

Remarks of the Honourable Rosalie Silberman Abella  
Swearing-in Ceremony of The Honourable Rosalie Silberman Abella and The  
Honourable Louise Charron  
October 4, 2004

This moment is, at the same time, intensely public and intensely personal. The lawyer and judge in me, and the person who is a wife, mother and daughter, have all come together in this courtroom. Each of those parts is resonating deeply today, and each is very nervous about how to translate the depth of feeling into meaningful language.

Anyone who has ever had to explain rationally the tumultuous emotions that accompany life's transforming events, knows what I mean. How do you explain inexplicable luck? How do you describe indescribable relationships? How do you express inexpressible memories? And how do you define indefinable dreams?

You don't. You tell the story, and let the listener do the defining.

Today I have two stories - one public and one personal. I am a product of both. The first is the public one, and it is a legal story, the story of how Canadian law emerged from the jurisprudential shadows cast by decades spent under colonial thrall and staked its claim to independent preeminence. I made none of this happen, but I was carried along on my legal journey by its currents.

When I was born in 1946, the year the Supreme Court of Canada moved into this magisterial building, the final adjudicative body for Canadian cases was the Privy Council in England. By the time I graduated from the University of Toronto Law School in 1970, the Supreme Court had already begun to clear pioneering paths. By the time I became a judge on the Ontario Court of Appeal in 1992, it was in full flight.

What happened to Canadian law in between was nothing short of revolutionary. Legislatures across the country, encouraged by a public newly sensitized the previous decade to the inhibiting power of tradition, shone roving flashlights across their social landscapes. They exposed the inequities both created and hidden by the law's Pavlovian obedience to the neutrality of its own indifference, and responded with a seismic reformulation of what constitutes the Canadian mainstream and who gets to join it.

From 1970, with the Report of the Royal Commission on the Status of Women, the document that provided the ramp from the dislocating agitation of the 60's to the reconfiguring policies of the 70's, we launched a new journey in this country which was, if not always about law, always about justice. We got official bilingualism and multiculturalism, gave persons with disabilities protected status in human rights codes, entered into serious dialogue with aboriginal people, welcomed waves of non-white immigrants, abolished the matrimonial property regimes that for centuries had kept wives on an economic continuum that ranged from invisible to inconsolable, and watched women ponder competing visions of security as they made the transition to a world with options.

And then, with the *Charter of Rights and Freedoms* over 20 years ago, our justice journey became a justice juggernaut. We constitutionalized the protection of rights, gave independent judges the authority to enforce them, and introduced the public to a new, uniquely Canadian legal vision that rendered the status quo vulnerable to heightened expectations. It was, as a result, a controversial vision. It still is.

But out of the ashes of controversy emerged the phoenix of awareness - public awareness of who the judiciary was and what it did, and judicial awareness of who the public was and why what it thinks, matters. We are both still learning, but the vision remains magnetically illuminating.

We strengthened our democracy by enhancing and guaranteeing its constituent rights and freedoms, and we enhanced our country by strengthening and guaranteeing its democratic values.

This leads me to my second story, the personal one that started where there was no democracy, no rights, no justice. It created an unquenchable thirst in me for all three.

I did not appreciate, growing up, the full horror of what had happened to my parents during World War II. All I knew was how incredibly lucky I was to have such wonderful, loving, and positive people as parents. They told me, whenever I asked, what it had been like in concentration camp; what it felt like when they learned that their 2 year old son had been killed at Treblinka; why they decided to come to Canada - for years I thought it was because I was born on July 1; how they found the optimism to have more children; what it was like for my father, a

lawyer, not to be able to practise law in Canada; and what it meant to lose everything and almost everyone and start all over again.

What amazed me, looking back, was that they always answered me with dignity, not in anguish. They never cried. I always did. I never understood how they found the strength not to cry, and I remember as a young girl reading everything I could about the period so I could make better sense of its senselessness.

But what I did understand, and was in awe of, was their unwavering resilience, optimism, courage, and, above all, profound gratitude to Canada for what they saw as its breathtaking generosity and opportunity.

They saw it as a country that respected their commitment to rebuilding a joyful family; respected their right to retain, in demonstrable pride, the religious identity that had attracted such brutality in Europe; and respected their hopes that life in Canada would provide peace, safety, and fairness.

But above all, they saw Canada as offering the best promise of the best possible future for their two children. They never said so, but I'm sure their unspoken motivating bargain with Canada was: We'll do everything we can to get them ready, if you do everything you can to let them use it. This day is a tribute to their invincible optimism - about Canada, about its opportunities, and about its children.

Which brings me, in conclusion, to my children. One of the psychological legacies of having a holocaust background like mine, is that you take nothing and none for granted. There is no sense of entitlement, only of grateful relief when luck merges happily with fate.

I have been very lucky all my life - I have had wonderful friendships, remarkable professional opportunities, and extraordinary parents who taught me to cherish justice fearlessly and embrace life optimistically. But nothing in my life was luckier than finding Irving Abella almost 40 years ago, chasing him for three years until he finally agreed to marry me, then having the privilege of together raising our two magnificent sons, Jacob and Zachary. These boys, one born a year after I started practising law, the other 4 months after I became a Family Court judge, were, from the beginning, at the core of everything their father and I did and believed in. We knew how lucky we were to have them and we thought nothing in life was more important than they were. To be here today and to see them, both lawyers, as the brilliant, compassionate, funny, and erudite

young men they have become, is the greatest luck in a life of astonishingly good luck. They are the next Canadian chapter of the personal story that started after World War II, a story I hope will always be filled with love, courage, optimism, and justice.

So there you have my two stories - one intensely public and the other intensely personal, one the story of the majestic dynamism of the law in one generation, and the other the story of how in one generation a journey that started in a Displaced Persons Camp in Germany ended in the Supreme Court of Canada. Both incredible stories. Neither possible anywhere else. I am so proud to be a Canadian.