Essay: What If? Career Paths Not Taken: Claire L'Heureux-Dubé and Politics

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Canadians know Claire L'Heureux-Dubé as one of Canada's most celebrated judges. Internationally heralded as an icon for her legacy of human rights jurisprudence, she also became a controversial lightning rod for her strongly worded opinions that could provoke anti-feminists and homophobes alike.[2] Much of what is publicly known about Claire relates to her years on the Supreme Court of Canada, to which she was appointed in 1987, the second woman so honoured and the first Québécoise. Virtually no one knows that she was also offered a political career in the fall of 1972, a path she rejected only six months before she launched her judicial career as the first woman to be appointed to the Superior Court in the district of Quebec. From there, she skyrocketed to fame on the nation's top court.

As I have conducted research for Claire's biography, I have become curious about why Claire selected one life path over another. This essay offers a short detour into one of the most fascinating of Claire's "paths not taken." In my view, such an inquiry is not only inherently intriguing but also useful. Researchers know so little about why people opt to move in one direction or are pushed or pulled in another. How much depends on access to information about the possibilities? How much relates to personal ambition and drive? Are talent and skills critical elements? How much is based on status and connections? How many decisions are influenced by families, teachers, or peer groups? How does the economic, social, and political context set the stage? What role does timing play? Few individuals are able to predict their careers accurately, or to appreciate fully all the forces that impact their paths. The lives of important historical figures offer excellent opportunities for dissecting paths taken and not taken, and for illuminating the complexities of the landscapes upon which we deliberately mould our careers or stumble into them. Such explorations also increase the potential for more informed, thoughtful, analytical career-path decisions in the future.

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[2] See, for example, Elizabeth Sheehy, ed., *Adding Feminism to Law: The Contributions of Justice Claire L'Heureux-Dubé* (Toronto: Irwin Law, 2004); Marie-Claire Belleau et François Lacasse, eds., *Claire L'Heureux-Dubé à la Cour suprême du Canada 1987–2002* (Montréal: Wilson & Lafleur, 2004); Constance Backhouse, "The Chilly Climate for Women Judges: Reflections on the *Ewanchuk* Decision," (2003) 15:1 *Canadian Journal of Women and the Law* at 167–93.

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Figure 1 Claire L'Heureux-Dubé. Courtesy of the Hon. Justice Claire L'Heureux-Dubé.

First, it may be useful to provide a thumbnail sketch of Claire's life path prior to the 1972 fork in the road, the dramatic turning point in question.

The Background Setting: Claire's Early Career

Born in 1927 and raised in Rimouski, Quebec on the lower St. Lawrence River, Claire was the eldest child in a middle-class family.[3] In the summer of 1946, when Claire announced she wanted to go into law, she was carving a path that few had trod before. Only eleven women had been admitted to the Quebec bar, which was the last jurisdiction in the country to lower the barriers to female lawyers.[4] Across Canada, 1.6 percent of the profession was female.[5]

Claire entered Laval law school in 1948 as one of two women in the class. When she completed her degree near the top of the class, she became the ninth

[3] Unless otherwise indicated, all information about Claire's life and career comes from the interviews with her, her family members, her friends, and her colleagues conducted in preparation for the biography. Details of all interviews are on file with the author.

[4] *An Act Respecting the Bar*, S.Q. 1941, c.56, s.1. On the eleven women admitted before Claire made her decision to enter law in July 1946, see Gilles Gallichan, *Les Québécoises et le barreau: L'histoire d'une difficile conquête 1914–1941* (Sillery, Québec: Septentrion, 1999).

[5] The 1941 census recorded 129 women lawyers out of a total of 7,920 members of the profession; Canada Department of Labour, *Occupational Trends in Canada 1931–1961* (Ottawa: 1963), 40 and 45. The Ontario numbers, more accurately tracked than those in other provinces so far, show 3.7% of those called to the bar in 1945 were female. See Constance Backhouse, "A Revolution in Numbers: Ontario Feminist Lawyers in the Formative Years, 1970s to 1990s," in Constance Backhouse and W. Wesley Pue, eds., *The Promise and Perils of Law: Lawyers in Canadian History* (Toronto: Irwin Law, 2009), at 274.

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woman to graduate from Laval in law.[6] In 1952, when she was called to the bar, there were 239 lawyers practicing in Quebec City, 238 of them male. Claire would become the second woman to embark upon private law practice in Quebec City.[7] It was her historical fate to be on the cusp of change, at the tip of the wedge that would thrust women into law, decades before Quebec would outstrip the other provinces and claim the highest number of women lawyers in Canada by the turn of the century.[8]

In the mid-twentieth century, getting started in law was a difficult proposition for anyone, male or female, who did not have elite family backgrounds or legal connections. Quebec City was deeply stratified socially and economically, with those born into bourgeois families privileged over those from less elite tiers and smaller urban or rural areas.[9] One lawyer, who qualified for the bar a year after Claire, explained: "It was a very closed society—like the mafia—very closed."[10] But things were tougher still for women. The Honourable Justice Louis LeBel, who was admitted to the bar ten years after Claire, practised in Quebec City until he embarked on a judicial career that also took him to the Supreme Court. He recalled that the firms were "very reluctant" to hire women: "Men lawyers were uncomfortable with the idea of women lawyers. The senior partners had been raised and lived and practised law at a time when women were not even allowed to join the Quebec bar. So they had this understanding that the place of women was essentially at home."[11]

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6 The first eight were Jeanne D'Arc Lemay, Thérèse Lemay-Lavoie, Magdeleine Therrien-Ferron, Lucille Gauthier, Ghislaine Gagné, Pauline Shink, Marguerite Choquette, and Ginette Fournier. Claire graduated the same year as Judith Gamache, making them ninth and tenth.Gallichan, *Les Québécoises et le barreau*, at 116; *Annuaire Général de L'Université Laval pour L'Année Académique 1943–44, 1944–45, 1945–46, 1946–47, 1947–48, 1948–49* (Québec: Université Laval, 1943–1948).

7 The woman who preceded Claire, Ginette Fournier, had graduated one year previously and practised for four to five years on her own before dropping out of the profession. The numbers are calculated from the listings in the *Canadian Law List, 1952* (Toronto: Cartwright & Sons, n.d.), at 679–83. Claire L'Heureux did not appear in the listing until 1953. Gender data from 1950–51 compiled by the Barreau du Québec show women across the province as 1.11% of the practising bar, twenty-one individuals in total. (Untitled, undated list showing members, women, and men from 1942–1999, copy on file with the author.)

8 The proportion of women lawyers in Quebec rose from 3% in 1967 to 25.6% in 1987. By 1999, Quebec women represented 40% of the profession. The percentages in the other provinces were: PEI 35.2%, Yukon 34.6%, Ontario 30.2%, Nova Scotia 28.2%, NWT & Nunavut 28.1%, BC 27.6%, Newfoundland 26.8%, Alberta 26.4%, New Brunswick 26.1%, Saskatchewan 24.7%, Manitoba 24%.Fiona M. Kay and Joan Brockman, "Crossroads to Innovation and Diversity: The Careers of Women Lawyers in Quebec" (2007) 47 *McGill Law Journal* at 701–9.

9 André Desgagné from the Saguenay-Lac-Saint-Jean was a classmate of Claire's. He emphasized the difficulty of setting up in practice in Quebec City with two other men who had no legal, political, or business connections: "Society was not wide open like today. And if you didn't know anyone in the profession, your chances were not very great. We began from zero, to set up a new law firm. The first objective was to pay the rent. It took three long years before we had some revenue." Author's interview with André Desgagné, 10 May 2010, Quebec City. The Honourable Roger Chouinard from Chicoutimi described Quebec City at the time: "It's a closed milieu—a town of the family compact. They called it the 'Grande Allée,' referring to the name of the street, and the people who lived in that class…. It's a fable to a certain extent. But there was a certain protection between a certain number of families." Author's interview with the Hon. Roger Chouinard, 11 May 2010, Quebec City. Roch Bolduc explained that classmates who came from small towns often returned, their only option to open practices as notaries in the hinterland. Author's interview with the Hon. Roch Bolduc, OC, QC, 7 August 2009, Quebec City.

10 Author's interview with Calin Morin-Melihercsik, 11 May 2010, Quebec City.

11 Author's interview with the Hon. Justice Louis LeBel, 8 July 2010, Ottawa.

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Claire had taken to heart the messages bombarding her from all sides that women could not earn a livelihood in law, and she just assumed that secretarial work would be her bread and butter. Fortuitously, while she was still studying law in 1951, she landed a position as a secretary to a Quebec City lawyer, Sam Schwarz Bard.[12] Claire may have been the second female to enter private practice in Quebec City, but Bard was one of only two Jews.[13] Had Bard been a different sort of employer, he might have kept her on in a secretarial capacity, benefitting from her legal knowledge while compensating her at the lower wages of a clerical worker. Instead, as one outsider in the legal profession to another, he transferred her status to that of a full-time lawyer after her admission to the bar. Calin Morin, a female classmate, observed, "I don't think French-Canadian lawyers would have given her the same chance."[14]

Sam Schwarz Bard mentored Claire generously and brilliantly as she learned the ropes. Over the next two decades, under his steady, guiding hand, Claire came to love practising law at the Bard firm. She spent the first fifteen years conducting a non-specialized, general practice: drafting contracts, transferring real estate, incorporating companies, and collecting debts. That Bard's law firm serviced many English-speaking clients enabled Claire, who was already quite conversant in English, to hone her bilingual skills, something that would serve her in good stead on national and international platforms in the years to come. She also managed to combine practice with a family life, something that was most unusual for professional women in that era.[15] In 1957 she married Arthur Dubé, who received a doctorate in engineering from the Carnegie Institute of Technology in Pittsburgh and taught as a faculty member in Laval University's mines and metallurgy

[12] Since the Laval law professors, who were primarily practitioners, lectured early in the morning and late in the afternoon, Claire had worked as a secretary at Sun Trust from 10 a.m. to 4 p.m. all through law school to pay her way. In 1951, she obtained her first position as a legal secretary, to the lawyer Sam Schwarz Bard.

[13] The *Canadian Law List, 1952* (Toronto: Cartwright & Sons, n.d.) listed only two Jewish lawyers in the city: Sydney Lazarovitz and Sam Schwarz Bard. A search of the *Canadian Law List* from 1900 to 1931 does not reveal any Quebec City lawyers with names that are not English or French. It is not always possible to determine ethnicity by last name, but the absence of names that suggest minority ethnicity is suggestive. On the longstanding history of anti-semitism, see Pierre Anctil and Gary Caldwell, *Juifs et réalités juives au Québec* (Québec: Institut québécois de recherché sur la culture, 1984); Morton Weinfeld, "The Jews of Quebec: Perceived Antisemitism, Segregation, and Emigration" (1980) 22:1 *Jewish Journal of Sociology* 5–20; Louis Rosenberg, *Canada's Jews: A Social and Economic Study of Jews in Canada in the 1930s* (1939; repr., Montreal: McGill-Queen's University Press, 1993); Constance Backhouse, "Anti-Semitism and the Law in Quebec City: The Plamondon Case, 1910–1915," in Daniel W. Hamilton and Alfred L. Brophy, eds., *Transformations in American Legal History—Law, Ideology, and Methods; Essays in Honor of Morton J. Horwitz* (Cambridge: Harvard Law School, 2010), at 303–25; Sylvio Normand, "L'affaire *Plamondon*: un cas d'antisémitisme à Québec au début du xx^{e} siècle" (2007) 48 *Les Cahiers de Droit* at 477–504; Joshua MacFadyen "'Nip the Noxious Growth in the Bud': *Ortenberg v. Plamondon* and the Roots of Canadian Anti-Hate Activism" (2004) 12 *Canadian Jewish Studies* at 73–96.

[14] Author's interview with Calin Morin-Melihercsik, 11 May 2010, Quebec City.

[15] See Mary Kinnear's study of early Manitoba women lawyers, "That There Woman Lawyer: Women Lawyers in Manitoba 1915–1970" (1992) 5 *Canadian Journal of Women and the Law* 418 at 432: "It was usual for the woman to retire from professional work on marriage, and it was a commonplace that women put their families first when family responsibilities conflicted with work demands. […] Women lawyers who worked before 1970 identified the fact that women were the primary care-givers in a family as a major reason for both their low numbers and their relative lack of success in the profession."

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department. Several years later, the couple had two children: Louise, born in 1960, and Pierre, born in 1964. With the assistance of a succession of nannies, Claire continued to practice throughout this period, restricting herself to fifteen days of leave after each pregnancy.

When the 1968 federal *Divorce Act* brought Quebec residents their first access to the dissolution of marriage, Claire was uniquely positioned to become the city's pre-eminent family law practitioner.[16] Other lawyers were disdainful of the new field of practice and anxious to distance themselves from the opprobrium that attended marital disgrace.[17] Claire was already known as one of the few lawyers who would take retainers from the impoverished, desperate women who sought whatever legal relief could be extracted from impossible marriages, before divorce came into the picture. And family law would soon be stereotyped as female work, given the high number of female clients and the relatively low fees that were charged.[18] By 1970, Claire had been pressed into service to conduct continuing legal education workshops for the Barreau du Québec and lectures on family law at Laval. With additional attention from newspaper and television reporters hungry for information about the new divorce regime, her practice "bloomed."[19] Claire boasted, somewhat ruefully, that after the floodgates opened, she "divorced half of Quebec City."[20] By dint of her tremendous hard work, tenacity, and charm, she developed a profile as the most successful, prominent, senior woman lawyer in Quebec City.

All of which prepared her perfectly for the startling tap on the shoulder that came in 1972: the offer to enter federal politics as a Liberal candidate.

An Offer from the Top: Liberal Politics and Feminist Demands

Claire should have had an inkling that something was stirring when the phone call came in from Jean-Paul Lefebvre. Lefebvre was a 46-year-old Quebec Liberal Party operative, a confidante of Jean Marchand who was co-chairing the 1972 Liberal federal election campaign.[21] Lefebvre asked if he could come to Claire's Mont St. Denis home to talk. To her surprise, he showed up with Prime Minister Pierre Elliot Trudeau.

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16 *Divorce Act*, S.C. 1968, c. 24.

17 Author's interview with Roger Garneau, 28 April 2009, Quebec City.

18 Author's interview with Julien Payne, C.M., Q.C., LSM., LL.D., F.R.S.C., 7 July 2009, Ottawa.

19 Author's interview with Claire L'Heureux-Dubé, Quebec City, 27–28 April 2009.

20 Author's interview with Claire L'Heureux-Dubé, Ottawa, 10 March 2010.

21 Federal cabinet ministers Robert Andras and Jean Marchand co-chaired the 1972 federal election campaign. John English, *The Life of Pierre Elliott Trudeau: Just Watch Me, 1968–2000*, vol. 2 (Toronto: Knopf Canada, 2009). Joseph-Yvon-Jean-Paul Lefebvre, born 1926, had risen through the ranks of the Jeunesse Étudiantes Catholiques (JEC), inspired by his passion for adult education to work with Jean Marchand at the Confédération des Syndicats Nationaux (CSN) and then to serve as the Liberal member of the National Assembly of Quebec for the riding of Ahuntsic from 1966 to 1970. He worked in the federal public service after the 1972 election. Marc Lalonde recalled that, at a later point, Lefebvre served as secretary general of the Liberal Party, Section Quebec. Author's interview with the Hon. Marc Lalonde, C.P., O.C., c.r., 16 August 2012, Ile Perrot, Quebec; Author's interview with Monique Bégin, 4 September 2011, Ottawa; Bégin's email correspondence of 5 September 2011, copy on file with the author; Pierre G. Normandin *The Canadian Parliamentary Guide 1970* (Ottawa: Gale Canada, 1970), at 758–59.

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The fifteenth prime minister of Canada had swept to power in 1968 amid the wave of "Trudeaumania" that took the country by storm, and he was preparing to campaign for a second term in the fall of 1972.[22] More than half a century had passed since federal suffrage had been extended to Quebec women in 1940, yet no woman had ever been elected to Parliament. Some were beginning to think it was time for change.[23]

Although much about the 1972 Liberal electoral campaign would continue to be overtly sexist, Trudeau had given instructions that he wanted some female candidates who could actually be elected.[24] There were rumours that Marc Lalonde, Trudeau's principal secretary who would first win election himself in Outremont, Montreal in 1972, was compiling a list of eight women from Quebec, each of them potential candidates for the party.[25] Lalonde admits that he recruited at least one: "I recommended that women run," he recalls, "but the desire for women was more widespread, stretching all the way to Trudeau himself."[26] It was what brought Pierre Elliot Trudeau to Claire's home that evening.

What was the impetus behind this new interest in recruiting women candidates for political office? Much can be credited to La Révolution Tranquille in Quebec and the second-wave women's movement throughout Canada, which had coalesced into a formidable demand for more women in positions of power. Crusty social attitudes about gender roles were increasingly challenged as out of sync with the dramatic transformations taking place in education and employment.[27] Laura Sabia, the dynamic leader of the newly formed Committee for the Equality of Women in Canada, had called on Prime Minister Lester Pearson in 1966 to set up a Royal Commission on the Status of Women. The Royal Commission's wide-ranging recommendations, released in 1970, demanded changes to the law, the economy, the family, education, the tax system, childcare, immigration, citizenship,

[22] John English *The Life of Pierre Elliott Trudeau: Citizen of the World, 1919–1968*, vol. 1 (Toronto: Knopf Canada, 2006); English *The Life of Pierre Elliott Trudeau: Just Watch Me, 1968–2000*, vol. 2.

[23] On the 1940 extension of suffrage in Quebec, the last province in Canada to do so, and the failure to elect Québécoises to Parliament before 1972, see Micheline Dumont, *Le féminisme québécois, raconté à Camille* (Montréal: Les Éditions du remue-ménage, 2009), at 165.

[24] The Liberal campaign platform, "The Land is Strong," offered statistical evidence of economic growth and then stated: "Behind these statistics is a man with a good job and a steady wage; a man and a woman starting a new family in a new house; another man with a good job because Canadian products sell so well abroad; still another man with a good job because Canadian enterprise has the confidence in itself and in the country to re-invest to create the new jobs our young people want." English, *The Life of Pierre Elliott Trudeau: Just Watch Me, 1968–2000*, vol. 2, at 178. On Trudeau's instructions, see Author's interview with Monique Bégin, 4 September 2011, Ottawa.

[25] Monique Bégin notes that although she never saw the reputed list, she was told that she was number eight, and that other names included Rita Cadieux and Monique Coupal. Many of the women refused to run, some claiming that the Liberal Party was not sufficiently focused on social reform. In contrast, the campaign organizers on the English-Canadian side apparently told Trudeau that "there were no women capable of being candidates." In the end, the only Liberal women elected in 1972 were from Quebec. Author's interview with Monique Bégin, 4 September 2011, Ottawa.

[26] Author's interview with the Hon. Marc Lalonde, C.P., O.C., c.r., 16 August 2012, Ile Perrot, Quebec.

[27] Gail Cuthbert Brandt, Naomi Black, Paula Bourne, and Magda Fahrni, *Canadian Women: A History*, 3rd ed. (Toronto: Nelson, 2011), at 527.

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the criminal justice system, women's prisons, and the role of women in public life.[28] A *Toronto Star* columnist characterized it as "a call to revolution."[29] And according to Lalonde, who would later become the minister responsible for the status of women, the government was "serious" about implementing the report. "Trudeau was really supportive, and we wanted to proceed with the recommendations."[30]

The growing political interest was bolstered by the activism of women who were determined not to let the momentum falter. The Royal Commission's executive secretary, Monique Bégin, took pains to disseminate its findings in an organized fashion, hiring contractors to teach women how to lobby for implementation of the recommendations. It was a campaign that found particularly fertile ground in Quebec.[31] The Fédération des femmes du Québec published a 46-page discussion guide on the report and distributed thousands of copies to eager women's groups across the province.[32]

Governments across the country were setting up advisory councils on the status of women, including an exceptionally effective, well-funded *Conseil du statut de la femme* in Quebec.[33] Independent status-of-women committees were cauldrons of energy that enabled younger, professional women to develop expertise in political skills, and they set their sights on politicians and bureaucrats alike.[34] By 1972, the National Action Committee on the Status of Women had surfaced. This pan-Canadian feminist caucus was composed of service groups, advocacy organizations, business clubs, arts and cultural groups, labour unions, religious institutions, and ethno-racial groups, and its political orientation ran the gamut from conservative to radical feminist.[35] In 1970, the Front pour la liberation des femmes du Québec carried off an explosive Mother's Day demonstration in Montreal's Lafontaine Park, denouncing the day's celebration and demanding the right to abortion with picket signs that read, "Reine un jour, esclave 364 jours" ("Queen for a day, slave for 364 days").[36] Women's lib was, beyond dispute, a growing gale swirling through all corners of the land.

Years later, Marc Lalonde tried to explain the influences that stretched right to the top in the prime minister's office, and the personal insights that had caused so

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28 Cerise Morris, "No More Than Simple Justice: The Royal Commission on the Status of Women and Social Change in Canada," M.A. Thesis, McGill University Department of Sociology, January 1982.

29 Anthony Westell, "Report is More Explosive Than Any Terrorists' Time Bomb," *Toronto Star*, 8 December 1970.

30 Author's interview with the Hon. Marc Lalonde, C.P., O.C., c.r., 16 August 2012, Ile Perrot, Quebec.

31 Author's interview with Monique Bégin, 19 July 2012, Ottawa.

32 Micheline Dumont *Le féminisme québécois raconté à Camille* (Montréal: Les Éditions du remue-ménage, 2009) at 133.

33 The *Conseil du statut de la femme* published a groundbreaking document in 1978 entitled *Pour les Québécoises: Égalité et independance*. Gail Cuthbert Brandt et al., *Canadian Women: A History*, at 531–32.

34 Ibid., at 532.

35 Jill Vickers, Pauline Rankin, and Christine Appelle, *Politics As If Women Mattered: A Political Analysis of the National Action Committee on the Status of Women* (Toronto: University of Toronto, 1993).

36 Micheline Dumont *Le féminisme québécois raconté à Camille* (Montréal: Les Éditions du remue-ménage, 2009) at 126–27.

many to believe that feminism was politically important. His experience was instructive:

> When the Royal Commission's report came out, I was convinced that this was an issue the government should deal with. I'm married to a person I call a quiet feminist, but a strong feminist. She had educated me. So when I came into the political sector, either as an adviser or politician, I had been properly groomed on the subject. I had read all of the big names of those days—Simone de Beauvoir, Benoîte Groult, Germaine Greer, Margaret Mead. Claire [my wife] read them and talked to me about them. I had no choice.[37]

Claire Lalonde laughs at her husband's candour, describing the feminist movement in Quebec as "exciting" and "serious," a movement of which she was proud to be a part. She was not only a persuasive influence on her husband but had been at the founding meetings of the FFQ and served on one of its committees.[38] Other prominent leaders of the FFQ were married to powerful Liberal men: Rita Racette-Cadieux, the second president of the FFQ, was the wife of Fernand Cadieux, former president of the Jeunesse Étudiantes Catholiques (JEC), who was close to both Trudeau and Michael Pitfield. Fernande Juneau, also active in the FFQ, was the wife of Pierre Juneau, co-founder with Trudeau of the dissident *Cité Libre,* the first president of the Canadian Radio-television and Telecommunications Commission (CRTC) and, later, the president of the CBC. It was a remarkable network of women who brought unparalleled pressure to bear on their husbands to respond to feminist demands. Those who watched the process from within credited them for much of the changing environment.[39]

Why did the politicians come calling on Claire? Ironically, Claire was not someone who would ever claim membership in "women's liberation," and she was without attachment to any of the burgeoning new feminist organizations. When Claire launched her career in 1952, she was well ahead of the rebirth of organized feminism. She was not one of the select group that set the feminist wheels in motion:

> I never thought of the fact that other women didn't have opportunities. When I was asked to help, I did, but I didn't have women's issues in mind. I treated my secretaries well. I had women clients, but *I never had the idea that I was on a feminist mission.* It was not in my parameter of views. It is very disappointing to some, I know, but it's true. The feminist movement was not advanced at the time, and I was not one who would have started it first. I had my career, my children. I was occupied twenty-four hours a day.[40]

Nor was she a woman who joined the feminist organizations that were blooming around her in the early 1970s. The woman who would rise to prominence as a feminist icon and, later, as a lightning rod for anti-feminist attack in her position

[37] Author's interview with the Hon. Marc Lalonde, C.P., O.C., c.r., 16 August 2012, Ile Perrot, Quebec.
[38] Author's interview with Claire Lalonde, 16 August 2012, Ile Perrot, Quebec.
[39] Author's interview with Monique Bégin, 4 September 2011, 5 September 2012, Ottawa.
[40] Author's interview with Claire L'Heureux-Dubé, Clearwater, Florida, 10–14 May 2009 (Emphasis in oral statement).

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as a Supreme Court jurist, was strongly supportive of egalitarian ideals but distinctly not a self-identified feminist:

> I never belonged to a movement of feminists. I had plenty on my plate to work and have children. It was enough. I never went to the barricades for the movement. But I couldn't accept that women would be treated the way they were. We had to fight every step of the way, to battle every minute with the judges. I was sensitive to injustice. I really was acting like a feminist, although I didn't use the word.[41]

When the politicians went looking, she was in the right place at the right time. Simply by virtue of being one of Quebec City's only high-profile women lawyers, the most senior woman in private practice, Claire had become an icon, propelled forward by the momentum of something much larger than her own talents or ambitions. She was on the cusp of feminist demands for revolution, and the government was ready to showcase a few new women in politics. Claire was the recipient of unleashed pent-up desires, singled out precisely because she was a woman, and in response to the demands of a movement to which she had never actually belonged.

There were also other factors that made Claire an attractive prospect. While she had never had any personal political involvement with any political party, she had important linkages to key Liberals. The Liberal Party's chief Quebec power broker, Jean Marchand, was a good friend of Yves Dubé, Claire's brother-in-law and the dean of social sciences at Laval University from 1968 to 1976. Through Yves, Claire had been introduced to Marchand. By chance, Claire, Yves, and Jean Marchand had found themselves on a plane to Ottawa one morning, and they had arranged to meet up that night. The three spent an enjoyable evening together, and Claire remembers dancing with Marchand, who had a considerable reputation for being flirtatious with women. Claire was impressed by the dynamic cabinet minister, whom she perceived as having entered politics "with his heart, to change things."[42]

Marchand had first reached prominence during the Asbestos Strike, when he stood out as an impassioned orator and brilliant labour organizer who travelled the backroads of Quebec, sleeping in workers' bedrooms, speaking in church basements, and singing ballads in cafés as he pressed for workers' equality. He resigned his position as head of the Confederation of National Trade Unions (CNTU) to run for the Liberals in 1965. Marchand, Trudeau, and Gérard Pelletier would be dubbed the "three wise men" (or, in French, "les trois colombes") when they successfully burst onto the federal electoral scene together that year. Marchand was appointed to the cabinet immediately, named as senior Quebec minister. He was to become one of Trudeau's closest confidantes, a lifelong friend throughout his long tenure as a politician.[43]

The L'Heureux-Dubé family connections reached even higher in the party hierarchy, since Claire's husband, Arthur Dubé, knew Pierre Trudeau personally. The two had socialized years earlier as part of a small French-Canadian cohort in Ottawa, when Arthur had worked for the Department of Mines prior to joining

[41] Author's interview with Claire L'Heureux-Dubé, Clearwater, Florida, 10–14 May 2009.
[42] Author's interview with Claire L'Heureux-Dubé, Quebec City, 30 August 2012.
[43] English *The Life of Pierre Elliott Trudeau: Citizen of the World, 1919–1968*, vol. 1.

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the faculty at Laval.[44] Both Arthur and Yves were great admirers of Trudeau and his political approach. So it was that Arthur welcomed the prime minister as an old friend the evening that Trudeau and Lefebvre came calling, and the whole group sat down in the family's living room.

The discussions that followed would open the door to a career path that had been largely blocked for women in the past. This newfound opportunity appears to have been based, in part, on Claire's considerable legal talent and skills; her professional status and family connections; the changing economic, social, and political framework within a modernizing Quebec; and the strength of the women's movement at the time.

The Path Not Taken: "I Said No"

Trudeau came to the point quickly. He asked Claire to run as a Liberal in her home riding of Louis-Hébert, emphasizing that they "wanted a woman." There are several versions of the conversation that ensued, all of them amusing. Claire recalls that she gave Trudeau a flat rejection: "I said, 'No, I'm not interested at all to go into politics. You're too late, my children are born. And you're too early, because they are not brought up.'"[45] Then, she quipped: "I accept on one condition. That I be defeated!"[46] Other recollections are of a longer exchange, in which Trudeau protested that she would not be defeated, and that they "could put a dog there and get it elected." Claire's rapid-fire comeback was "So, run the dog."[47]

Despite the humorous sparring, the conversation also involved some probing on Claire's part. She wondered aloud whether women were just wanted as window-dressing. She predicted that women would be relegated to the backbenches. She argued that no one listened to women, and that female MPs would be no exception. When Trudeau intimated that he would put Claire into his cabinet, she registered total disbelief: "I'm not stupid. That's ridiculous. I said no."[48]

The main rationale Claire offered for her refusal seems to have been that politics would be incompatible with her family responsibilities. Louise was twelve, Pierre was eight, and Arthur shouldered little responsibility for child rearing. Claire was no stranger to the challenge of combining long working hours with a family. But federal politics would have added geographical distance to the mix, taking her

[44] In the 1940s, a small group of French-Canadians living in Ottawa (among them Arthur Dubé and Gérard Morin, correspondent for *Le Soleil*) used to dine at Le Canton, a Chinese restaurant favoured by Pierre Trudeau. Arthur Dubé followed politics carefully but never joined the Liberal Party. According to Claire, Arthur's political philosophy was "liberal, very nationalistic, but not separatist." Author's interview with Claire L'Heureux-Dubé, Quebec City, 27–28 April 2009.

[45] Author's interview with Claire L'Heureux-Dubé, Quebec City, 27–28 April 2009.

[46] Ibid.

[47] Claire recalls several versions of the conversation. See Author's interview with Claire L'Heureux-Dubé, Quebec City, 30 August 2012. André Legault, a member of Claire's staff at the Supreme Court of Canada, recalls hearing from her a slightly different version: "Trudeau approached her and said, 'You'd be a good minister in my cabinet.' She said, 'I know nothing about being elected . . . whether people would vote for me.' He said, 'Don't worry—I've got a place for you to run, even a dog could get elected there.' She said, 'So you think I'm a dog!' And he said, 'No, that's not what I meant.' They were laughing about it." Author's interview with André Legault, 10 December 2007, Ottawa.

[48] Author's interview with Claire L'Heureux-Dubé, Quebec City, 27–28 April 2009.

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frequently to Ottawa. It seems a more than reasonable explanation for Claire's decision. Yet a mere six months later, Claire would accept a judicial appointment to the Superior Court that also required a great deal of travel away from Quebec City to sit on circuit. Judging would also detract considerably from her time with the family. The family could not have been the only reason for Claire's categorical dismissal of the political opportunity.

The objections Claire raised that evening also suggest that she believed women would have insufficient status to make a significant mark in politics. She may have doubted the long-term strength of the nascent women's movement, or its potential to transform gender relations deeply enough to provide women with a fair chance. Years later, Claire admitted that she might also have been "afraid" of politics: "My father was a civil servant. We never talked about politics. I knew nothing about it. I would have thought, 'I don't know how, I don't have the background, I don't have the money.'"[49]

Claire had no firsthand experience of politics and very little she could draw upon indirectly from family and colleagues. No one from her family or her law firm had ever run for office. None of the women from her cohort of graduates at Laval had tried their hands at politics. Being in the position of a path-breaker had not daunted her, as she was one of the first women to scale the walls of Laval and venture into practice in the capital. But Claire's self-confidence seems to have faltered at the prospect of politics. She did not ask Trudeau for time to reflect on the offer. She appears never to have second-guessed her decision. She didn't look twice at the momentous fork in the road.

Her decision made the headlines in the local newspaper, which noted that Madame Claire L'Heureux-Dubé had turned down an offer to run for politics in the forthcoming election. The refusal was attributed entirely to family needs. The laudatory article described Claire as "humaine," "dynamique," "optimiste," and "une travailleuse acharnée," quoting her as saying, "Mon schème de valeurs ne me permettait pas d'y penser. Ma priorité va à ma famille."[50] The radical feminists who had demonstrated against Mother's Day two years earlier must have shuddered in recognition, even though the real explanation behind Claire's refusal may have been broader than maternal responsibilities alone.

But Claire's influence was felt nevertheless. The night she said no, she urged Trudeau and Lefebvre to solicit Albanie Morin, a client of hers who lived in the same riding. Morin was a teacher and translator by occupation, a rising municipal politician with the Council of Sillery who had just enrolled in law school. Her husband and sons had been Liberal Party stalwarts. Recently widowed and with grown children, Morin had retained Claire to handle the affairs of her husband's estate. Claire was intrigued with her impressive client and recommended her without reservation. Although neither Trudeau nor Lefebvre committed themselves that night, they did indeed pursue Morin. In the election of 30 October 1972, Morin sailed to victory in the Louis-Hébert riding that had initially been

[49] Author's interview with Claire L'Heureux-Dubé, Quebec City, 30 August 2012.
[50] Lily Tasso, "La famille avant la politique chez Madame Claire L'Heureux-Dubé," clipping dated 5 October 1972, no other reference, in scrapbook kept by Claire's father.

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offered to Claire. She entered Parliament as one of the first three Québécoise MPs ever elected, along with Monique Bégin and Jeanne Sauvé.[51]

What If: "She would have made a great politician"

Many observers have characterized Claire as a natural politician, someone who could work a room and charm all manner of person. Family law expert Julien Payne insisted that she "would have made a great politician," adding, "Claire knows everybody! If she's in a room, she'd know everybody in the room by the time the evening's over."[52] Quick on her feet, humorous, well-organized, and a glutton for long hours of work, Claire had many of the key attributes for electoral success. What if she had taken the bait that evening and entered federal politics in the winnable riding of Louis-Hébert? Would she have surpassed Albanie Morin, who became the first woman to sit as the assistant deputy chair of the House of Commons Committee of the Whole; Monique Bégin, who served as a long-time successful cabinet minister; and Jeanne Sauvé, who became Canada's first female governor general?[53]

Paths not taken present opportunities for speculation. What if Claire had said yes? Backed by the Quebec Liberal machine she, instead of Morin, would undoubtedly have taken the Louis-Hébert riding that fall. It was a "safe" seat for the Liberals, and it is likely that the party would have provided financial backing for her campaign, as it did for some of the other women who were the first to run in Quebec.[54] Entering Parliament as one of five women out of 264 MPs,

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51 Micheline Dumont, *Le féminisme québécois, raconté à Camille* (Montréal: Les Éditions du remue-ménage, 2009), at 165; Michèle Jean, *Québécoises du 20e Siècle* (Montréal: Les Éditions Quinze, 1977), at 43. Albanie (Paré) Morin was born 30 April 1921 in St. Elizabeth, Manitoba. Her husband, George Morin, ran a sales and repair business in automobiles. Albanie did not finish high school as a young woman and began her career as a secretary. After she married, she completed her university education with degrees in history, education, and translation. She won the riding of Louis-Hébert in 1972 and in 1974, and she served as the assistant deputy chair of the House of Commons Committee of the Whole from 1974 to 1976. She had completed all of her law courses but was not yet called to the bar when she died on 30 September 1976. Interview with Albanie Morin (daughter of Albanie Paré Morin), 1 August 2008, Montreal; Wayne D. Madden, *Canadian Women M.P.s and M.L.A.s* (Fort McMurray, Alta: A Little Bit of Hope (Madden), 1998), at 12; Jean Bannerman *Leading Ladies Canada* (Belleville: Mika Publishing, 1977), at 263–64.

52 Author's interview with Julien Payne, 7 July 2009, Ottawa.

53 Born in Saskatchewan, rising to prominence with the JEC and as a CBC journalist, in 1972, Jeanne Sauvé was first elected to the Montreal riding of Ahuntsic and appointed the minister of state for science and technology, the only woman in the Trudeau cabinet. She later served as the minister of the environment and of communications and became the first female Speaker of the House of Commons. In 1984, she was appointed Canada's first female governor general. Shirley Wood, *Her Excellency Jeanne Sauvé* (Toronto: Macmillan, 1986). Born in Rome, Monique Bégin was elected in 1972 to the Montreal riding of Saint-Michel, which she held until 1979. She was then elected to the Montreal riding of Saint-Léonard-Anjou, which she held until 1984. She was appointed the minister of national revenue in 1976 and served as the minister of health and welfare from 1977 to 1984. Author's interview with Monique Bégin, 4 September 2011, Ottawa.

54 When the Liberals recruited Monique Bégin to run in 1972, they offered her a "safe" Montreal seat, pledged to run no fewer than three Québécoises, and provided some financial support for the campaign. One assumes that had Claire so requested, her entrance into politics would have been similarly assisted. Author's interview with Monique Bégin, 4 September 2011, Ottawa.

Claire would have been well positioned to take a leading role.[55] The only Liberal women were the three Québécoises. With the prime minister intent on reserving a cabinet posting for a woman, chances are that Claire would have garnered the prize.[56]

Musing many years later over the results of the 1972 election, which returned a minority Liberal government, Monique Bégin emphasized that the inner circle was searching for the strongest fighters it could find.[57] She was told she was not a serious candidate for the cabinet because, at age thirty-six, she was "too young," too much of a "novice," and perceived as vulnerable.[58] Albanie Morin was not a contender either. Even if she had been elected alongside Claire, Morin was perceived to be insufficiently powerful to qualify as cabinet material.[59] Jeanne Sauvé, the one who did get the cabinet posting, was fifty years old, ambitious, and well-positioned due to the stature of her husband, Maurice, who had been a Liberal MP and a cabinet minister before her.[60] But Bégin believes that Claire would have edged out Sauvé in 1972, particularly because Sauvé and her husband were John Turner supporters and viewed as suspect by Trudeau loyalists at the time.[61] Marc Lalonde hypothesized that if Claire had won, there might have been two female cabinet ministers from Quebec, especially since Claire came from Quebec City and Jeanne Sauvé from Montreal.[62]

Had she been assigned to the cabinet, Claire might have gone on to even greater political acclaim. Stéphane Dion, who took on the leadership of the Liberal Party some years later, believed that Claire would have been highly successful. Having known her from childhood, since his parents were close friends with Claire and Arthur, Dion offered the opinion that Claire would have relished working with

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55 The two other female MPs were Grace MacInnis (NDP, Vancouver Kingsway) and Flora MacDonald (Progressive Conservative, Kingston and the Islands). Grace MacInnis was the daughter of J. S. Woodsworth, the founder of the CCF predecessor party to the NDP, who had held the seat since 1965. For all of the others, this was their first term as MP. Sunny P. Lewis, *Grace: The Life of Grace MacInnis* (Madeira Park, BC: Harbour Publishing, 1993); Ann Farrell, *Grace MacInnis: The Story of Her Love and Integrity* (Markham, Ont.: Fitzhenry and Whiteside, 1994); Madden, *Canadian Women M.P.s and M.L.A.s*, at 12.

56 Author's interview with Monique Bégin, 4 September 2011, Ottawa. Trudeau had been criticized, because his first cabinet contained no women (unlike the earlier cabinets of John Diefenbaker and Lester Pearson), and he was anxious not to repeat the oversight. English, *The Life of Pierre Elliott Trudeau: Just Watch Me, 1968–2000*, vol. 2.

57 The 1972 election produced a minority Liberal government, with the NDP holding the balance of power: Frank B. Feigert, *Canada votes, 1935–1988* (Durham, NC: Duke University Press, 1989), at Table 2–37. Author's interview with Monique Bégin, 4 September 2011, Ottawa.

58 Bégin recalled that Gérard Pelletier told her that they wondered if a cabinet appointment at that early stage might "destroy" her; she added: "They thought Question Period would kill me." Author's interview with Monique Bégin, 4 September 2011, Ottawa.

59 Jean Marchand told Bégin that he supported Morin's candidacy as a Liberal because he perceived her to be "feminine," "traditional," "not dangerous." Bégin added: "Albanie was very proper. A fine human being. I liked her a lot. The Conservatives in the House loved her. She was a very feminine, comfortable, mature woman. But socially speaking, she was not a fighter. They didn't want a nice, sweet person. It was a minority government. They needed a fighter." Author's interview with Monique Bégin, 4 September 2011, Ottawa.

60 Author's interview with Monique Bégin, 4 September 2011, Ottawa.

61 Author's interview with Monique Bégin, 4 September 2011, Ottawa.

62 Author's interview with the Hon. Marc Lalonde, C.P., O.C., c.r., 16 August 2012, Ile Perrot, Quebec.

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Trudeau. "She would have admired Trudeau's strength of opinion, his ability to hold an unpopular position," he said, and her "facility in English would have been a great asset." He added: "She would have been made a cabinet minister. She would have been successful."[63] This was an opinion shared by Marc Lalonde, who ventured that Claire's "outgoing, open personality," "forcefulness," and "good judgment" would have suited politics well.[64] Allan Rock, who served as a Liberal cabinet minister from 1993 to 2003, agreed: "She would have been a marvellous politician and cabinet minister. She is colourful, charismatic, and self-confident. She would have built up a huge following. She would have been a wonderful counterfoil to Trudeau. And if she could have brought a feminist influence into the cabinet during these critical years, it would have had a major impact on the shaping of public policy."[65]

These were turbulent years for the Liberal government of Canada. Their minority government went down in defeat within eighteen months, was returned with a majority in 1974, was defeated by a short-lived Conservative government under Joe Clark in 1979, and returned to power yet again in 1980. The country stumbled from crisis to crisis: recession, the oil embargo, the controversy over bilingualism, the unpopular introduction of wage and price controls, the divisive National Energy Program. Then, in 1976, René Lévesque's Parti Québécois swept to power in Quebec, catapulting the dissolution of the country into high relief.[66]

Monique Bégin, who rode through those tumultuous years as a powerful force within the Liberal government, suspects that Claire would have thrived. She noted that the Liberals needed tough spokespersons from Quebec in order to bring prevailing perspectives into the caucus and to sell the government message back to constituents. She forecast that Claire would have started with relatively small portfolios and graduated to positions of high prestige, potentially the minister of justice and the minister of foreign affairs. She thought that Claire would have been easily re-electable, well-mentored, and widely liked by political colleagues for her intelligence, competence, humour, and charm. She added that Claire had the "self-confidence" and "thick skin" necessary to succeed in politics.[67]

The risk factors? Observers predicted that the two biggest questions would have been whether Claire could get along with the civil service and whether she could compromise when necessary. "She would have needed to develop good relations with the civil service," remarked Bégin. "Some of them are easy, some not.

[63] Dion has sat as an MP from 1996 to the present and served as a cabinet minister under Jean Chretien and Paul Martin. He headed the federal Liberal Party from 2006 to 2008. Author's interview with Stéphane Dion, 6 August 2011, Lake Couchiching, Ontario.

[64] Author's interview with the Hon. Marc Lalonde, C.P., O.C., c.r., 16 August 2012, Ile Perrot, Quebec.

[65] Author's interview with the Hon. Allan Rock, 6 September 2012, Ottawa.

[66] English, *The Life of Pierre Elliott Trudeau: Citizen of the World, 1919–1968*, vol. 1; English, *The Life of Pierre Elliott Trudeau: Just Watch Me, 1968–2000*, vol. 2; Stephen Clarkson and Christina McCall, *Trudeau and Our Times*, 2 vols. (Toronto: McClelland & Stewart, 1990–1994).

[67] Author's interview with Monique Bégin, 4 September 2011, Ottawa.

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Would she have been able to work with them? Did she have a reputation of not suffering fools gladly? Am I right or wrong that she can't stand stupidity? If so, it's a problem because they notice that attitude. A big minus." As for compromise, Bégin speculated: "[All] hell may break loose. Claire appears to me to be the kind of human being who might have exploded, might have resigned from Cabinet on principle."[68]

Assuming Claire surmounted the risks, where might she have ended up? There was little chance she would have obtained the highest rung, the post of prime minister. Even if the forceful headwinds against a female PM had been somehow neutralized, Trudeau held on to the reins of power until 1984 and then, according to traditional convention, was succeeded by an Anglophone leader, John Turner. Bégin wondered if Claire would have been satisfied with lateral cabinet shuffles decade after decade, leavened perhaps with the odd posting as an ambassador. She, rather than Jeanne Sauvé, might eventually have been offered the position of governor general. But having to follow rigid protocol and refrain from expressing any opinions in that office would undoubtedly have come at a high cost to Claire. Assuming she had wished to leave politics for the judiciary, she would probably never have made it to the Supreme Court of Canada. A direct posting to the highest court would have been unlikely. And if she had started in the lower courts after a significant stint in politics, she would have needed a lightning-speed ascent to reach the top court in time to make a mark.

The Judicial Path: A Different Legacy

Instead, it was the judicial door that opened next, just months after Claire's decision to forego a career in politics. This time the call came from Claire's former client, Albanie Morin, now the Liberal MP for Claire's riding, whom Claire had personally recommended to Trudeau. Morin told Claire there was a judicial spot opening up, and it was time to put a woman on the bench. The forces that had coalesced to prompt the offer of a political seat were still reverberating, and with Morin's backing, the Liberals had agreed to approach Claire again.

The path that opened this time was the one that Claire took. Although she was initially reluctant to agree, primarily on account of her family's financial needs and the cut in pay she would take with a judicial posting, she did not resist Morin's insistent urgings. Although she remained uncertain, Claire sent in her curriculum vitae. On 8 February 1973, the Honourable Otto Lang, federal minister of justice, advised her that the cabinet had signed the order-in-council naming her to the Quebec Superior Court. With the stroke of a pen, on 9 February 1973, Claire L'Heureux-Dubé became the first woman on the

[68] Author's interview with Monique Bégin, 4 September 2011, Ottawa.

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Superior Court in the district of Quebec, the second in the province, and the third in the country.[69]

Would Claire L'Heureux-Dubé's legacy have been greater had she chosen the political route rather than the judicial one? No one can know for certain, but perhaps we will be closer to venturing a thoughtful answer when the full biographical study of the Supreme Court jurist is finally written, and observers have more opportunity to consider the judicial legacy that was, alongside the legacy that wasn't.

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[69] Ignace-J. Deslauriers, *La Cour Supérieure du Québec et ses juges, 1849–1er janvier 1980* (Québec: Bibliothèque nationale du Québec, 1980), at 33, 45, 144; Ed Ratushny, "Judicial Appointments: The Lang Legacy" (1977–78) 1 *Advocates' Quarterly* 2 at 14. Réjane Laberge-Colas, the first, was appointed by Justice Minister John Turner and Prime Minister Pierre Trudeau to the Superior Court of Quebec in Montreal on 20 February 1969. She had graduated from the Faculty of Law at the University of Montreal (LL.L. cum laude) and stood first at the bar exams in 1952. She was married to Émile Colas, a Montreal lawyer, and the couple was part of a tight network of successful Liberal professionals. Her first five years in practice were spent as in-house counsel with Aluminium Secretariat. She had just joined the law office of Geoffrion et Prud'homme in 1969, when she was appointed to the court. Author's interview with Monique Bégin, 5 September 2012, Ottawa; Michèle Jean, *Québécoises du 20e* Siècle, at 42; Alison Prentice, Paula Bourne, Gail Cuthbert Brandt, and Beth Light, *Canadian Women: A History* (Toronto: Harcourt, Brace, Jovanovich, 1988), at 346; Lucie-Anne Fabien "Décès de l'honorable Réjane Laberge-Colas—1923-2009," *Canada Newswire*, 10 August 2009. The second woman was Mabel Margaret Van Camp, who was appointed by Justice Minister John Turner and Prime Minister Pierre Trudeau to the Supreme Court of Ontario in 1971. Born in Blackstock, north of Toronto, in 1920, Van Camp was a graduate of Osgoode Hall Law School and was called to the bar in 1947. She practised in Toronto with Beaudoin, Pepper & Van Camp until her appointment. Obituary, William Illsey Atkinson, "I Am the Damn Judge," *Toronto Globe and Mail*, 9 August 2012, R5. On earlier appointments to lower courts, see Cameron Harvey, "Women in Law in Canada" (1971) 4 *Manitoba Law Journal* at 20–2.

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