

The case for the defense

by Patrick M.J. Follens

The notion of our justice system as something of an "all boys club" was exposed as alarmingly accurate recently. Madame Justice Bertha Wilson visited Osgoode Hall Law School February 8 to deliver the Fourth Annual Barbara Betcherman Lecture. Justice Wilson's lecture "Will Women Judges Really Make A Difference?" was a presentation of The Barbara Betcherman Memorial Fund.

The fund, established at the law school in 1985, preserves the ideals of academic excellence and achievement which Betcherman had established for herself and others. Betcherman achieved many far-ranging goals: in 1974, she co-founded the Toronto Rape Crisis Centre, received Osgoode's silver medal and, in 1980, published her first novel, *Suspicious*. Betcherman had two other novels published posthumously in 1989, *Side Effects*, and *Stiletto*, as she was the victim of a fatal auto accident on June 13, 1983.

Justice Wilson is a graduate of Dalhousie Law School (1957) and made history by becoming the first woman to be placed on the bench of the Ontario Court of Appeal, despite the fact she had never argued in a courtroom. Instead, Justice Wilson was a partner in the Toronto law firm of Osler, Hoskin and Harcourt, in which she established an extensive research department within the firm, putting it at an advantage to other firms. Justice Wilson again made history, in 1982, by becoming the first woman appointed to the Supreme Court of Canada.

Justice Wilson began her lecture with a discussion concerning the ideals of justice and of the role of the judiciary. The obligation of any judge is that of an independent and impartial decision-maker. However, the all-important term, impartiality, is a relative one because, to be entirely independent and impervious to personal opinions, is to be something other than human.

Justice Wilson cited a hypothetical example of this problem in the form of a trade union dispute. In such a situation, how could a labourer, Justice Wilson asked, feel confident of an impartial decision if the judge operates in the same circles as the employers and, in all likelihood, originates from a similar background and education?

How indeed? Perhaps even more perplexing, then, is the issue of gender bias in the courts. The roots of this problem run far deeper than those of the previous example; in light of the obvious physical and psychological differences in gender, rather than simply a disparity in social standing.

Sexism, whether it is intentional or not, according to Justice Wilson, can be seen at the root of many decisions. This is no great surprise, as we live in a society so firmly entrenched in the myth of male superiority that despite all good intentions, and the formal guarantee of equality in the Charter Of Rights And Freedoms, it is rendered inadequate when placed in uneducated hands.

Madame Justice

Bertha Wilson

*says "women judges will
make a difference"*



Justice Wilson drew attention to gender bias task forces that have been in operation in the United States, particularly in New Jersey (formed in 1982) and in New York (1984). The task forces uncovered several areas of the law, particularly criminal law, that are subject to gender biased decisions in the courts.

It also revealed that litigants were not the only parties subject to gender bias. There seemed to be an apparent and unnecessary trend toward the use of endearments and slang terms by both male lawyers and judges towards female lawyers.

It was also found that the proportions of female law school graduates working in lower paying clerical positions, and being denied important cases in law firms, far outweighed those of men, pointing to what could only be interpreted as a gender bias in the profession.

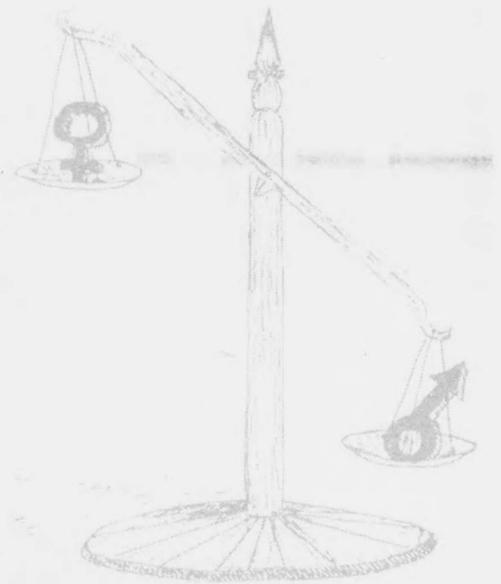
In order to put an end to this "boys club" notion of the legal profession, programmes have been formed in these states to re-educate judges with regard to the detrimental effects of gender bias, as well as methods of recognizing such injustices when they occur.

As Justice Wilson pointed out, the effect of the programmes is two-fold, in that they have both helped to educate judges as well as raise the public level of awareness; hence, creating added pressure for change.

Justice Wilson praised these measures taken in the United States, and expressed her desire to see programmes of the same nature implemented in Canada: "Courses and workshops on gender bias for judges, male and female, are an essential follow-up to scholarly insights and learned writings. In Canada, we are just beginning to touch the fringes."

Courses concerning gender bias, however, will be of little remedy, said Justice Wilson, if lawyers are not also sensitized to the dangers of such discrimination.

At this point, one might be inclined to reason that simply appointing more women judges to the bench would be an adequate measure. Justice Wilson stated that, at present, only nine per cent of federally appointed judges are women, but that this number is on the rise.



As to the effect that this change will have on the Canadian courts, Justice Wilson said, "The mere presence of women on the bench will make a difference." She added later in her presentation that a great deal of good could be found in the hiring of more sensitive male judges, a point well taken, as clearly the courtrooms of our country are no place for a battle of the sexes.

When presented with questions after her lecture, Justice Wilson answered each with the clarity and intelligence that had been evident throughout her lecture. As an example, when asked if task forces and workshops such as those used in the United States were wise for Canada as well, Justice Wilson replied, "I think that the approach they took in the United States was an eminently sound one. I wish we would do it here. I wish we would approach the subject with the seriousness it deserves."

As well, when asked for examples of legal principals which are threatened by a male perspective, (Justice Wilson quite eloquently side-stepped any direct mention of these in her lecture), she quite slyly refused by saying, "The last thing I would like to do would be to disqualify myself from sitting on cases [of this nature]." The parenthesis exist in this quotation as, unfortunately but understandably, Justice Wilson was drowned out by applause.