

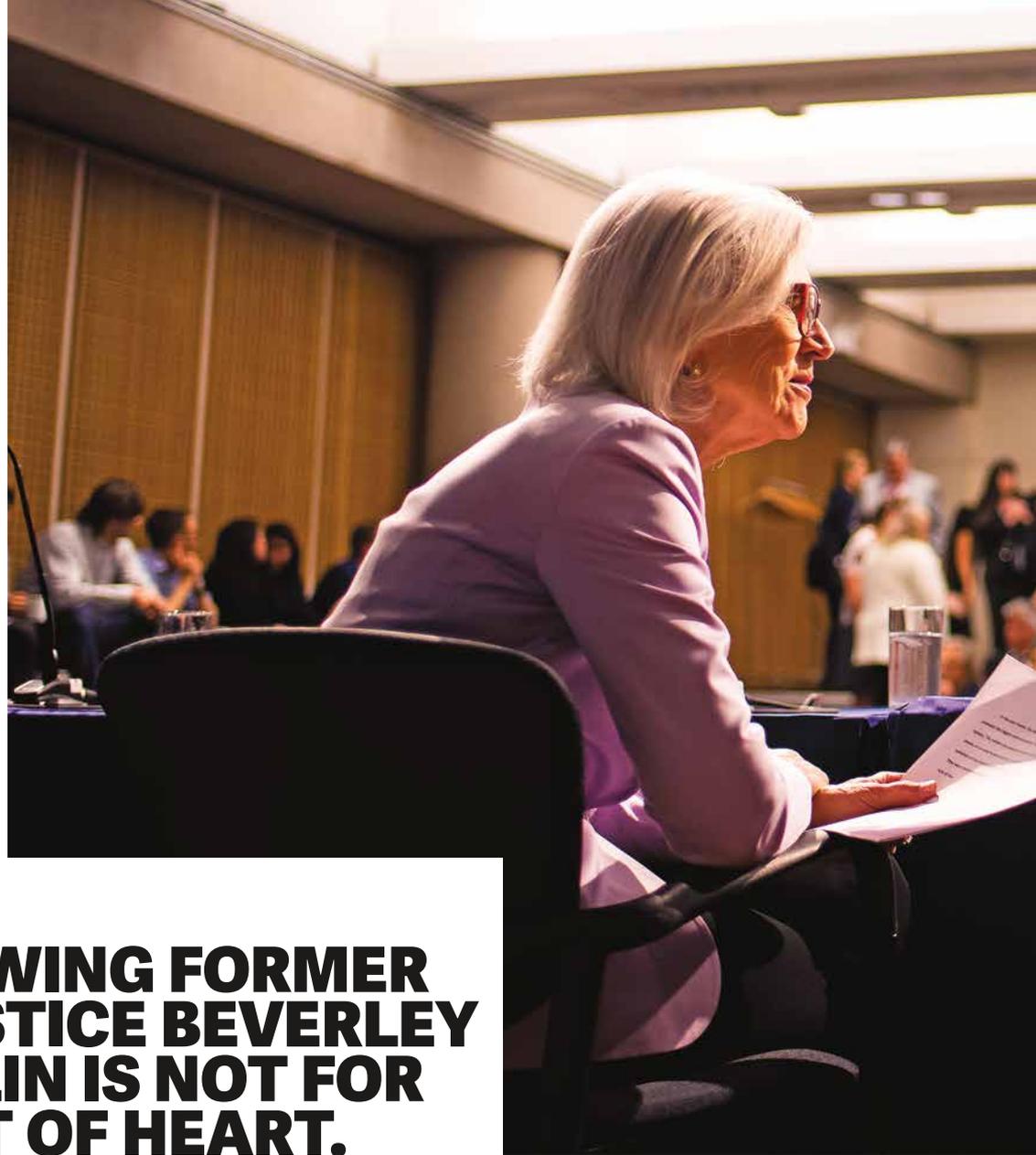
Justice is at the heart of what drives **Beverley McLachlin**, whether she's writing groundbreaking judgments at the head of Canada's highest court or a bestselling legal thriller. Expect more of the same in her next chapter

BEYOND *the* BENCH

BY **CURTIS GILLESPIE**, '85 BA(SPEC)
PHOTOS BY **JOHN ULAN**



McLachlin signs a copy of *Full Disclosure*, the legal thriller she started writing while she was still serving on the Supreme Court. The protagonist is a young female defence lawyer in Vancouver.



INTERVIEWING FORMER CHIEF JUSTICE BEVERLEY MCLACHLIN IS NOT FOR THE FAINT OF HEART.

She is widely regarded as one of the greatest legal minds ever to come out of Canada. Her tenure at the Supreme Court of Canada, particularly as its chief justice (the first woman ever to hold the post), is generally viewed not only as the high-water mark of Canadian jurisprudence but also as an example of judicial excellence much of the world seeks to emulate. Her decisions and writings on dozens upon dozens of intellectually intricate and ethically thorny issues are models of clarity and precision.

The impact on the lives of Canadians has been incalculable. Not only has **McLachlin**, '65 BA, '68 LLB, '68 MA, '91 LLD (Honorary), weighed in with fairness and precision on such issues as the right of prisoners to vote, Indigenous land claims, systemic discrimination against women, safe injection sites, assisted dying, hate speech, and free and fair electoral practices, but she has done it while fostering an open and collegial environment on the Supreme Court.

McLachlin's retirement from the bench in 2017—after 28 years on the

Supreme Court and 17 years leading it, the longest run ever for a chief justice—elicited an outpouring of praise, respect and admiration. The high regard with which she was, and still is, held has since been reinforced by her being named to the Hong Kong Court of Final Appeal and appointed to review allegations of misspending by two officials in the B.C. legislature. She had a few other surprises up the arm of her robe, too. Shortly after retiring, she produced a legal thriller, *Full Disclosure*, which immediately shot to the top of the bestseller lists and discussions are underway for a screen treatment. (More about the book later.) Her memoir, *Truth Be Told: My Journey Through Life and the Law*, is due to be released this fall.

In short, McLachlin is—and there is no fear of exaggeration—one of the most truly impressive people this country has ever produced.

When interviewing such a person, a journalist frequently looks for, or at least remains alive to,



Since her retirement from the Supreme Court in 2017, Beverley McLachlin continues to be involved in law and justice. Here, she prepares to deliver a talk in June at a Vancouver event hosted by the Law Society of British Columbia.

flaws to offset the subject's outward-facing impressiveness (if for no other reason than to hang on to a shred of one's self-worth). But there is no such recourse with McLachlin because as impressive as she is intellectually, she seems equally kind and gentle in person. And genuine. And polite. And self-deprecating. One can only come away feeling that one's own life path, no matter how unswerving and ambitious it may have seemed, is but a weedy backwoods trail full of soggy maps, aimless backtracking, popped blisters and roots tripped over, and which, in the end, hasn't led anywhere particularly interesting ... but this is not about me.

Born in 1943, McLachlin grew up in southern Alberta, near Pincher Creek, the eldest of five children. Her father, Ernest, was a rancher and farmer and also ran a sawmill. Her mother, Eleanora, ran the household and helped with her husband's various business ventures. McLachlin describes her upbringing as not affluent but says her parents always had enough to feed and clothe their children. Though that didn't prevent economic anxiety.

"There was always a sense of, 'Will there be enough money to pay the bills? To pay all the people we have to pay at the end of the month?' It was a rural community and nobody was wealthy. It wasn't a class community in that sense, and so I never had any sense of entitlement at all."

Her parents encouraged her academic ambitions during an era that was less than welcoming to women in the white-collar professions. McLachlin knew she wanted to go to a university of good standing when she finished high school.

"The U of A was always something of an icon," she says. "But there was also a practical reason. I didn't have any money and my parents had four children younger than me, so there was no way that they had the luxury to say, 'Would you like to go to UBC or the University of Toronto?' But I never wanted to, either, because everything I knew about the University of Alberta was that it was a very fine institution. And indeed, it was and still is."

Once she finished her undergrad degree, McLachlin went on to complete a master's in philosophy and a law degree at the U of A—graduating with both, remarkably, in the same year. By then she had married her first husband, **Rory McLachlin**, '70 MSc. He was

supportive of her career and urged her to take it as far as she could. “He always told me, ‘You’ll be on the Supreme Court one day.’ I would laugh at him.” (Tragically, he died of cancer at age 47.)

The study of law resonated deeply and immediately with her. It suited her intellectual interests—exploring ideas, developing positions, arguing for certain stances—and it was also about people. It seemed to her a good avenue to engage with society in a direct way.

Law was still mainly the domain of men. There were 65 students in her class at the law school, seven of whom were women, four of whom went on to legal careers. Sexism was a mountain that a woman in a professional field had to climb every single day.

“It was just the way the world was,” McLachlin says. “It’s changed a lot, thank goodness. But I remember when I went for my first interview for articles, and it was with a prominent practitioner, a wonderful man. We had a great interview and I was the top of the class. I thought I’d get the job. At the end of this lovely interview, he said, ‘Why do you want to practise law?’ I was completely flummoxed and didn’t know what to say. Seeing my discomfiture, he said, ‘Well, you know, you’re married!’ I thought, ‘What does that have to do with it?’ I remember just fleeing the office and feeling, ‘I’m not going work there, even if they were to ask me.’ They never did. But I went across the hall and got a job with a different firm that had had women working for them.”

She was soon to discover the depth of sexism that existed, even once a woman had secured a job and established her bona fides. The sexual banter, the casual disrespect. The day she started with the new law firm, she was put in an office with another female lawyer; none of the male lawyers shared offices. It wasn’t that people were unkind, she recalls, but there was an entire set of working assumptions taken for granted.

“I even remember times you’d finish a case and the firm would have a victory lunch at a men’s-only club! I fumed and in the end just said to them, ‘I’m hurt, you shouldn’t have done





that, and that was wrong.' ... Basically, I decided that if things happened, well, that was the other person's problem and I wasn't going to let it get me down. I always had a certain doggedness and determination that I would not let that kind of thing get in my way. I'm a pragmatic person. Sometimes you have to stand up, but do it honestly and politely. That has always been my approach and I think it has served me well."

She would go on to bring about many changes in the workplace. An observer will no doubt wonder whether her early experiences of discrimination etched into her a passion for fighting for the powerless. "The greatest satisfaction I got out of the early years of my practice," she says, "were those cases where I took on somebody who didn't seem to have a hope. You knew they were in a bad situation, and I found some small role to play in rectifying their situation or getting them justice. I found that enormously satisfying."

McLachlin worked as a lawyer in Edmonton and British Columbia, then as a professor at UBC, before taking on various judge positions up the chain until she was appointed in 1988 as chief justice of the Supreme Court of British Columbia. When former prime minister Brian Mulroney appointed her to the Supreme Court of Canada in 1989, she found almost instantly that it suited her intellectually and temperamentally. The 70-hour workweeks weren't a problem. "When you're involved with what you're doing, it's fine. The most important thing is not how much you're working but that you love what you're doing and that you're involved with what you're doing."

Yet the stress of the Supreme Court is real and relentless. Again, McLachlin's temperament helped set the tone. "I've always felt in my soul that it's right to achieve as much consensus as possible. I mean, I will never resile from what I feel is the right position, so someone else would probably say, 'She is pretty confrontational.' And I've written my share of dissents. But there's a high level of collegiality. During my time on the court, I was privileged to serve with wonderful people. We had a lot of good times and great discussions. It's fun. When you're working that closely with people, you develop intense bonds."

It might be difficult to understand how two judges can argue a point of law vociferously in the afternoon and then have an enjoyable meal together in the evening. Professional differences, she says, are part of the work. It doesn't mean you don't respect one another. You have to be true to your vision of the law and what the result

should be, and if you're not true to that, you're not doing your job. Which means no matter how much you respect your colleagues, there are going to be confrontations. But she led the way in creating an environment of respect for opinions, ideas and shared humanity.

"At the basis of all her decisions is compassion," says legal scholar **Ian Greene**, '70 BA(Hons), who is co-writing a book with **Peter McCormick**, '68 BA(Hons), called *Beverley McLachlin: The Legacy of a Supreme Court Chief Justice*, due out this fall. "She has been arguably one of the most

"I'd get up at 5:30, work on the book for a couple hours, take my dog for a walk, shower, then go to court and the rest of the day was judge stuff."

effective judges the court has had in terms of the advancement of the rule of law and human rights, clarity of writing, leadership and the promotion of collegiality."

One has to wonder how a person can retain the mental and emotional strength, not to mention the physical stamina, to do a job like that day after day, year after year. McLachlin admits she had to remain constantly aware of managing the stress, as every judge does. Most find ways to sublimate the strain, to bleed off the pressure with outside interests. She recalls the advice of former Supreme Court justice William McIntyre. When she replaced him, she asked if there was one piece of advice he could give her. He thought about it for a while and then said, "Find outside interests. Otherwise this job will consume you."

"It was wonderful advice," McLachlin says. "I had a young son at the time. And Frank [McArdle, her second husband, to whom she has been married for 27 years] and I have a cottage we get away to. I walk a lot. I turn off my electronics for a day or two. I go to concerts. I see friends outside the legal profession. You need to stay connected, to read the papers, to be involved with society. You have to be part of the community to understand the community. I was appointed in 1989 and left the court in 2017, and there's no way I could have survived that period so happily if I hadn't had a good human life."

A generation ago, the Supreme Court of Canada was not viewed as a template for other countries; today, countries around the world have sought counsel from and even attempted to emulate the practices of our highest court. That's not an accident, though McLachlin would never think of taking

credit for any of it. "It's all part of our Canadian collective psyche, I think, which tends to promote the rational, pragmatic outcome, the concern for all, not just individualism. And ultimately Canadians, even if they feel that they themselves are not happy with their situation or what's happening, they seem collectively able to understand what needs to be done to move forward together."

McLachlin is upbeat about the future of the country's top court. She foresees a time when citizens and the court have an even greater engagement, a more open dialogue. In the long run, she hopes Canadians continue to understand and even elevate their understanding of how vital it is to retain the institutional integrity of the justice system. "It really is fundamental," she says, "to everything that we enjoy in our democracy, that we preserve the rule of law, and that we maintain the institutions. Everything rests on public confidence."

Her words are so optimistic and so hopeful, so full of that pragmatic wisdom she generously ascribes to us all, that I can't help but ask how she plans to put that good nature aside as she works on her next crime book, which must, as the genre dictates, feature all manner of depravity and malfeasance. She laughs.

"One thing about being a judge," she says, "is that you get exposed to the whole range of human behaviour. So, by the time you've been a judge for as long as I have, you understand that people operate and act in a lot of different ways. I'm very aware of the darker currents of human nature."

I ask how she managed to get a book written in the first place. Where did she find the time?

"Oh, you just compartmentalize," she says breezily, as if anyone could run the Supreme Court and write novels in their spare time. "I'd get up at 5:30, work on the book for a couple hours, take my dog for a walk, shower, then go to court and the rest of the day was judge stuff."

Judge stuff. How much of her work, I ask, was divided between writing and ... judge stuff.

"They were long weeks," she says. "But I was often really surprised at what came out. I'd be writing in the morning and think, 'Where did I come up with that line or that idea?' That's an amazing feeling, to see that happening and to allow yourself to see that happening."

She'd had the story of *Full Disclosure* niggling away at her for decades, but it wasn't until she knew retirement was coming that she began those early morning writing sessions. No doubt most observers would have expected her to write something with great intellectual weight—a history of the Supreme Court or an examination of legal practices in other countries. But, no. She surprised pretty much

When she retired in 2017, Beverley McLachlin was the longest-serving chief justice of the Supreme Court in Canadian history. In that role, she sat for more than 1,000 appeals and contributed legal opinions in 252. Her opinions have been lauded for their prescience, clear-mindedness and groundbreaking exposition of the Charter of Rights and Freedoms. We asked lawyers and judges what they view as her most important judgments.

OPINING *the* OPINIONS

By **Jay Smith**, '02 BA(Hons), '05 MA

Chief Justice Catherine Fraser,
'69 BA, '70 LLB, '13 LLD (Honorary),
Chief Justice of Alberta

McLachlin's fingerprints are all over the most important judgments of the Supreme Court in the charter. She's able to see past the legal horizon to things others cannot yet see. Many have a favourite case or sentence from one of her judgments. Mine is three words—a sentence fragment only—from *R vs. McIntosh* (1995). In those three words, she captured the very essence of why, in a democracy, we have laws: "Life is precious."

Justice Ritu Khullar,
'85 BA(Hons), Alberta Court of Appeal

My two favourite McLachlin-penned decisions were both released in 1999. They represent the high-water mark of Canadian human rights jurisprudence. The first, *Meiorin*, provides a clear articulation of the meaning of discrimination when otherwise seemingly neutral rules have a discriminatory impact on an individual. *Meiorin* also explains the obligation of employers or service providers to accommodate an individual who has experienced discrimination to the point of undue hardship. The second, *Grismer*, emphasizes that human rights assessment focuses on the impact on the individual.



McLachlin, shown with her Supreme Court colleagues in 2015, fostered an open and collegial atmosphere during her tenure as chief justice.

Justice Sheila Greckol,
'74 BA, '75 LLB, Alberta
Court of Appeal

McLachlin was a visionary. She conceived that social, historical and legal context ensures impartiality. Contextual decision-making took hold: in *Gladue* (1999) and *Ipeelee* (2012), her court required sentencing judges to consider the historical disadvantages, wrought by colonialism, of individual Indigenous offenders. Prescient, imaginative, wise.



Rose Carter,

'78 BA, Queen's counsel, partner at Bennett Jones LLP

In my practice area of health law, the 2015 Carter decision was a sea change. McLachlin set the stage for this significant change in her dissent in the 1993 Rodriguez decision, in which the slim majority of the court denied Sue Rodriguez, terminally ill with ALS, the right to end her life with assistance. McLachlin's stance, which in 2016 became law, lets adults who are physically incapable end their lives with the assistance, comfort and safety of a health-care professional.

Neena Ahluwalia,

'80 BA(Spec), '83 LLB, Queen's counsel, senior manager at Alberta children's services

As a law student, I learned a dissenting opinion today may become a majority decision later. That was true when McLachlin's 1993 dissenting opinion in Rodriguez became the basis for the court's 2015 decision in Carter. She also weighed in on the roles court and Parliament play in the Constitution. She wrote: "The focus [of the court] is not on why Parliament has acted, but on the way in which it has acted." Rodriguez was a harbinger for decisions that challenged executive power, forged ahead on charter rights, recognized Aboriginal title and protected access to justice.

Dan Chivers,

'97 BCom, '04 LLB, partner at Pringle Chivers Sparks Teskey

McLachlin was a unifying force within the court and a strong leader who left a legacy of numerous decisions. *Canada vs. Bedford* was one of her most prominent cases, which expanded protections under Section 7 of the charter. This decision prevented the possibility of any law that would allow for inequality and unsafe work environments for sex workers. Bedford remains as a lasting example of McLachlin's willingness to challenge Parliament where necessary.

everyone when she went to the opposite end of the spectrum. Crime writing. A genre novel. Packed with wrongdoing and scandal and unsavoury characters and sex and intrigue. *Full Disclosure* is a legal crime thriller full of the kind of lurid details you'd see in a TV legal show. Clearly, McLachlin had things other than legal decisions bubbling under the surface all those years. She laughs when I ask her about that.

"Oh, I always knew I had it in me," she says.

"So when I finally wrote fiction, it just felt so liberating to exploit that part of my personality. To create characters, describe things, be creative. Because as a judge, you're not supposed to be creative. You are developing legal concepts, yes, and the law has to develop to meet new situations, so there's an element of creativity. But storytelling was so different and great fun."

McLachlin is smart enough and humble enough

to have kept expectations in check ("I'm not Proust!"), which meant she was pleasantly surprised when she finished the book, found an agent and then a publisher. She was convinced it was something she had to get out of her system and then she'd move on. But she is now a full-fledged success and is already at work on her next book, the aforementioned memoir.

"I never set out to create a literary masterpiece," she says of *Full Disclosure*. "But I did have a philosophy in the book to write about the truth and my reflections on social justice and the downtrodden, to address the situation of those less fortunate, or who are weak or discriminated against, who are maybe caught up in something that they shouldn't

be caught up in, and can they be redeemed. So that does come through because that's what my fundamental concerns are."

These have been the concerns of her entire career but to lay them out in fictional form takes a different kind of courage. I ask her what the reaction to the book has been from her colleagues in the legal and judicial worlds. She laughs.

"Well, it depends. Some have read it and really enjoyed it; others, I think, didn't know quite what to make of it. Nothing negative, though. I thought that there would be some negative reaction, but if there has been, it hasn't been communicated to me. As I said to one of my colleagues, this is my little frolic."

A frolic her new freedom allows her. She says her friends have remarked that she seems lighter, freer, since retirement, even with the work she has taken on since leaving the Supreme Court. It's not hard to understand why, given the tremendous demands of the job she shouldered for so many years: nothing less than helping shape law in this country.

To those who know McLachlin, or know of her remarkable role in Canadian jurisprudence, it is clear that she made the role, the role did not make her.

Greene notes in the upcoming book that her career was not one that she planned for herself. "But her personal qualities of collegiality, hard work, insight, impartiality and down-to-earth humility quickly brought her to the attention of senior judges and politicians."

He sums up his thoughts for this article: "Although she rose from obscurity to become one of the world's leading jurists, she never lost her humility and compassion. We are all beneficiaries of her example." ■

