

*Judges Act*

enough past presidents of the Liberal party who are women because, if that is what he meant, then that is true too.

It is particularly interesting to look at the minister's own department, the Department of Justice, and to see the number of women in the department who are lawyers. I think there were 574 people in the LA occupational group in the public service in 1979, the vast bulk of whom were in the Department of Justice. Women constituted close to 20 per cent of that group. There are clearly, then, in the minister's own department a number of very highly qualified women, so I suppose it is only when the minister looks outside his department that he makes the decision that there are no highly qualified women in the practice of law.

I am glad to put on the record another very interesting statistic. Of the new appointments made in 1979 to the LA occupational group from outside the public service, 40.3 per cent were women. I find this to be one of the most encouraging developments in an otherwise often gloomy scene for women in the public service in professional groups.

The minister went on to say that he would not name a woman "just because she is a woman". But that is exactly why he should appoint a woman. Let us look at the history just of Supreme Court decisions alone in the past decade when there have been no women on the court. Indeed, there are still none on the Supreme Court of Canada. We could go back even earlier to the famous "persons" case of 1928. As the minister knows, the Supreme Court of Canada decided that women were not persons. Then, during the seventies, the Supreme Court of Canada decided that discrimination against Indian women in the Indian Act does not violate equality before the law; that Stella Bliss was not discriminated against because she was a woman but, rather, a pregnant person; and again in the Bliss case that there was no discrimination because not all pregnant women were denied benefits under the Unemployment Insurance Act.

The Supreme Court of Canada also decided that Irene Murdoch had no claim to a share in the ranch on which she had for 20 years done the haying, raking, swathing, mowing, driving of the horses and tractors, the de-horning, vaccinating and branding of cattle as well as the keeping of the house and the raising of four children because she had done "no more than what a normal farm wife would do".

What I am in fact wanting to emphasize as strongly as I can is that the absence of women in the judiciary has itself had an enormously important bearing on the treatment of women in the sex equality cases which have come before the court.

It is interesting that the government is most anxious to ensure that there be civil law justices on the Supreme Court of Canada because of the importance of ensuring that questions relating to the civil law of Quebec are determined by judges trained in that law and, indeed, in the government's proposed constitutional amendment bill of 1978 there was a provision for an 11-member Supreme Court of Canada, four of whom would have been appointed from Quebec. This is something that is quite logical.

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If judges lack the requisite skill and expertise required to decide civil law cases, then you do not have fairness given in those cases. But surely the same principle, the same analogy, applies exactly in the case of women. In other words, can it not also be argued that male judges may lack what Paul Weiler has called "the essential trait of judicial attitude", namely, "impartial and impersonal judgment" when deciding cases where sex inequality has been alleged by women?

It is generally agreed by the scholars who have done research in this field that there are two main reasons why men may lack impartiality in sex equality cases. First, the men never experience the deprivations from personhood which women face during their lifetime, nor is it sufficient for a male judge to experience vicariously the deprivations of the women with whom he is on close terms. The distance between being and perceiving can never be completely bridged, even by the most sympathetic male judge.

Two very interesting studies have been done recently, and both were referred to in the paper presented by the Canadian Advisory Council on the Status of Women to the constitutional committee. One was a study of American cases carried out in 1971 by two middle-aged, white, male, law professors, and this their self-characterization. They analysed a representative selection of American judicial opinions in which the judges were responding to allegations of sex discrimination. Their conclusion was that the performance of American judges in sex discrimination decisions ranged from "poor to abominable." The judges "failed to bring to sex discrimination cases those judicial virtues of detachment, reflection and critical analysis which have served them so well with respect to other sensitive social issues". The authors found particularly noteworthy the contrast between judicial attitudes in the sex discrimination cases and those in the race discrimination cases. I found this particularly interesting when they reported:

Judges have largely freed themselves from patterns of thought that can be stigmatized as "racist"—at least their opinions in that area exhibit a conscious attempt to free themselves from habits of stereotypical thought with regard to discrimination based on colour. With respect to sex discrimination, however, the story is different. "Sexism"—the making of unjustified (or at least unsupported) assumptions about individual capabilities, interests, goals and social roles solely on the basis of sex differences—is as easily discernible in contemporary judicial opinions as racism ever was.

Then the American study proceeded to offer suggestions as to the reasons why American male judges should have difficulty perceiving the harmful effects of sex discrimination. The initial reason was the judges' lack of knowledge and awareness of the injurious effects of sex discrimination, a lacuna which might be compounded if the judges over generalized from their personal experiences because those women with whom the judges were in daily contact were likely to appear happy and satisfied.

The study went on to suggest that even if male judges could understand the harmful effects of sex discrimination, their personal attitudes might deter them from granting the appropriate relief. It is the likelihood that these personal attitudes might consciously or unconsciously intrude, that provides the