

Donat Pharand (1922–2018)

Professor Emeritus Donat Pharand, who passed away in April 2018 at the age of ninety-five, was a true scholar by any definition: someone who through long study has gained mastery in one or more disciplines; a person who uses the mind creatively and who is skilled in academic disputation; a specialist in a given branch of knowledge; a person of high literary or scientific attainments; and one engaged in the pursuit of learning. Indeed, though Pharand, like so many other Canadians of his generation, wore different hats while making his way in the world — lieutenant in the Canadian army, translator, insurance adjuster, stevedore, practising lawyer, international arbitrator, government consultant — his most important career was undoubtedly as a law professor and scholar.

Drawn to the discipline of international law as a young law student at Dalhousie University, it was the Arctic, in particular, that captured his interest and imagination. A stray reference to Senator Pascal Poirier in his third-year studies sparked his curiosity and eventually led him to Paris, where he obtained a “Doctorat d’Université” in 1955 under the supervision of Charles Rousseau on the basis of his thesis “La théorie des secteurs dans l’Arctique à l’égard du Droit international” [“The Sector Theory in the Arctic under International Law”].

Something of a visionary, Pharand wrote in the conclusion to his thesis that a general warming trend made navigation in the Arctic a real possibility:

La navigation, au sens propre de ce terme, n’est pas encore possible au pôle Nord lui-même, à l’exception de la navigation sous-marine, mais il est très possible qu’elle le devienne. Le réchauffement général dont nous avons parlé fait non seulement diminuer les glaces en superficie, mais aussi en épaisseur.¹

Editors’ Note: The Board of Editors was deeply saddened to learn of the passing, in April 2018, of Professor Donat Pharand, a founding member of the Board and past Associate Editor of the *Yearbook* (1974–82, vols 12–20). Le Comité est très reconnaissant à la professeure Suzanne Lalonde, qui avait collaboré étroitement avec le professeur Pharand, d’avoir rédigé ce court hommage à sa vie et son œuvre.

¹ Donat Pharand, “La théorie des secteurs dans l’Arctique à l’égard du Droit international” (Doctorat d’Université, Université de droit, d’économie et de sciences sociales de Paris, 1955) at 145 [unpublished].

He later remembered that some of the members of his jury (Charles Rousseau, as president, with Paul Reuter and Paul Bastid) had been somewhat sceptical. Undeterred, Pharand had passionately defended the need to consider what legal mechanisms might best safeguard the region. After hours of spirited debate, the jury unanimously awarded Pharand's thesis the distinction "very good" and recommended it for a prize. Rousseau would later write that "[t]he thesis is a remarkable work by its documentation, its in-depth analysis and its objective conclusions, which does the greatest honour to its author."²

The conviction and passion that Pharand demonstrated as a young student, anxious to win over some of the greatest French publicists of the time, and the rigour and thoroughness that distinguished his thesis, would be hallmarks of his long and illustrious career. Over the course of forty years, Pharand published more than thirty articles in both French and English³ and three influential books: *The Law of the Sea of the Arctic with Special Reference to Canada*,⁴ *Northwest Passage: Arctic Straits*,⁵ and *Canada's Arctic Waters in International Law*.⁶

While a prolific writer on the law of the sea generally, Pharand's scholarship reveals a single-minded focus on the Arctic. There is in fact no other academic who has been so consistently involved with the legal issues affecting the region and its people and over such a considerable period of time. His knowledge of the issues was immeasurable. Referring specifically to his 1988 book *Canada's Arctic Waters*, Donald M. McRae writes:

This short encapsulation of the major themes in *Canada's Arctic Waters in International Law* hardly does justice to the wealth of detail and precision of argument its pages disclose. There is in this book the accumulated wisdom of years of research that has been subjected to close and careful analysis ... Whether or not the issue of Canadian sovereignty over Arctic waters has been finally laid to rest, international

² Certificate, 26 December 1955, Donat Pharand's personal files [on file with the author].

³ Pharand's first article on the law of the sea of the Arctic was published in 1968 in the *American Journal of International Law*. Donat Pharand, "Soviet Union Warns United States against Use of Northeast Passage" (1968) 62 *AJIL* 927. His last article, an exhaustive summary of the issues and principles involved in the debate over the Northwest Passage, was published in March 2007. Donat Pharand, "The Arctic Waters and the Northwest Passage: A Final Revisit" (2007) 38:3 *ODIL* 3.

⁴ Donat Pharand, *The Law of the Sea of the Arctic with Special Reference to Canada* (Ottawa: University of Ottawa Press, 1973).

⁵ Donat Pharand, *Northwest Passage: Arctic Straits* (Dordrecht: Martinus Nijhoff, 1984).

⁶ Donat Pharand, *Canada's Arctic Waters in International Law* (Cambridge, UK: Cambridge University Press, 1988).

lawyers everywhere are indebted to Professor Pharand for his meticulous and scholarly analysis of the issue which combines unparalleled knowledge of the facts with rigorous intellectual scrutiny.⁷

Such a glowing assessment of Pharand's authority and scholarly qualities is shared by a number of other experts, many of them outside Canada. In 1989, Vaughan Lowe wrote that "[t]he editors of the series [*Studies in Polar Research*] have chosen wisely in securing Donat Pharand as the author of the study of Canada's Arctic waters. Professor Pharand is already well established as the leading authority in the field."⁸ Charles Rousseau, for his part, declared that "[l]e professeur Pharand est indiscutablement l'un des grands spécialistes du droit maritime canadien et des problèmes juridiques liés à l'Arctique. Son nouvel ouvrage [*Canada's Arctic Waters in International Law*] confirme avec éclat une réputation qui n'est plus à démontrer."⁹

Pharand has also been praised for the "thorough and systematic approach [he] brings to his work."¹⁰ For Victor Prescott, "Pharand's latest study [*Canada's Arctic Waters in International Law*] is elegant in structure and language, clearly argued and possessed of that wonderful balance between generalisation and detail."¹¹ In a review of Pharand's 1973 book, *The Law of the Sea of the Arctic*, Michael Rutter emphasizes that "[t]he book contains much information of an historical, geographical and scientific nature, not ordinarily accessible to a lawyer ... Yet such information may often be indispensable to a proper understanding of basic legal concepts."¹² And, of course, so many experts have praised Pharand for his charts. David Hutchinson writes that "Professor Pharand provides a fascinating account of the intricate geography of the Northwest Passage ... A large, detachable chart greatly facilitates understanding."¹³ Claude Jacquemart, among

⁷ Donald M McRae, "Book Review of *Canada's Arctic Waters in International Law* by D Pharand" (1987) 25 CYIL 535 at 537. Ted McDorman has also referred to Donat Pharand as "[t]he foremost world authority on the international law of the sea in the Arctic." Ted L McDorman, "Book Review of *The Northwest Passage: Arctic Straits* by D Pharand" (1985) 9 Dal LJ 827 at 833.

⁸ Vaughan Lowe, "Book Review of *Canada's Arctic Waters in International Law* by D Pharand" (1989) 38 ICLQ 703 at 703.

⁹ Charles Rousseau, "Recension de *Canada's Arctic Waters in International Law* de D Pharand" (1989) 93 RGDIP 464 at 464.

¹⁰ B Flemming, "Book Review of *The Law of the Sea of the Arctic* by D Pharand" (1974) 12 CYIL 369 at 370.

¹¹ Victor Prescott, "Book Review of *Canada's Arctic Waters in International Law* by D Pharand" (1989) 5 National Geographic Research 271 at 271.

¹² Michael F Rutter, "Book Review of *The Law of the Sea of the Arctic* by D Pharand" (1975) 13 Alta L Rev 371 at 371.

¹³ DN Hutchinson, "Book Review of *The Northwest Passage: Arctic Straits* by D Pharand" (1987) 36 ICLQ 172 at 172.

many others, also highlights this feature of Pharand's texts: "Un ouvrage sérieux et très bien documenté, dont la lecture est facilitée par la présence de cartes."¹⁴

And yet, despite their widely recognized scholarly attributes, Pharand's contributions were in fact much more extensive than his writings. Pharand travelled the nation and the world to share his passion and knowledge of the Arctic with others. During one year alone, in 1988, he travelled from coast to coast, equipped with his charts and his famous pointer, sharing his insights and incredible knowledge on the issue of Canadian sovereignty in the Arctic.¹⁵ A born communicator, Pharand made the Arctic real for his audiences, many members of which would never experience the Arctic first hand.

Pharand also brought his fire, energy, and dedication to the classroom, and he cherished his role as a teacher and mentor. He inspired generations of students and instilled in them the value of hard work and determination. Pharand considered his "Excellence in Teaching Award," for which he was nominated by his University of Ottawa students in 1988 after nearly thirty years of dedicated service (first in the Common Law section of the Faculty of Law, then in the Department of Political Science, and, finally, in the Civil Law section), as the greatest accolade of his career.

J'ai moi-même eu l'immense chance de rencontrer le professeur Pharand tôt dans ma carrière professorale. Pour des raisons longtemps oubliées, on m'avait confié la tâche de produire le *Bulletin* du Conseil canadien de droit international (quatre numéros par année). Je n'avais que très peu de contacts à l'époque parmi les internationalistes canadiens et je me souviens d'avoir été obligée, à plus d'une reprise, de moi-même créer du contenu pour étoffer les pages du *Bulletin*. J'ai un jour trouvé dans mon casier postal une note manuscrite du professeur Donat Pharand, un nom qui m'était alors inconnu. Il m'écrivait pour me féliciter pour mon travail et pour m'inciter à continuer à privilégier le bilinguisme au sein du *Bulletin*. Il ne me connaissait aucunement. Je venais tout juste d'entamer ma carrière universitaire à l'Université de Montréal. Pourtant, il a eu la générosité de vouloir m'appuyer et m'encourager, un geste qu'il a répété à l'égard de plusieurs autres collègues au Canada et ailleurs.

¹⁴ Claude Jacquemart, "Book Review of *The Law of the Sea of the Arctic* by D Pharand" (1974) 20 AFDI 1125 at 1126.

¹⁵ Pharand was very proud, and rightly so, of a map of the Canadian Arctic archipelago that he devised in the late 1980s with engineering students at the University of Ottawa. Using small lights, Pharand could highlight the main route through the Northwest Passage (including red and green lights at the entrances to the passage). Pharand could also light up the Canadian Arctic baselines and the outer limit of Canada's exclusive economic zone on his map.

Quelques années plus tard, j'ai accepté de compléter un article que son grand ami, le juge Ronald St. J. MacDonald, avait commencé sur sa vie et son œuvre.¹⁶ J'ai alors lu tout ce qu'il avait écrit, et ce savoir si rigoureusement transmis et cet engouement pour le Grand Nord si éloquentement communiqué ont transformé ma propre carrière. Mais au-delà du droit, nous avons également passé de longues heures à discuter de sa vie bien remplie en sirotant du sherry. Et j'ai pu alors un peu connaître l'homme aussi: fier de son héritage franco-ontarien, profondément reconnaissant pour sa vie comblée, travaillant, ponctuel, exigeant (notamment au niveau de la ponctualité), généreux, optimiste avec une joie de vivre contagieuse.

Sa poignée de main, sa voix portante, sa fidèle amitié et sa passion pour le droit de l'Arctique me manqueront énormément.

SUZANNE LALONDE

Professeure titulaire, Faculté de droit, Université de Montréal

¹⁶ Suzanne Lalonde & Ronald St J Macdonald, "Donat Pharand: The Arctic Scholar" (2006) 44 CYIL 3.