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## Tribute to Madame Justice Bertha Wilson, Foreword, and Preface

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Minister of Justice    Ministre de la Justice  
and Attorney General of Canada    et Procureure générale du Canada

A. Kim Campbell, P.C., Q.C., M.P./c.p.,c.r., députée

## Tribute to Madame Justice Bertha Wilson

On behalf of the Government of Canada, I am pleased to convey my best wishes to all those participating in "The Democratic Intellect" Symposium being hosted by Dalhousie Law School in honour of Madame Justice Bertha Wilson's contribution to the law and to the life of Canada.

Madame Justice Bertha Wilson has been, in many respects, a pioneer in the legal profession, a leader in the law, and a model for succeeding generations of women who wish to emulate her many achievements. Her appointment to the Supreme Court, which coincided with the implementation of the *Canadian Charter of Rights and Freedoms*, gave her an opportunity to map a new course for Canadians. Madame Justice Bertha Wilson's most significant contributions will always be associated with the *Charter* and her judgments have had a major influence in making Canadians aware of their rights and in giving those rights full meaning and effect.

This Symposium will explore several facets of the influences exerted by and upon Madame Justice Wilson. I trust that your discussions will be both fruitful and stimulating, and that they will be carried out in full appreciation of the Honourable Bertha Wilson's place in Canada's legal and jurisprudential history.

October 5, 1991

# The Dalhousie Law Journal

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The assistance and contributions of a number of people to the Symposium and its result, this special edition, must be acknowledged. The Symposium Committee consisted of Moira McConnell (Chair), Thelma Costello, Department of the Attorney General of Nova Scotia,

Susan Ashley, Associate Dean of Law, Mr. Justice Jamie Saunders of the Supreme Court of Nova Scotia, Dawn Russell, Associate Professor of Law, Dalhousie University, (students) Rina Hoque, Janet Dickie, Ken Greer, and Sharon Parker (Organizer of the Horace E. Read Memorial Lecture).

The word processing assistance of Molly Ross and the editorial assistance of law students Dale Darling, Christopher Crassweller and Elizabeth Dyke is gratefully acknowledged.

The purpose of the Symposium was to recognize the contribution of a graduate of Dalhousie Law school, The Honourable Bertha Wilson, Q.C., a former judge of the Supreme Court of Canada. We are certain that readers of this volume will have the view of the organizers of the Symposium that this purpose was amply achieved.

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# Foreword

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These papers record the enormous contribution made to Canada through the life and work of the Honourable Bertha Wilson. While the focus is on her scholarly approach to the law during her career as a lawyer and jurist, they also reflect her determination to improve the lot of all Canadians.

Nova Scotians are especially proud of her achievements. We regard her as one of our own. Bertha Wilson came to this province - the New Scotland - imbued with the same zeal that was brought by the early Scottish scholars and clerics who settled here in the 1700s. They were convinced that only by giving real meaning to the rights of the individual could freedom and liberty exist for every person. With that was twinned a commitment to provide a broadly based education for all, from which Dalhousie was born.

Two centuries later Bertha Wilson came to Canada with the same commitment and determination. She gave new life and meaning to the ideals of the democratic intellect. That we are her beneficiaries is appropriately documented in this valuable series of lectures given at the Law School of Dalhousie University.

Lorne Clarke  
Chief Justice of Nova Scotia

## Preface

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The Honourable Bertha Wilson, Q.C., former judge of the Supreme Court of Canada was an immigrant from Scotland, a teacher, a graduate of Dalhousie Law School, a scholar, a practitioner at the Toronto law firm of Osler, Hoskin & Harcourt, is a woman, married to a member of the clergy, is a member of the Royal Commission examining the place of Aboriginal peoples in Canada, and was the first woman to be appointed to both the Supreme Courts of Ontario and Canada. The last of these experiences has officially given her a place of note in Canadian history but all the other aspects of her life are interwoven with and shape her continuing contribution to the “larger dimension” of law (as she commented in 1976 when she was sworn in as a Judge of the Ontario Court of Appeal).

In October 1991, Dalhousie Law School was accorded the honour of organizing a Symposium to acknowledge and document Bertha Wilson’s place in the life of Canada. The title of the Symposium, “The Democratic Intellect: The Contribution of Madame Justice Wilson” was chosen to highlight the many facets to her contribution. While her role as the first woman to be appointed to the Supreme Court of Canada is of great importance her contribution to Canadian life reaches far beyond the mere fact of her appointment, and stems from her intellectual and human contributions to thinking and values in Canadian society. Her position as a judge of the court charged under the Constitution with interpreting “the supreme law of the land” merely provided the conduit.

The suggestion that the phrase “democratic intellect”, a phrase inherited from the Scottish Enlightenment, captured some essential aspects of Justice Wilson’s life came from a legal historian, Philip Girard, Acting Dean of Law at Dalhousie. His idea formed the text of the invitations to the Symposium and the intellectual challenge and enticement to the speakers. He stated:

The notion of the “democratic intellect” is meant to raise a number of possible approaches to assessing the work of Madame Justice Wilson. The phrase itself was coined by George Elder Davie in his 1961 study, *The Democratic Intellect: Scotland and her Universities in the Nineteenth Century*, in which he argued that the distinctive features of Scottish (as opposed to English) higher education were wide accessibility, opposition to overspecialization, and the preeminence of moral philosophy in the curriculum. Subsequently, intellect was important both as a myth and reality in Scottish history. On the one hand, Scottish elites have traditionally been recruited from a wide range of

social backgrounds; on the other, “a limited equality of opportunity [could be] held to justify the reinforcing of structural inequalities”. The tension between the communitarian and liberal elements in Scottish educational philosophy forms an appropriate backdrop for the examination of similar tensions which have become more evident in Canadian jurisprudence since the adoption of the Canadian Charter of Rights and Freedoms.

The democratic intellect is highly relevant in the Canadian context. Scottish views on education flourished in Canada, especially in the maritime provinces, where even today a higher proportion of young people from Prince Edward Island and Nova Scotia attend post-secondary education than from any other province, and where a wide network of community-based universities continues to exist. In particular, the founding of Madame Justice Wilson’s alma mater, the Dalhousie Law School, may be seen as motivated by the ideals of the democratic intellect. The school’s founders desired to make accessible at the local level a type of university education in law which had formerly been available only to those able to afford attendance at American law schools. The principal moving spirit behind the law school was the Scottish-born Robert Sedgewick, later a puisne judge of the Supreme Court of Canada (1893-1906), who was involved in a variety of educational reform efforts in Nova Scotia, most notably the ending of racially segregated public schools in Halifax.

The theme of the Symposium to honour Justice Wilson was chosen to direct attention to three principal areas of inquiry: a) “Democracy”: changing notions of democracy in Canada during her judicial career, particularly in light of the adoption of the Canadian Charter of Rights and Freedoms in 1982; b) “Intellect”: the interrelationship of legal thought and intellectual life more generally in Canada in the last twenty years; and c) “The Scottish connection”: including possible influences on Madame Justice Wilson’s work of the Scottish Enlightenment philosopher-jurists and of Common Sense philosophy.

The people who spoke at the Symposium are all noted legal scholars and in several cases, although now scattered across the nation, are also connected with Dalhousie or Nova Scotia. Hester Lessard and Philip Bryden both former residents of Nova Scotia and articulated clerks to Justice Wilson are teachers of law on the West Coast of Canada. Mary Jane Mossman, now resident in Ontario is a former resident of Nova Scotia. Jim MacPherson, Dean of Osgoode Hall Law School was a graduate of Dalhousie Law school and former assistant to the Right Honourable Brian Dickson, former Chief Justice of Canada. Dr Alan Watson, a Scot and kilt garbed jurist had previously visited Nova Scotia. Although the speakers were invited because of their expertise in the issues they were invited to consider, they also represent the increasing prominence of women in the legal life of Canada.

Dean Maureen Maloney was one of the first woman to become a Dean of a law school in Canada, Professor Danielle Pinard was clerk to the honourable Justice Lamer, now Chief Justice of Canada, and has contributed to the development of jurisprudence in Canadian common and civil law in both the French and English languages. Christine Boyle, a faculty member at both Dalhousie Law School and the University of British Columbia is a leading feminist scholar and has contributed to numerous important test cases before the Courts.

Dalhousie Law School and Justice Wilson were doubly honoured by the presence of the Right Honourable Brian Dickson, P.C., former Chief Justice of Canada, who graciously agreed to be the 1991 Horace E. Read Lecturer. It is a sign of the changes and ironies wrought by time that the Dean who was initially less than encouraging with respect to Bertha Wilson's desire to attend law school should have a memorial lecture given by the former Chief Justice of Canada, entitled "Madame Justice Wilson: Trailblazer for Justice".

The Symposium was attended by members of the judiciary, the practising Bar in Nova Scotia and across Canada, and academics from across Canada. It culminated appropriately in an evening of commentary and the premiere of a musical work by Canadian composer, Sandy Moore and performed by the celtic music group "SWALLOWS TALE". The work entitled "Flowers of Fife" was commissioned with the support of the Nova Scotia Department of Tourism and Culture to honour Bertha Wilson and it, as with her legal contribution, is a gift to Canadian society which will outlive its creators.

The Symposium was without doubt a stellar exhibition of reflection, imagination and scholarship which can truly be said to have achieved the organizers' aspirations: the most fitting way to honour Bertha Wilson's contributions was through an event which in itself was also a source of intellectual and artistic enlightenment.

July 1992

Moira L. McConnell

Assistant Professor of Law

Chair of the Wilson Symposium Committee

Articled Clerk to Justice Wilson 1984-85.



