
Gender Equity in Canada and Lessons from Former Supreme Court Chief Justice Beverley McLachlin

In 2014, the Supreme Court of Canada heard an appeal that drove right to the heart of then-Chief Justice Beverley McLachlin's philosophy about the role of the courts in society. The case involved a custody dispute between a BC couple. Facing a 10-day hearing, the mother found she'd have to pay a \$3,600 court fee – an amount that was roughly equivalent to the couple's monthly income, and therefore well out of reach. She couldn't pay.

The trial judge saw that such fees raised critical questions about economic privation and access to the protections of the law. The case made its way to the Supreme Court, and McLachlin ended up writing the 6-1 decision – a ruling that has become an important legal marker. “The historic task of the superior courts is to resolve disputes between individuals and decide questions of private and public law,” she opined. “Measures that prevent people from coming to the courts to have those issues resolved are at odds with this basic judicial function.”

McLachlin also stressed that the issues in the case “are not abstract of theoretical . . . If people cannot bring legitimate issues to court, laws will not be given effect, and the balance between the state's power to make and enforce laws and the courts' responsibility to rule on citizen challenges to them may be skewed.”

Earlier this fall – with McLachlin, now retired from the bench, and about to release her autobiography, *Truth Be Told* – the Vancouver Foundation [announced](#) it would establish an “access to justice” fund in McLachlin's name, leveraging a \$5 million seed grant from the federal government in order to raise another \$5 million from law societies to invest in expanding accessibility. “She had such a passion for creating more access to the judicial system,” observes Sharon Avery, CEO of the Toronto Foundation.

McLachlin, of course, knows all about accessibility, growing from a bookish girl raised on a prairie farm into a legal trailblazer – not only the first woman to serve as chief justice, but also a judge widely credited for the high court's reputation for commonsensical, consensus-oriented rulings. Under her watch, the court carved out new rights for Indigenous communities and LBGTQ+ people while resisting the politicization of the criminal code during Stephen Harper's term as prime minister.

“There was no doubt it was a man's profession,” she told the 90 or so leaders from about 60 Canadian non-profit organizations at the Imagine Canada Sector Champion Executive Roundtable held in August, in Winnipeg. “If a woman was smart, she might earn a little place in it.” Many professions, she continued, have “a very different culture now . . . there is a general buy-in that it's good to have women contributing in all fields.”

Yet equal access – or, more precisely, the lack thereof – remains a compelling theme that cuts across many domains in Canadian society, from the courts to law enforcement, affordable housing, and senior leadership roles in both the corporate world and the philanthropic sector.

McLachlin's dedication to providing equitable access to the courts, and therefore the law,

serves as a reminder that many women still have little or no recourse in the face of sexual violence. *Globe and Mail* investigative reporter Robyn Doolittle's award-winning series, *Unfounded*, documented in laborious detail how police services across the country summarily dismissed victims of sexual violence or harassment who sought to report the crimes perpetrated against them. As Paulette Senior, president and CEO of the Canadian Women's Foundation (CWF), observes, Canada's criminal code is known for its exemplary sexual assault laws, but it took Doolittle's series to force law enforcement agencies to treat victims more seriously.

Senior points out that the presence of high-profile women jurists – McLachlin, but also pioneering figures like Bertha Wilson (who was also a former editor of *The Philanthropist*), Claire L'Heureux-Dubé and Rosalie Abella – has increased the likelihood that sexual crime is taken seriously. McLachlin, of course, also served as a role model, and her lengthy tenure implicitly poses questions about why other institutions in our society remain mostly off-limits for women who seek out leadership roles.

Senior notes that there is an abundance of research showing that diversity on boards or senior management teams is linked to profitability for corporations. But she says the progress towards parity is "glacial." "These messages just don't seem to be getting out."

The philanthropic sector also has much to answer for, adds Avery. "We still have charities that have never had a female chair and that includes my own. The leaders are still mainly white men. You have to say it out loud."

Issues of restricted access also continue to afflict women at the other end of the socio-economic spectrum. Andrea Dicks, chief operating officer of the Community Foundations of Canada, points to statistics that haven't moved in years: the nearly two million low-income Canadian women and the 34% of Indigenous women and children living in poverty. Systemic, employment, and fiscal barriers keep these figures from changing.

Even seemingly progressive gestures – for example, the federal government's pledge that a quarter of all funds spent as part of the Liberals' \$40 billion National Housing Strategy, which will go towards building or renovating social housing projects – are marred by sluggish implementation. Delays mean the highly anticipated rollout of more affordable and shelter housing for families likely won't be completed for years. As Senior says, the federal government needs to partner with municipalities to ensure that provincial regimes don't re-direct transfers.

Despite such obstacles, gender equity advocates looking ahead over the next five years can point to initiatives that, they say, will create results.

In mid-2020, the CWF will release a report on creating a comprehensive national gender equity strategy through its work with the Gender Equality Network. Any such plan, Senior says, must address intersecting policy issues such as pay equity, violence against women and children, housing, and childcare. "We really don't have a robust, fully supported strategy at all levels of government," she says.

During the Sector Champions session this past summer, McLachlin, ever the advocate for access to the law, urged Canada's non-profits to step up with programs or grants designed to provide women with more access to the judicial system. She pointed out that, when non-profits

provided support for legal challenges involving cases that focused on the right to die, Indigenous rights, and the rights of sex workers, all produced rulings that changed the law in Canada.

On the philanthropic end of the charitable sector, Avery points to the accelerating intergenerational transfer of wealth and notes that organizations like community foundations need to think about new approaches towards wooing women donors. Some, in cities like Edmonton and Toronto, have begun adding a gender focus to their work. In its 2018 *Vital Signs* report, for example, the Edmonton Community Foundation partnered with the Edmonton Social Planning Council to include a special focus on women, and specifically gender issues affecting visible minorities and seniors, among others.

Then, this past June, the Toronto Foundation was part of the launch of the ambitious [Equality Fund](#), an initiative consisting of 11 partners that put up \$100 million alongside a \$300 million [federal grant](#) through Global Affairs Canada. The model is described as the first of its kind, combining domestic and international gender initiatives and a range of funding partners “to create a sustainable and predictable source of funding for women’s organizations and movements in developing countries.”

Given these demographic shifts and increased focus on women in philanthropy, Dicks adds that community foundations will also have a significant opportunity to invest in organizations that are working on equity issues or are focused on [Sustainable Development Goal Five](#) (achieving gender equity and empower women and girls).

She also points to the emergence of a new set of investment screens that focus on the gender aspects of corporate performance – women in senior board or management positions, outstanding lawsuits over harassment and other workplace abuses, and so on. The Royal Bank of Canada has developed [one such screen](#).

Looking ahead, Dicks says she’s hopeful that these moves will add up to more progress. “I’m optimistic because there are a number of innovations coming to life that will change the experience of being a woman or girl in the world.”