MADAM JUSTICE BERTHA WILSON: A "DIFFERENT VOICE" IN THE SUPREME COURT OF CANADA

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This article discusses the impact of the appointment of Madam Justice Wilson, the first woman judge, to the Supreme Court of Canada. The author explores the thesis that Justice Wilson provided a "different voice" to the highest court of Canada with an analysis of two opposing forces underlying her work. On the one hand, Justice Wilson adhered to the restraints of judicial decision-making regarding principles of law and community morality. On the other hand, with the influence of psychologist Carol Gilligan, Justice Wilson aspired to infuse Canadian jurisprudence with a "feminine morality" comprised of a contextual humanist approach to justice. The author applies this analysis to the jurisprudence of Madam Justice Wilson. With a detailed examination of R. *v.* Morgentaler *and* R. *v.* Lavallee, *the author demonstrates Justice Wilson's ability to look beyond traditional abstract principles of justice and its normative standard. Justice Wilson constructed a legal framework, based on a contextual justice, that took a subjective and holistic view of the issues of the court. This article concludes with an outlook of the manner in which Madam Justice Wilson's mode of analysis will impact Canadian jurisprudence.*

L'auteure examine l'impact de la nomination de la première femme à la Cour suprême du Canada : Mme la juge Wilson. Elle explore la thèse selon laquelle la juge Wilson a apporté une « voix différente » à la plus haute cour du pays, en proposant une analyse de deux forces opposées sous-tendant son travail. D'une part, la juge Wilson s'en est tenue aux limites du processus décisionnel juridique concernant les principes de droit et la moralité communautaire. D'autre part, sous l'influence de la psychologue Carol Gilligan, la juge Wilson a tenu à donner à la jurisprudence canadienne une « moralité féminine » marquée par une approche humaniste contextuelle à la justice. L'auteure applique cette analyse à la jurisprudence de Mme la juge Wilson. Au terme d'un examen détaillé de R. *c.* Morgentaler *et de* R. *c.* Lavallée, *l'auteure démontre la capacité de la juge Wilson d'aller au-delà des principes juridiques abstraits traditionnels et de ses normes. La juge Wilson a élaboré un cadre juridique fondé sur une justice contextuelle, qui aborde les questions portées devant la Cour dans une perspective subjective et holistique. Le présent article laisse enfin entrevoir quelles seront les répercussions du mode d'analyse de Mme la juge Wilson sur la jurisprudence canadienne.*

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in *Lavallee*, has given rise to profound developments in the law of evidence. In particular, there is the Supreme Court of Canada's increased receptiveness to the admissibility of both the hearsay evidence of children who may have been victims of sexual abuse[83] and of expert opinion evidence regarding the state of mind of an accused person.[84] These changes to the law of evidence alone are legacies of Madam Justice Wilson's success in injecting a new humanism and contextualism to the decision-making process of the Supreme Court of Canada.

In conclusion, Madam Justice Wilson's courageous and transformative decision-making as well as her contextual and holistic approach to legal decision-making have made an indelible and invaluable contribution to Canadian jurisprudence that will undoubtedly continue to enrich the discourse in Canadian courts for years to come. Perhaps her contribution to the development of Canadian jurisprudence was most eloquently summarized by the eminent Right Honourable Brian Dickson, former Chief Justice of the Supreme Court of Canada, who once provided:

> Through her contribution we have all come to see how much weaker our legal culture has been for the dearth of women lawyers and judges. That the quality of her contribution has made our previous failings in this respect so obvious is the ultimate measure of her success.[85]

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[83] See *R.* v. *W.(R.)* (1992), 74 C.C.C. (3d) 134 (S.C.C.); *R.* v. *Marquard* (1993), 85 C.C.C. (3d) 193 (S.C.C.).

[84] See *R.* v. *Mohan* (1994), 89 C.C.C. (3d) 402 (S.C.C.).

[85] B. Dickson, "Madam Justice Wilson: Trailblazer for Justice" (1992) 15 Dalhousie L.J. 1 at 5.