

## Chapter 10

# Gender, Race, Bias and Perspective: Or, How Otherness Colours your Judgment

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The project I discuss in this chapter is an ongoing project that I return to from time to time: I feel that I can never consider it more than a work in progress as I keep finding new examples. It concerns an overarching theme in feminist engagements with law: how the concepts of 'bias', 'partiality' and 'perspective' are connected, via notions of 'otherness', to 'outsider' judges and other legal decision makers.<sup>1</sup> This particular incarnation of the ongoing project started life in 2002 as a critical reflection for a festschrift to mark the retirement of Justice Claire L'Heureux-Dubé from the Supreme Court of Canada, on which she had served for 15 years, a period in which that court developed an equality jurisprudence that is widely considered the most sophisticated in the world.<sup>2</sup>

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\* This discussion has benefited from the opportunity to discuss the ideas in a number of different forums, including Cornell Law School; Columbia Law School; Washington College of Law, American University; Santa Clara Law School; CUNY Law School; Cleveland-Marshall Law School; University of Sydney Law School and the Gender and Judging group at the Law and Society Association Conference, Berlin, 2007. I should also like to thank the many people who have made comments and suggestions or assisted in other ways over the years: these include Christine Chinkin, Ruthann Robson, Jenny Morgan, Fleur Baupert and Tiffany Hambley. Thanks also to the anonymous referees for their helpful suggestions. This chapter was previously published in (2008) 15 *International Journal of the Legal Profession* 73 and is reproduced in this collection with permission.

1 See Graycar R, 'The Gender of Judgments: An Introduction' in Thornton M (ed), *Public and Private: Feminist Legal Debates* (Oxford University Press, Melbourne, 1995); 'The Gender of Judgments: Some Reflections on "Bias"' (1998) 32 *University of British Columbia Law Review* 1.

2 Graycar R, 'Claire L'Heureux-Dubé: Some Reflections from Down Under' in Sheehy E (ed), *Adding Feminism to Law: The Contribution of Justice Claire L'Heureux-Dubé* (Irwin Law, Toronto, 2004), pp 81-107.

This is a preview. Not all pages are shown.