What's Going On inside the Judge's Mind)" (2004) 23:1 Advocates' Soc. J., at 230-32.

[25] Supreme Court of Canada, "Supreme Court Hearings: *Canada (Attorney General) v. PHS Community Services Society*" (May 12, 2011), online: https://www.scc-csc.ca/case-dossier/info/webcastview-webdiffusionvue-eng.aspx?cas=33556&id=2011/2011-05-12--33556&date=2011-05-12&fp=n&audio=n, at 02h: 13m: 44s. See also Joseph J. Arvay & Alison Latimer, "Cost Strategies for Litigants: The Significance of *R. v. Caron*" (2011) 54:2 Sup. Ct. L. Rev. 427, at 434.

[26] *Carter v. Canada (Attorney General)*, [2015] S.C.J. No. 5, 2015 SCC 5 [hereinafter "*Carter*"].

[27] Joseph J. Arvay, "Is there a constitutional right to die?" (2012) James L. Lewtas

Wilson J. explained that a contextual approach to the Charter "attempts to bring into sharp relief the aspect of the right or freedom which is truly at stake in the case as well as the relevant aspects of any values in competition with it."[28] In her extra-judicial writing, as well, Wilson J. emphasized that

> [i]t is through the detailed presentation of historical, economic and social data by counsel that the court has available to it the necessary background against which to develop the meaning and content of Charter rights and guarantees.[29]

Justice Wilson understood the importance of telling a story and calling attention to context in Charter litigation. Her time on the Court coincided with a watershed period in the foundational jurisprudence of how we interpret and balance the values of our Charter. In reflecting on the nature of constitutional litigation in the post-Charter era, Justice Wilson wrote of the unique role that facts and evidence came to play in applying frameworks like the *Oakes* test and breathing meaning in to the aspirational language found in the Charter. Unlike the "classical" era of constitutional litigation, where arguments drew upon "legislative facts" of purpose and jurisdiction, the Charter era ushered in a new focus on the consequences of legislation and a burden on government to demonstrate its necessity.

For these reasons, the hallmark of successful civil rights advocacy, be it at the trial or appellate level, involves marshalling evidence and crafting compelling narratives in a way that anchors lofty principles to the lives of very real people. Often, it requires building bridges with communities and networks into other social/scientific disciplines to find ways to manifest as fact what others simply intuitively experience every day.

Context is also crucial to furthering the value of substantive equality in Charter litigation. As Justice Abella wrote in the Court's recent decision in *Fraser v. Canada (Attorney General)*, substantive equality demands that we pay attention to the context in which the claim arises.[30] Without this context, the court will be left with only a partial view of how the law affects those who lack power, wealth and privilege. Lawyers do well to heed Prof. Matsuda's advice to "look to the bottom", taking into account that "those who have experienced discrimination speak with a special voice to which we should listen".[31] Great advocates listen to those voices and amplify them for the courts, giving judges the tools to advance substantive

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Lecture 2, online: https://digitalcommons.osgoode.yorku.ca/lewtas/2/.

[28] *Edmonton Journal v. Alberta (Attorney General)*, [1989] S.C.J. No. 124, [1989] 2 S.C.R. 1326 (S.C.C.).

[29] Justice Bertha Wilson, "Constitutional Advocacy" (1992) 24:1 Ottawa L. Rev. 265, at 270 [hereinafter "Justice Wilson, 'Constitutional Advocacy'"].

[30] *Fraser v. Canada (Attorney General)*, [2020] S.C.J. No. 28, at para. 42, 2020 SCC 28 (S.C.C.).

[31] Mari J. Matsuda, "Looking to the Bottom: Critical Legal Studies and Reparations" (1987) 22:2 Harv. CR-CLL Rev. 323, at 324.

equality. As Hughes and others argue, substantive equality requires us to "prioritize the constitutional interests of the most vulnerable".[32] This is what Joe sought to do. His work shows that he "looked to the bottom" in his advocacy, helping to uplift the voices of those who are least privileged by the status quo, including the homeless, prisoners, those with disabilities, and survival sex workers, among many others.

By helping the court to understand what is "truly at stake" for a claimant, context also reveals the emotional contours of the case. Justice Wilson advised that counsel in the Charter era must understand the social context "not only intellectually but emotionally":

> We are in the business now of weighing competing values and values have an emotional and spiritual as well as an intellectual content. . . . So please don't treat Charter cases as if you were dealing with mechanics' liens. . . .[33]

Similarly, Professor Higginson says "[t]he heartstrings of controversies" are what shape constitutional law.[34] As demonstrated by the previously-cited example of Joe's oral advocacy in *SWUAV*, part of his story-telling ability was his talent for cutting straight to the emotional core of the case. He was known for speaking straight from the heart, and this was a part of the magic of his advocacy. Nowhere is this more evident than in *Carter*, a crown jewel of his career. As he said at the opening of his submissions, it was "a momentous occasion, for [his] clients, for society, for [the] Court". A striking example of his courage and heart: "I would be the very last person to ever suggest that one is 'better off dead' than being disabled". He also knew when to add a little well-placed outrage. As Professor Higginson observes, lawyers "can give anger its time and place".[35]

Joe's submissions before the Supreme Court of Canada in *Insite* show how he could convey the high stakes for his clients by painting a picture of the context and speaking to the emotional heart of the case.[36] In *Insite*, the Court considered whether it was constitutionally permissible for the federal Minister of Health to refuse to exempt staff at a supervised injection site on Vancouver's Downtown Eastside from criminal liability for drug offences. Joe and his team assembled an evidentiary record that illuminated the context surrounding Insite and this record was also key on appeal. In oral argument at the Supreme Court of Canada, Joe said:

> Insite is a life raft in a sea of misery. And we don't let the state yank that life raft on the theory. . . that there's . . .[a] chance that the sharks are going to get the

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[32] Jula Hughes, Vanessa MacDonnell & Karen Pearlston, "Equality & Incrementalism: The Role of Common Law Reasoning in Constitutional Rights Cases" (2013) 44:3 Ottawa L. Rev. 467, at 476 [hereinafter "Hughes, MacDonnell & Pearlston"].

[33] Justice Wilson, "Constitutional Advocacy", at 273.

[34] Higginson, at 868.

[35] Higginson, at 868.

[36] *Canada (Attorney General) v. PHS Community Services Society*, [2011] S.C.J. No. 44, 2011 SCC 44 (S.C.C.) [hereinafter "*Insite*"].

> person anyway. That life raft is critical to the people on the Downtown Eastside. And the federal government's application of these provisions is to pull away the life raft.[37]

In line with Joe's highly contextualized approach to the case, McLachlin C.J.C.'s reasons for the Court in *Insite* are remarkable in taking the time to shine a light on that context. Her reasons go into detail on the realities of those living in the Downtown Eastside and the lived experience of drug users who avail themselves of Insite's services. She discusses the challenges faced by many residents in the neighbourhood, including housing insecurity and the risks to safety and health for injection drug users, along with the background to Insite itself. Although *Insite* was not a s. 15 case, this kind of contextualized approach brings a substantive equality lens to the s. 7 analysis to ensure the impacts of the law on marginalized groups are fully appreciated.

Along with helping the court to understand the context and the plight of one's client, a great constitutional advocate must help the court see that it can reach the desired legal result without casting aside existing legal principles—that one's position is not as "novel" as it seems, even if it involves taking legal doctrine in new directions. This is the second strand I referred to in the co-dependence between advocates and courts in producing jurisprudence to advance the rights of society's most vulnerable.

As Hughes and others point out, "the boundary between incremental and sweeping change often lies in the eye of the beholder",[38] and it is the advocate's role to convince the court to see the change sought as an incremental step rather than a leap. Great advocates know how to draw upon what is familiar to bridge the divide between what their audience already knows and what they are trying to teach them.

Helping the court bridge that divide requires both listening and anticipating. The best advocates put themselves in the decision-maker's shoes and consider what they need to hear to decide the issue. In the context of Charter litigation, what the court needs to hear will often revolve around the future implications of deciding one way or another. As Justice Wilson said, in Charter cases, the Court is often "breaking new ground and it is accordingly more important for the Court to look ahead to the implications of any judgment it may come up with than to look back".[39]

Joe understood this side of constitutional advocacy too. Alison Latimer describes Joe doing the work and preparation of taking the law apart and putting it back together again, giving him such a complete understanding of the legal principles that

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[37] Supreme Court of Canada, "Supreme Court Hearings: *Canada (Attorney General) v. PHS Community Services Society*" (May 12, 2011), online: https://www.scc-csc.ca/case-dossier/info/webcastview-webdiffusionvue-eng.aspx?cas=33556&id=2011/2011-05-12--33556&date=2011-05-12&fp=n&audio=n, at 02h: 35m: 45s.

[38] Hughes, MacDonnell & Pearlston, at 474.

[39] Justice Wilson, "Constitutional Advocacy", at 272.

it was easy for him to explain and teach them in a way that was responsive to the court's concerns. He did not simply accept the conventional way of looking at the law without breaking it down and examining it for himself.

He also had a keen ability to recognize the weaknesses in his own case, and like any great advocate knew those weaknesses had to be addressed head-on. Even if opposing counsel did not raise them, Joe knew the smartest judge in the room would. And he knew to listen carefully to the questions from the bench. As Justice Binnie once said of appellate advocacy, "the factum gives you a crack at us but, from the judges' point of view, the oral argument gives us a crack at you".[40]

This willingness to listen to concerns from the bench and recognize and tackle weaknesses in one's own case allows a stellar advocate to build trust with the court. Trust is a necessary precondition for courts and advocates to partner in moving the jurisprudence forward. An advocate who makes hyperbolic arguments, refuses to make concessions where appropriate, and who is ill-prepared will fail to establish credibility with the court. Watching Joe's advocacy in the Supreme Court of Canada, you can see the level of trust and rapport he established with the judges by dint of his relentless preparation, his earnestness, and his proven ability, time and again, to help the court wrestle with the most challenging aspects of his cases. It helps that he appeared before the Supreme Court over 75 times. He was famously known as "the court whisperer".[41] He earned the privilege of being bold and unreserved with the justices—for instance, he once asked McLachlin C.J.C.: "I'm wondering if I could just have 5 or 20 more minutes".[42] As Professor Higginson points out, laughter has its place in advocacy.[43] But it was because Joe was able to inspire such trust that he had this relationship with the bench.

While this address seeks to pay tribute to Joe and his work, we should at the same time recognize the dangers of lionizing individual lawyers. We should be cautious in making heroes out of lawyers in a way that dims the heroism and struggles of the marginalized communities they represent. Many have pointed out that putting lawyers in a hierarchy above those communities can be harmful when seeking social

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[40] Justice W. *Ian Binnie*, "In *Praise of Oral Advocacy*" in David Stockwood, Q.C. & David E. Spiro, eds., *Ethos, Pathos and Logos: The Best of the Advocates' Society Journal 1982-2004* (Toronto: Irwin Law, 2005), 17 at 18.

[41] Chief Justice Wagner, Remarks about Joseph Arvay, Q.C. at the opening of proceedings at the Supreme Court of Canada on December 8, 2020, online: https://static1.squarespace.com/static/58619081ff7c506c99486b12/t/5fd933eac8a6414ff9776a5a/1608070122541/Remarks+of+the+Chief+Justice+of+Canada.pdf.

[42] Supreme Court of Canada, "Supreme Court Hearings: *Canada (Attorney General) v. PHS Community Services Society*" (May 12, 2011), online: https://www.scc-csc.ca/case-dossier/info/webcastview-webdiffusionvue-eng.aspx?cas=33556&id=2011/2011-05-12--33556&date=2011-05-12&fp=n&audio=n, at 02h: 33m: 00s.

[43] Higginson, at 889.

change through litigation.[44] No doubt Joe would agree. Rather than seeing himself as a savior telling those communities what to do, Joe viewed his legal education as a great privilege, and one which he had a responsibility to use to help those less fortunate than himself.[45]

Another danger in putting lawyers like Joe on a pedestal is that new lawyers may come to think their greatness is out of reach. Though Joe was one-of-a-kind, students and new lawyers should not feel discouraged in aspiring to reach the kind of heights that he did. Indeed, Joe would undoubtedly be the first to point out that he could not have achieved what he did without a coterie of other highly talented lawyers committed to the same vision. Joe himself worked very hard to become the "court whisperer", and his willingness to take on pro bono work allowed him to accumulate a wealth of experience.

For up-and-coming members of our profession, we cannot do better than to repeat Joe's own advice: "working pro bono is not only the right thing to do, but likely the most satisfying work you will ever do".[46] Most importantly, Joe advised new lawyers to "always ask yourself the question as you proceed in your careers: am I doing noble work?" One of his greatest legacies is the inspiration his example continues to offer to the next generation of lawyers who will take up the mantle of doing noble work.

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[44] See, for example, Sala & Fenske, at para. 8; Faraday, Heffernan & Luu, at paras. 33-35, 70-78.

[45] Joseph J. Arvay, Convocation Address (delivered at Osgoode Hall Law School, York University, June 24, 2016) [unpublished].

[46] Joseph J. Arvay, Convocation Address (delivered at Osgoode Hall Law School, York University, June 24, 2016) [unpublished].