

An Interview with the Honourable Louise Charron

THE HONOURABLE LOUISE CHARRON

The Honourable Louise Charron graduated from the University of Ottawa's Common Law Section in 1975. She worked in private practice and then as an Assistant Crown Attorney. Ms. Charron was also a professor at the University of Ottawa's French Common Law Program from 1978 until 1988. She was appointed to the bench in 1988 and served as a trial judge in Ottawa until 1995, when she was then appointed to the Court of Appeal for Ontario. Ms. Charron was appointed to the Supreme Court of Canada in 2004 and retired in 2011.

In an interview covering the span of her career, Ms. Charron reflected on her legal career and shared some of the wisdom she gained from it. Throughout the interview, the *Ottawa Law Review* offers a look into the choices that shaped Ms. Charron's notable career. Her remarks provide an encouraging reminder to all individuals in the legal field that there are many opportunities available to them. Ms. Charron's experiences further illustrate her belief that justice, in the end, will be better served when it is approached with an open mind and a willingness to work with others.

The *Ottawa Law Review's* Sam Weinstock, Colin Holland and Joel Kom met with Ms. Charron in the Judges' Library of the Supreme Court of Canada.

L'honorable Louise Charron a obtenu son diplôme de la Section de common law de l'Université d'Ottawa en 1975. Elle a exercé le droit dans un cabinet puis a occupé les fonctions de procureure adjointe de la Couronne. Madame Charron a également été professeure au Programme de common law en français de l'Université d'Ottawa de 1978 à 1988. Elle a été nommée à la magistrature en 1988 où elle a exercé la charge de juge de première instance à Ottawa jusqu'en 1995. Elle a ensuite été nommée à la Cour d'appel de l'Ontario. Madame Charron a été nommée à la Cour suprême du Canada en 2004 et a pris sa retraite en 2011.

Au cours de cet entretien portant sur l'ensemble de sa carrière, Madame Charron a fait part des réflexions que sa carrière juridique lui a inspirées et des leçons de sagesse qu'elle en a recueillies. Tout au long de l'entretien, la *Revue de droit d'Ottawa* met en lumière les choix qui ont façonné l'exceptionnelle carrière de Madame Charron. Ses observations rappellent à toute personne qui se lance dans le domaine juridique que de multiples possibilités lui sont offertes. Les expériences de Madame Charron illustrent sa conviction que la justice sera, au bout du compte, mieux rendue si ceux et celles qui la servent l'abondent avec un esprit ouvert et animés d'une véritable volonté altruiste.

Sam Weinstock, Colin Holland et Joel Kom, de la *Revue de droit d'Ottawa*, se sont entretenus avec Madame Charron dans la bibliothèque des juges de la Cour suprême du Canada

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Ottawa Law Review [OLR]: *What brought you to law school and to the University of Ottawa in particular?*

Louise Charron [LC]: I didn't set out to be a lawyer until my third undergraduate year. From grade ten on, I wanted to become a psychologist, and I was intent on pursuing graduate studies in psychology. That brought me to Carleton University, in its experimental psychology honours program. I preferred that branch to the clinical psychology program offered at the University of Ottawa. It was really right before exams in my third year when I became a bit disillusioned with what I was doing. Not because there was anything lacking with the Carleton University program—it was excellent, actually—but my intent was to work with people, to deal with their problems, and to find solutions to them. Somehow, the hours I was spending in the lab with pigeons and rats just wasn't quite satisfying. I didn't think that a switch to clinical psychology would suffice either—the courses I had taken in that field were far too theoretical for my liking.

I decided to switch to law. You ask me why the University of Ottawa? The simple answer is that I lived in Ottawa, I enjoyed living in Ottawa, and I didn't see any reason to move. In addition, the University of Ottawa was renowned for having a fine Faculty of Law. There was no reason *not* to go there. I only applied to one law school. The competition wasn't the same back then. I had an excellent record and I felt quite confident that I would be accepted. I can honestly say that if were applying now, I would still apply to the University of Ottawa. I would still like Ottawa as a place to live, and it is still a very fine university. And the added attraction that makes me sure I would apply is that I could study common law in French.

OLR: *What language did you study in?*

LC: I studied strictly in English. No common law courses were offered in French at the time and I wasn't interested in studying civil law. As a Franco-Ontarian who did not envisage moving to Quebec, common law was the obvious choice. However, today as a Franco-Ontarian, I would choose *la common law*

en français,¹ but I would probably study civil law as well. I considered the idea then, but there was less mobility in the profession and the value in doing an additional year to obtain a combined degree was not so obvious to me. Today, even if one never steps out of a common law province, there can be a great advantage to having *les deux formations*. In retrospect, the combined degree would certainly have served me well, particularly on the Supreme Court of Canada bench.

OLR: *Do you find that having studied psychology informed the way you studied law?*

LC: It probably did. It was the same interest in people and solving their problems that brought me first to psychology and then to law. People who choose to study law come from such varied backgrounds. I was in contact with so many law clerks over the years as a judge and I loved to see how sometimes a background in music or in math would inform their analytical thinking in law.

OLR: *What was your favourite subject in law school and why?*

LC: I enjoyed several subjects, which maybe reveals my overall preference for variety. Commercial law comes to mind, and a lot of that had to do with Professor Hayek.² Professor Hayek is retired, but he had a very principled, organized way of presenting his lectures. It almost felt like a mathematics course, a field of study that I always liked. Even though I was in psychology, I took optional courses in mathematics—some people thought I was crazy! But I liked that analytical approach. Therefore, I really enjoyed commercial law. I also enjoyed real property and, again here, I think it was because of the professor, Dean Feeney.³ Dean Feeney scared the living wits out of many students, and I have to admit I wasn't always brave in his class. But he was such a showman—such a fine professor. In his class, I always felt as if I was watching a play unfold.

I have to add torts and contracts to the list of favourite subjects.⁴ Overall, I've always had a preference for "black letter law." Even as a judge, it was always a treat when I could say, "Oh, lovely! The issue here is whether a contract was formed and whether there was a breach! A good old contract case." I always liked the black letter law topics.

1 See generally Louise Bélanger-Hardy & Gabrielle St-Hilaire, "Bilinguisme judiciaire et enseignement de la common law en français en Ontario : un bilan historique" (2009) 34 *Revue du Nouvel-Ontario* 5.

2 Professor Emil Hayek is an Emeritus Professor at the University of Ottawa. He received the University of Ottawa's Excellence in Teaching Award in 1985 and the Ontario Confederation of University Faculty Associations Teaching Award in 1986.

3 Professor Thomas Feeney was named Dean of the University of Ottawa Common Law Section in 1962. He is recognized for building a law school in spite of "a limited number of faculty members, a lack of space, and a small library." He resigned as Dean in 1973 but taught at the Faculty until he died in 1988. Dean Albert Hubbard has said, "Students who had Dean Feeney, loved him, if they could get over the initial fear." See "Reunion: Common Law History at the University of Ottawa" (online document), online: University of Ottawa, Faculty of Law, Common Law Section <<http://www.commonlaw.uottawa.ca>> at 22, 23 [Common Law History].

4 The Honourable Louise Charron was taught tort law by Professor Frederick Sussman and contract law by Professor Christopher Granger.

OLR: *What was your least favourite class?*

LC: It may surprise you to hear, but without a doubt, the subject that I liked the least was criminal law.⁵

OLR: *The least?*

LC: The least. Not a word of a lie. It may have been the way it was taught. Also, keep in mind that those were the days before the *Canadian Charter of Rights and Freedoms*.⁶ Criminal law was very technical. I think we spent right up to Christmas talking about *actus reus*, divided into twelve parts, and then we moved onto *mens rea*. I had no particular interest in criminal law. There it is—criminal law was not my favourite subject.

OLR: *Can you tell us about your articling experience?*

LC: I had great articles. I wasn't very attracted to bigger firms, so I purposely applied to small firms. I was also looking for a firm with a French clientele. Lalonde & Chartrand⁷ was a francophone firm in Ottawa with four lawyers.⁸ They did just about everything, except criminal law, but that didn't bother me as it was not my interest. They gave me a lot of responsibility as the articling year progressed, and I think I was right in believing that you are more likely to get hands-on experience in a small firm. Because there were just four people, the answer to the question "So who's going to argue the motion tomorrow?" was often "Well, Louise could do it..." It was great.

One of the lawyers, Robert Chartrand, had a satellite practice in Rockland, a small town east of Ottawa, and I would accompany him on Wednesday nights. At times, if he wasn't available, he let me go by myself. I loved it. It did wonders for building credibility with clients. As a woman, I was a minority from the start. One can just imagine an old farmer coming to see the lawyer who he's been dealing with for years, and instead he's greeted by this young woman. I was very proud of the fact that there were no objections from clients. They did agree to speak to me, and they did give me instructions. As an articling student, I was limited in what advice I could give to the clients, obviously, but I gained great experience.

I think articling is a very important stage in a legal education. Sometimes it is difficult to know what kind of practice one will really like until one tries it. Articles can provide an opportunity for hands-on experience in areas that one may not have otherwise considered.

5 Criminal law was taught by Professor Christopher Granger.

6 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

7 The Honourable Louise Charron practised law with the firm of Lalonde & Chartrand from 1977 to 1980. Judges of the Court: Current and Former Puisne Judges, *The Honourable Madam Justice Louise Charron*, online: Supreme Court of Canada <<http://www.scc-csc.gc.ca>>.

8 Paul F Lalonde, now Justice of the Superior Court of Justice of Ontario, Robert Chartrand, Paul D Beseau and Roger Barrette.

OLR: *Was your articling the first time you gained practical legal experience or did you gain practical experience during the summers?*

LC: I did gain legal experience during the summers between my first and second years of law school. During the course of my first year, a classmate of mine, Jean-François Aubé, developed a program proposal and submitted it for a grant. What we proposed was that three of us (Jean-François, John Huot and I) would open a “front street office” in Timmins, a city in northeastern Ontario, the following summer. The objective was to give information to the public. Our work would be supervised by a local lawyer, and of course we had to be extremely careful to provide information only, as we were not allowed to give legal advice. The project was approved. We rented a place and we received whatever member of the public who walked in. We prepared and provided pamphlets on tenant rights, creditor and debtor rights, procedure in the Small Claims Court, and so on. We also ran weekly radio shows on various legal topics and we ended the summer with a feature on the local television. It was a lot of fun and great experience. That’s what I did the first summer in 1973.

Following my second year, I wanted to stay in Ottawa for personal reasons. I thought that a position with the Faculty of Law at the University of Ottawa would be the perfect solution. Therefore, I went to see Dean Hubbard⁹ and convinced him that our moot court program could benefit from some advance preparation in the summer. An excellent system was already in place, with local lawyers contributing to the program by acting as judges, but the moot problems themselves were usually put together quickly and didn’t always work out well. A lot of thought has to be put into a good moot problem. That was my job for the second summer—I was in the library cooking up moot problems.

OLR: *Which professors or legal practitioners influenced you during your formative years?*

LC: I’ll pick just one professor and one practitioner. For a professor, I would pick Albert Hubbard.¹⁰ Looking back, I can say that he was the inspiration for my academic career. When I was in law school, he encouraged me to do graduate studies and pursue a teaching career. But, at the time, I wanted none of it. I had been in school for so long. I wanted to go out and practice. But he was right, and he ended up winning because I did teach law at one point in my career; and he was the one who made it possible. It all started when he called me at my office a couple of years after my call to the bar. First, he described his dream about creating a common law section *en français*. I was immediately sold on the idea. It sounded so exotic back then, really. Then he set the hook in—the real purpose of his call was to get me

9 Professor Albert Hubbard became Acting Dean of the University of Ottawa Common Law Section in June 1973 and was offered the position of Dean in August of that year. He led the Faculty through a fourteen-year period of development. The French Common Law Program, the Human Rights Research and Education Centre, the Student Legal Aid Program, and the *Ottawa Law Review* were all established during Dean Hubbard’s tenure. He resigned as Dean in 1987. See Common Law History, *supra* note 3 at 23, 43.

10 *Ibid.*

to teach wills and estates *en français* — *testaments et successions*. My reaction was, “*Pourquoi testaments et successions? And, why me? Lord!*” The course had never been taught in French and I had an inkling that it would require a lot of work. But he talked me into it and I started to teach the course the following semester. I loved teaching, and from then on it became a component of my career, until later in 1985 when I joined the Faculty on a full-time basis. Again, Dean Hubbard was instrumental in securing a tenure-track position for me despite my lack of any graduate degree.

The legal practitioner who inspired me the most was John Nelligan.¹¹ John is an excellent counsel. He’s more than excellent; he’s an *outstanding* counsel. Very early in my career he personified civility to me. I will describe to you how we met and you will understand why. In my first year of practice, I found myself at the Court of Appeal for Ontario as counsel on a case¹²—that’s the only time I went to the Court of Appeal. It was a rather bold move because that was the first time I had ever worn my gown. How it happened is as follows: I had worked on the file as an articling student, and our client lost at first instance.¹³ Our firm, Lalonde & Chartrand, then hired an agent in Toronto to proceed with the appeal. When I came back to the firm after my call to the bar, we were close to the hearing date and, for some reason, the agent was just not working out. We were somewhat at a loss in finding a replacement so late in the day. The lawyer in our firm who had carriage of the file, Paul Lalonde, was not interested in doing appellate advocacy so I offered to do it. As a recent graduate from law school, frankly, I felt a lot more ready to do appellate advocacy than trial work—an appeal was like a moot court competition, but real. Given that, I took the file and went to Toronto. John Nelligan was lead counsel on the other side. When I encountered him at the Court of Appeal for Ontario, I thought I looked pretty confident, cool and self-assured, but I probably gave the opposite impression. Although he was my opponent in the case, John immediately took me under his wing. He showed me around the courthouse and then brought me to the dining room as our case was scheduled to start at two o’clock. I said, “Oh, I’m not hungry, I don’t need lunch.” John probably figured that I was just too nervous to eat. He ordered a soup and insisted I eat it. He was such a gentleman and a terrific opponent. I learned from him that just because you are adversaries on opposing sides of a case, it does not have to translate into a personal battle. I’ve always admired him as a litigator throughout the years.

Many years later, when he appeared before me in the Court of Appeal for Ontario, he still impressed me. I’ve seen experienced counsel fall into the trap of thinking that their experience will replace preparation. However, one cannot

11 John Nelligan, QC, is a founding partner of Nelligan O’Brien Payne. He was named Queen’s Counsel in 1972. Mr. Nelligan received the Law Society of Upper Canada Medal in 1991, the Laidlaw Medal for Excellence in Advocacy in 1994, the Advocates’ Society Medal in 1995, and the County of Carleton Law Association Medal in 2002.

12 *Leblanc, Re* (1978), 18 OR (2) 507, 83 DLR (3d) 151 (CA).

13 *Leblanc, Re* (1977), 15 OR (2) 273, 75 DLR (3d) 518 (CA).

bypass preparation. It is very obvious when a lawyer is ill-prepared—I often felt like saying, “Will you sit down and let your junior counsel take over?” Not so with John Nelligan—he was thoroughly prepared; he knew his file inside and out. Undoubtedly, he would have had his junior counsel help him prepare a lot of the material, but he knew his case. I had a lot of admiration for him. I still do. I think he’s a wonderful person.

OLR: *What drew you to criminal law?*

LC: What drew me to that area of law relates back to an earlier comment I made about the importance of trying out a variety of things. When I started out in practice, I wanted to gain some litigation experience. I decided to build on my defence work by taking on clients eligible for legal aid certificates, so as to familiarize myself with the courtroom. A criminal practice was incongruous with the rest of the firm. I remember once I had a client who was charged with robbery—and he was a big, burly man with tattoos. He was sitting in the waiting area beside one of my colleague’s clients—a little old woman who was coming seeking advice on an estate issue—and she was afraid of him! After she left, my colleagues asked me, “Louise, could you meet your criminal law clients after regular business hours?” And I replied, “Do you realize what you’re asking me here? You want *me* to be *alone* in the building with the likes of *him*?” We had a laugh over that.

Shortly after, the problem resolved itself because the Crown’s office contacted me and asked if I would be interested in doing prosecution on a part-time basis. At that time—this was 1978—trials began to be conducted in French and there was a demand for bilingual prosecutors.¹⁴ I jumped at the offer. It was easier to fit prosecution on a part-time basis with the rest of my practice and, if anything, it would give me even more courtroom experience than defence work because when I appeared in court I would have carriage of *all* the cases on the docket, not just that of one client.

The question remains, why did I switch to practicing criminal law on a full-time basis? After a few years at Lalonde & Chartrand, I was invited to buy into the partnership, but one of the partners queried whether I really wanted to do that. He said to me, “Well, before you decide, I have one question for you. You seem to be doing all kinds of things here. You’re teaching part-time. You’re doing part-time Crown prosecution. Neither of those things pay very well, which is fine, it’s not all about money. But, if you’re a partner you’re expected to bring in your fair share. You seem to have moved away from what you set out to do. What is it that you like to do?” His questions really caused me to reflect upon the direction I wanted my career to take. I came to the realization that what I really enjoyed the most, lo and

¹⁴ In 1978, amendments were made to the *Judicature Act* and the *Juries Act* to provide for judicial bilingualism in Ontario. See *Act to Amend the Judicature Act*, SO 1978, c 26; *Juries Amendment Act*, 1978, SO 1978, c 27; Bélanger-Hardy & St-Hilaire, *supra* note 1.

behold, was my time teaching and my time in court—particularly my time in court. I loved it. I absolutely loved it. This surprising revelation has stayed with me to this day, because you have no idea to what extent I was *not* interested in litigation when I first started out. And there I was, a few short years later, ready to jump into it on a full-time basis.

I therefore decided not to buy into the partnership. At the time, I had a three-month old baby, Gabriel.¹⁵ I figured I would have earned about the same income if I combined part-time Crown prosecution with part-time teaching because I would have no overhead expenses. But that plan never materialized because when I announced I was leaving private practice, the Crown's office offered me a full-time position and I accepted it. This was even better because I would have the security of a consistent paycheque. That's the long answer to your question regarding what drew me to criminal law.

OLR: *On that note, can you give us a few highlights from the Crown's office?*

LC: I could talk at length here. My time with the Crown's office was certainly the period when I learned the most. Of course, I had a lot to learn at that stage of my career, but it was also because of the intensity of the work. As a Crown prosecutor, you are in court every day; you have to think on your feet. It was the most exciting time of my pre-judicial career.

I remember a lot of cases. I will just pick a couple—the first, because I learned a lot from it. The accused was charged with sexual assault. In preparing for trial, it struck me that the jury might have problems accepting one aspect of the complainant's testimony. She alleged that various sexual acts had occurred, including sexual intercourse, in a very small space in the passenger seat of a very small car. The complainant was a tall woman, fairly built, and so was the accused. I figured the jury was going to have a hard time believing those acts could happen in such a small space. I spent a lot of time thinking about how I would conduct the examination-in-chief and confront the issue of confined space in my argument. Much to my surprise, the morning of the trial, right after the jury was empanelled, defence counsel announced that his client had a formal admission to make to the court. The accused admitted that all the sexual acts had occurred as alleged, but *with* the consent of the complainant. This was a memorable moment because at the time I felt like I was falling off a precipice—I had been so completely focused on there being *no* consent that I had given no thought to the fact that *with* consent a lot can be done in small spaces! What I learned from this case is that in preparing for trial, one must leave no stone unturned and consider all facets of the case. It is important to anticipate the unexpected and to guard oneself from tunnel vision.

15 Gabriel Poliquin is an associate lawyer at Heenan Blaikie's Montreal office. Mr. Poliquin joined Heenan Blaikie after clerking for the Honourable Justice Louis Lebel of the Supreme Court of Canada. Before pursuing a career in law, he was a professor of linguistics and cognitive science at the University of Delaware.

Another highlight from the Crown's office was a case I worked on that really illustrated, to me, some of the inner workings of criminal law. It was a second-degree murder trial before a judge and jury. The killing had happened at a bush party in the middle of the night. All present, mostly transients, were very intoxicated. The biggest challenge for the prosecution was to locate the witnesses. Somehow that was achieved, but no one was clear on their story until the moment they were sitting in the witness box. As the trial unfolded, there was a general consensus that a fight had broken out between the deceased and the accused. Both were extremely intoxicated. The deceased took a bottle of wine and hit the accused across the forehead. The accused, who in better days had been a kickboxer, responded with a rapid succession of kicks to the accused's head. This killed him. At the end of the Crown's case, it became quite clear that it was not second-degree murder: provocation, intoxication, lack of intent to kill. All the facts resoundingly pointed to manslaughter. Legally, it was obvious—anyone on a law exam who didn't indicate manslaughter on these facts would get zero. Defence counsel and I met during a court recess and it was agreed that the accused would plead guilty to manslaughter and the Crown would accept the plea. We informed the judge, and he agreed to charge the jury accordingly. The court was called, and as we got up, the client, who was in the dock, said "Psst!" to his counsel. Counsel went to see him and then quickly came to me and said, "The deal is off, he won't do it." When the judge came in, I said, "My Lord, the Crown has one last witness to call." The judge looked at me and understood that there was no longer a plea bargain. Therefore, we just continued and finished the trial without any change in plea. At the end of it all, the jury came back with a verdict of acquittal! None of us had anticipated that result, but obviously the accused made the right decision! This drives home the point that the decision to accept a plea bargain is always one for the accused to make. I think many counsel in that situation might have put pressure on their client to opt for the reduced sentence, but the defence counsel in this case wisely chose not to. Although from a strict legal standpoint the facts pointed to manslaughter, I think that it was a just verdict—in all the circumstances, the bush party could just as easily have ended with the accused dead, and the deceased on trial for murder. The jury may well have seen it that way and it was in their power to give effect to their sense of justice.

All this to say, this case stayed with me because it demonstrated that criminal law is not all about legalities and legal niceties. It is about fundamental justice.

OLR: *What was it like to practice law as a Crown when the Charter came into force?*¹⁶

LC: That was a very momentous event, and a very exciting time. However, in terms of the day-to-day work, what struck me was that it was business as usual. There

16 The *Charter*, with the exception of section 15 and paragraph 23(1)(a) in respect of Quebec, came into effect on April 17, 1982. Section 15 came into force three years later, on April 17, 1984. See *Charter*, *supra* note 6, ss 32(2), 58, 59; Proclamation of April 17, 1982, proclaiming in force the *Constitution Act, 1982*, SI/82-97, (1982) C Gaz II, 1808.

were new rights—for example, the right to counsel and the right to be informed of that right¹⁷—and there was a lot of uncertainty about how it would all unfold. The section 24 mechanism for excluding evidence was also novel and a lot of new ground had to be broken.¹⁸ But, fundamentally, most of the rights entrenched in the *Charter* reflected the existing Canadian judicial system. Therefore, we had to carry on business as usual, but operate in a modified environment. It was a lot of work because, as Crown prosecutors, we felt an obligation to lead the way. It created a lot of uncertainty for a long time.

OLR: *Having served at three levels of court,¹⁹ what are the unique challenges that you faced as a judge at each level?*

LC: The unique challenges are connected to the function of the court. In the trial court, the unique function is the fact-finding function, and that is indeed the most challenging task for a trial judge, particularly when the facts turn on questions of credibility. Since fact-finding is the unique function of the trial judge—no one can do it better—it is important to do it right. It is a demanding task because the trial judge must be very attentive and focused on the issues. Often, deep emotions play out in a trial—the clients can lose focus and at times the lawyers can lose focus—and it is the job of the trial judge to keep everything on track. Also, judging credibility is not an easy task. I would often instruct myself as we instruct juries. We instruct jurors to keep an open mind and not make a quick decision before having heard the entire story. We also instruct them not to make a snap decision based solely on how the witness testified. After all, testifying is difficult; a courtroom is foreign to most witnesses. An even better indicator than demeanour is how the witness' testimony holds up against the rest of the evidence. As a trial judge, it is important to adhere to those principles and to approach fact-finding in a methodical way. Fact-finding was the unique challenge of being a trial judge. But the work was exciting because, as a trial judge, I never knew what was going to happen when I walked into the court! It's a slice of life, in real time.

Appellate work presented a different challenge. The Court of Appeal for Ontario is a high-volume court. I found the unique challenge there was to keep on top of the work. As one of my colleagues put it, "Louise, think of it like the tide. You hear that cart rattling at your door with next week's cases. Make sure that the

17 *Charter*, *supra* note 6, s 10(b).

18 See generally *R v Grant*, 2009 SCC 32, [2009] 2 SCR 353; *Charter*, *supra* note 6, s 24(2) ("[w]here ... a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this *Charter*, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute").

19 The Honourable Louise Charron was appointed District Court Judge and Local Judge of the High Court of Ontario in Ottawa in 1988 and Judge of the Ontario Court of Justice (General Division) in 1990. In 1995, she was appointed Judge of the Court of Appeal for Ontario. In 2004, she was appointed to the Supreme Court of Canada, where she retired in 2011.

cases that come in go out at about the same rate, or else you drown.” I quite enjoyed the work at the Court of Appeal. It presented a combination of academic issues and practical ones. I really loved the variety.

And then the Supreme Court of Canada; although it also does appellate work, it is very different from the Court of Appeal, and not only because there are normally nine judges hearing cases instead of three. It surprised me to what extent the work is *qualitatively* different. First of all, the main function of the Court of Appeal is error-correcting. Almost all of the appeals in that court are brought as of right. In most cases, no error is found and the case can quickly be disposed of. Deciding jurisprudential questions is also a function of the Court of Appeal, but it is secondary to error-correcting. The reverse is true at the Supreme Court of Canada, where most appeals require leave of the Court and deciding jurisprudential questions is its main function; error-correcting is secondary, if not incidental. As for resolving jurisprudential issues, I found the exercise very different at the Supreme Court of Canada. Unlike the Court of Appeal for Ontario, where the question has to be resolved within an existing framework, at the Supreme Court of Canada, the framework *itself* is often the issue. There is also enormous pressure to get it right. Even if the Court speaks last, there is no guarantee that it gets it right—but *it is last!* This unique feature made the task weightier than at any other level.

OLR: *How did you first become a judge? Was it a position you sought out, or one that you were approached with?*

LC: I was approached, and then I sent an application. At the time, I was starting my fourth year as a professor in the French Common Law Program at the University of Ottawa’s Faculty of Law. I was contacted by a member of the francophone legal community who advised me that there was an opening in the County Court²⁰ and asked me if I was interested. I was 37 years old, it wasn’t quite on my radar, but I told him it was certainly something I was interested in. He said, “If you are interested, I suggest you apply. You would have the support from the community,” which I found to be quite an honour. In the end I applied, and three weeks later the phone rang and I was appointed to the County Court.²¹

I like to think that the appointment was based on competence alone, but there were also other factors at play. It was 1988 and there was a demand for female judges. Being bilingual was another factor, although several judges were already bilingual on the County Court. I think first and foremost the government was searching for competent women. That is how I was appointed the first time around.

20 The Ontario County Courts were created under the *Ontario Judicature Act, 1881*, which has since been replaced by the *Courts of Justice Act*, RSO 1990, c C-43. First passed in 1985, the Act merged the District Courts, County Courts and the Court of General Sessions of the Peace to form one court, the District Court of Ontario. In 1989, the Act was amended to merge the High Court, the District Court and the Surrogate Court into the Ontario Court of Justice.

21 The Honourable Louise Charron was appointed in 1988 by the Right Honourable Ramon John Hnatyshyn, then Minister of Justice.

OLR: *There was one line on your résumé that really surprised us, and that was your time at the Nunavut Court of Justice.*²²

LC: I had never put my experience with the Nunavut Court of Justice on my résumé until I was appointed to the Supreme Court of Canada. I did not feel that I had earned the credit for it because I didn't have the opportunity to contribute much. I was on the Court of Appeal for Ontario when the territory was formed. The Chief Justice of Nunavut, Beverly Browne,²³ called me and asked if I would accept an appointment as deputy judge. In this position, I would be called upon from time to time to sit for the new territory. I was very reluctant to accept, not because it didn't interest me, but because I was already very busy at the Court of Appeal for Ontario. Justice Browne assured me that there would be several judges on the roster and it would be fine even if I could only give a week per year; so I agreed.

I ended up only spending one week at the Nunavut Court of Justice. I presided over a criminal court that dealt mostly with young offenders. The court sat in Pond Inlet for half of the week and Clyde River for a day. There was definitely a disconnect between myself and the community—there I was, a judge from Toronto flown-in to administer justice. I wondered how credible the process really appeared to the members of the community. Especially with young offenders; one has to have a sense of the community to be effective. I was very thankful for the elder system, in Pond Inlet especially. There were four elders who had been contributing to the judicial process for years and they were excellent. In Nunavut, elders sit with the judge throughout the trial but only participate in the sentencing process. I thought their input was far superior to any probation report. I remember one elder, she was just giving heck to the parents of a fourteen-year-old for everything wrong they were doing in raising the child. Then she gave the accused a tongue-lashing. This was all communicated to me through a translator, but I really got a sense of what needed to be done for the case. The experience was somewhat different in Clyde River. Perhaps it was because I had to sentence their popular former mayor to jail for a mandatory three months as a result of his third impaired driving offence. The elders gave him a tongue-lashing, not because of the impaired driving per se but because his behaviour meant that “they” had to come here. That was my very brief experience in Nunavut. When I was appointed to the Supreme Court of Canada, I thought it would be a nice touch for the Nunavut Court of Justice to have one of their former judges on the bench, and added the notation to my résumé.

22 Established in April of 1999, the Nunavut Court of Justice (NCJ) became Canada's first and only single-level court. The NCJ is responsible for overseeing the administration of justice in the entire territory. Prior to its establishment, Nunavut was under the jurisdiction of the Territorial Court and the Supreme Court of the Northwest Territories.

23 Justice Beverly Browne was sworn into the Territorial Court of the Northwest Territories in Iqaluit in February of 1990. She became Nunavut's senior judge when the territory was created in 1999 and served until September of 2009 when she was appointed to the Alberta Court of Queen's Bench. Justice Browne is often credited for her role in establishing Nunavut's unified court system and developing the Akitsiraq Law School Program, which trains Inuit lawyers. See “Browne to leave as Nunavut court judge this fall,” CBC News (17 June 2009) online: CBC News <<http://www.cbc.ca/news/>>.

OLR: *What has been the single most memorable day in your career so far?*

LC: My most memorable day was when I was appointed to the County Court. It was a very defining moment in my career because, as I mentioned earlier, I was 37 years old, minding my own business. To be appointed to the bench was amazing, I thought. It was really something! I also felt that it suited my personality. Judging is a very solitary job and some may find that aspect difficult. I enjoy working on my own. All in all, I was very pleased with what had happened; it was like winning the lottery! It was such an honour to have been sought out by my community. I was the only female County Court judge, and I knew all the other judges; I had appeared before them. It was fun for me the first time we were all together, the seven of us.²⁴ I jokingly said, "One down, six more to go!" It was memorable. Of course, my appointments to the Court of Appeal for Ontario and the Supreme Court of Canada were memorable as well, but the most significant moment in my life remains my first appointment.

OLR: *Having practised litigation and observed it at every level of court, what advice would you give to students going into court for the first time?*

LC: I would give the same advice at any level of court: prepare, prepare, prepare. Preparation is one thing that must never be bypassed. With experience, it may become easier or quicker to prepare, but proper preparation is essential. A young lawyer does not need to worry about going to court without experience because with preparation he or she can be just as good as the next person. It is not all about experience. As I said before, I have seen experienced counsel in court who thought they could bypass preparation; it did not work. Preparation can't be faked.

It is also important to "know your court." By this, I do not mean one must know the individual judge. Rather, one must appreciate the true function of the court before which one is appearing. For example, many lawyers who argue their case at the trial level forget to change gears in the Court of Appeal and try to have the appellate judges retry their case. In those instances, my colleagues and I would respond, "Well, counsel, that was a beautiful argument for the jury but, guess what? You lost that argument! Fact-finding is for the trial court. What can this court do about it? We don't retry cases." Therefore, "know your court" in that sense.

Similarly, some counsel who argue before the Supreme Court of Canada fail to appreciate the true function of the Court. I have seen counsel fully prepared to argue their client's particular case, but when asked broader questions by the judges, all they could respond was, "Well, that's not my case..." That type of answer is not

24 At the time, the other full-time judges of the District Court were Justice Keith Flanigan, Justice Charles Doyle, Justice Hugh Poulin, Justice Hector Soublière, Justice Pierre Mercier and Justice Robert Desmarais. Superior Court of Justice, *Judges of the Court*, online: Court of Appeal for Ontario <<http://www.ontariocourts.ca/coa/en/formerjudges/>>.

helpful. Counsel who appear before the Supreme Court of Canada have to be very cognisant that the matter is before the Court not just because of the specifics of the particular case, but because it raises a question of public importance; it presents a national aspect.²⁵

As such, in preparation, it is very important for one to consider all facets of the case and to see beyond one's own perspective. Analyze the case from the opponent's point of view as well. And finally, consider it from the perspective of the decision-maker and try to anticipate what the court will be looking for.

OLR: *While on the Court of Appeal for Ontario, you gave a lecture in which you listed examples of poor appellate advocacy, which included: addressing a panel of three women judges as "Your Lordships," refusing to sit down after being told to do so, not answering questions, and re-arguing the trial.²⁶ Is there anything you would like to add from your time at the Supreme Court of Canada?*

LC: Yes. Another example of poor appellate advocacy skills is when a female judge addresses counsel and counsel answers with, "Oh yes, dear." This happened to me at the Court of Appeal, and the poor lawyer quickly became crimson red in the face. Beyond that, I would simply reiterate: prepare, prepare, prepare and "know your court."

OLR: *Do you have any advice for law students who, even at this early stage, are thinking, "I might want to be a judge one day?"*

LC: My advice would be to not dwell on that thought yet and, instead, to focus on becoming the best lawyer possible. A judicial appointment is something that may or may not happen in one's legal career. It is not something that can be planned for and, most decidedly, not something that can be counted on.

OLR: *What is one thing about the Supreme Court of Canada that we might not know? For example, do the judges socialize with one another?*

LC: Yes, we did socialize. It is a very collegial court. We didn't have to create an excuse to be together because we always were, but sometimes it is important to be together outside of the conference room or outside of the work context altogether. The Chief Justice Beverley McLachlin always has an end-of-the-year barbecue at her place with the spouses, and there is a Court retreat every year.

25 *Supreme Court Act*, RSC 1985, c S-26 s 40(1) (in order for an appeal to be considered by the Court, it must raise a question of law or mixed fact and law, and must concern an issue of public importance).

26 Louise Charron, "How to Lose at the Court of Appeal" (Lecture delivered at the County of Carleton Annual Civil Litigation Conference, November 2002), [unpublished], cited in Cristin Schmitz, "OCA's Charron gives litigators advice on how to argue appeals," *The Lawyers Weekly* 22:28 (22 November 2002) (QL).

OLR: *In your 2011 interview with The Lawyers Weekly, you stressed the value of collaboration.²⁷ Why is collaboration important in an adversarial system?*

LC: In that interview, I was referring to the need for collaboration within a collegial court in order to work jointly towards a common objective. With regards to an adversarial system, the collaboration is in the practice of law itself.²⁸ I think in that context it is also important, but in a different sense. As a practitioner, there are mandates to fulfil, which may prevent collaboration with opposing counsel. However, having an adversary on a case does not mean having an enemy. One should work with opposing counsel as best as possible while pursuing the best end result for the client. I think there is a lot of room for collaboration in an adversarial system.

Unfortunately, I often saw, particularly as a judge, an *absence* of collaboration between adversaries before the court. For example, in a motion court, it never ceased to amaze me how often lawyers would bring a motion to court, despite the added costs that would be imposed on the client, without first communicating with the other side to see if something could be worked out on consent. If a lawyer is seeking particulars on paragraph 12 of his or her opponent's statement of claim, for instance, why not phone the lawyer on the other side and simply ask for them? There is a good chance that the lawyer will agree to provide the information rather than face a motion. After all, it is to the advantage of both sides if any added costs resulting from unnecessary litigation steps can be avoided. It often became obvious to me in motions court that the lawyers had not even spoken to each other! At times I had trouble staying calm. Lawyers do their clients a service by cooperating and communicating; and there is not enough of that.

OLR: *Could you elaborate on your thoughts when you spoke about approaching other judges on the Supreme Court of Canada to discuss different issues in The Lawyers Weekly interview?²⁹*

LC: I believe the collaborative approach creates better justice. It is not a question of compromising or "watering down" a position; not at all. I always felt strongly that the quality of a product can only be bettered by considering the views of others. If I hear a view, I may completely disagree with it, but what have I lost in the process? And what if that alternative view makes a lot of sense? Why should I not have the benefit of hearing it?

As a final court, Supreme Court of Canada judges have an obligation to provide guidance. This cannot be accomplished if there are nine separate opinions on a point of procedure. What kind of guidance is that? There has to be some meeting

27 Cristin Schmitz, "Charron praises system that others 'envy,'" *The Lawyers Weekly* 31:27 (18 November 2011) 1, online: The Lawyers Weekly <<http://www.lawyersweekly.ca>>.

28 The Law Society of Upper Canada, *Rules of Professional Conduct*, Toronto: LSUC, 2000, r 6.03, online: The Law Society of Upper Canada <www.lsuc.on.ca> (on the responsibility to lawyers and others).

29 Charron, *supra* note 26.

of the minds. I remember being at the receiving end of some split opinions that left me wondering what to do. One case in particular comes to mind, which dealt with the question of whether criminal negligence required an objective or subjective test.³⁰ And the Court split even! Half the bench said objective-subjective (per Chief Justice Dickson, Justice Wilson and Justice LaForest), the other half said objective (per Justice McIntyre, Justice L'Heureux-Dubé and Justice Lamer). The deciding judges (Justice Beetz, Justice Estey and Justice Le Dain) did not side with either position. With all due respect—I'm talking from an outside perspective, not knowing at all how that happened—I think that Chief Justice Dickson should have locked the door and said, "You're not getting food until you make up your mind here!" I was a trial judge at the time of this case. After reading the judgement, I threw out the precedent and adopted the subjective test because it was better to err on the side of caution and go for the stricter test. That is one example where perhaps further discussion might have led the Supreme Court of Canada to say, "No, we can't release the decision with an even split on this—that would be criminal negligence!"

OLR: *Do you find that kind of compromise takes longer in rendering a decision?*

LC: It does, absolutely. But I wouldn't call it a compromise; I would call it a collaborative effort. Of course, there are limits to it, but I think it produces better quality judgements in the end. In my opinion, if I am persuaded that an alternative view makes sense and makes my judgment stronger, I am happy to accept it. But that process generally does take longer.

OLR: *It is reassuring to hear you talk about the flexibility that the legal profession has given you.*

LC: That is the beauty of the legal profession; there are so many options that suit different personalities and different stages in life. What one may be passionate about and wanted to do at 30 years old may not be the same at 45 years old. There are so many different jobs in law: in-house counsel for a corporation, teaching, litigation, solicitor work, judging And they are all very different jobs. Every year I spoke to law clerks at the Supreme Court of Canada about their career choices. I know it is stressful for young lawyers to find their way through the different options. I do not envy them. There was less competition and fewer complexities in my "dinosaur times." Although, in fact, it was not that long ago when I graduated. My advice to the law clerks was always to not be stressed. The bottom line is finding a job; one has to eat! It is important to choose whatever option is available and interesting at that moment and go for it! Opportunities will come. Skills are developed with time, and even when one changes job, those skills will always follow. There is no need to start with a clean slate.

30 *R v Tutton*, [1989] 1 SCR 1392, 48 CCC (3d) 129.

It is also just as important to find out what one *does not* like to do. In the end, that is what drove me away from private practice. I discovered that the business of law did not interest me. I would have had to have spent a lot of time dining with bank managers. They're really pleasant—my father was a bank manager—and I have nothing against them, but I wasn't interested in that aspect of law—finding the business. I preferred what I thought of as “the pure practice of law,” without the business component. This is why I loved my Crown work and my litigation work. But I only found that out because I branched out and tried it. You only know whether or not something will tug at your heart if you actually experience it.