

The Honourable  
Rosalie Silberman Abella

---

# A LIFE OF FIRSTS

---

May 12–13, 2022 | In Ottawa & Online

## COCKTAIL RECEPTION & VISIT

National Gallery of Canada

May 11, 2022

*Conference organized in collaboration with:*



40



The Advocates' Society  
La Société des plaideurs

# CONTEXT

*"We are all shaped by what we come from. Some people embrace what they've come from. Some people spend a fair bit of energy trying to distance themselves. I've never felt anything but a seamless relationship with who I was, so I am unabashedly committed to the values that increase justice for people. I am not at all embarrassed about the fact that I am shaped by who I am. I have learned as a judge that you take who you are, you take your own experiences, but when you are in the courtroom, you have to understand that what you are listening to may have nothing to do with any of that."*

— The Honourable Rosalie Silberman Abella

Source: <http://creativecanada150.com/justice/rosalie-silberman-abella/>

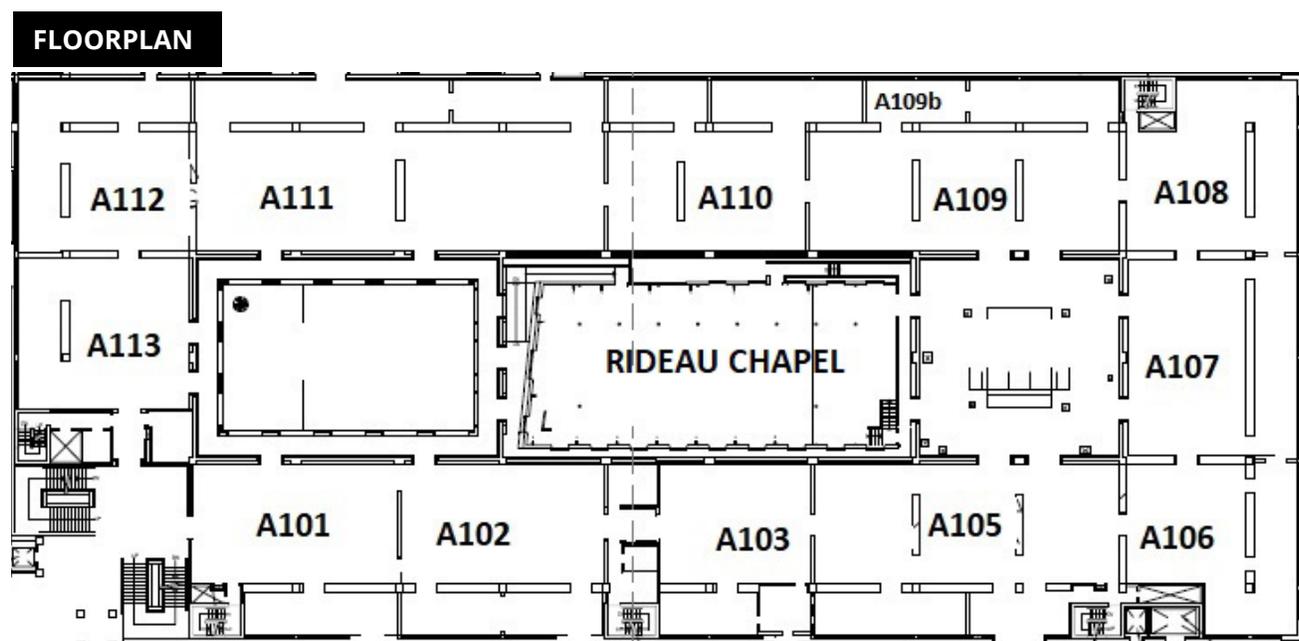
Welcome to the National Gallery of Canada. This cocktail reception kicks off a two-day Conference to mark the retirement of Justice Rosalie Silberman Abella from the Supreme Court of Canada. This event will take place at Delta Hotels Ottawa City Centre on May 12-13, 2022.

Justice Abella has a very strong connection to all forms of art, as you will see and hear in the coming days. In that spirit, we have selected a handful of pieces from the National Gallery's collection for you to explore which reflect Justice Abella's journey in different ways.

We hope that these few selected and contextualized works will enrich your understanding of the exceptional legacy and remarkable career of this extraordinary woman and jurist.

*Commentaries related to Justice Abella's life and work:*

- Colleen Bauman, Partner, Goldblatt Partners LLP
- Rosemary Cairns-Way, Full Professor, Faculty of Law, University of Ottawa



# SELECTED PIECES

## 1. JORDAN BENNETT, HISTORIES BETWEEN AND THROUGH TIME – 2017 A101

Bennett aims to recover the entwined histories of the Mi'kmaq and the Beothuk, who shared a peaceful co-existence before colonial contact, which systemically caused them enormous harm. In referencing the brightly coloured patterns found in the historical Mi'kmaq quillwork, abstracted together with the forms and contours of the Beothuk carved bone pendants, Bennett creates a new visual language that reimagines and renews this relationship across time and space.

## 2. UNKNOWN, HUNTING COAT – Early 18<sup>th</sup> century A102

In the 18<sup>th</sup> and 19<sup>th</sup> centuries, painted caribou-skin coats were collected by European traders from the Cree, Innu and Naskapi peoples of northern Quebec, although the coats had likely been made for hundreds of years before then. The coats were created to "please the caribou" and ensure a successful hunt. The ceremonial nature of the garments meant that great care was taken to produce the intricate designs, and new coats were created for each annual hunt.

*Commentary:* Through her jurisprudence, Justice Abella has made important contributions to the goal of reconciliation between Canada and Indigenous Peoples. For example, in her 2016 decision in Daniels v. Canada (Indian Affairs and Northern Development), drawing upon documents such as the Truth and Reconciliation Commission's Final Report, she recognized that the Métis were "Indians" under section 91(24) of the Constitution Act, 1867. This decision has resulted in a transformation of the relationship between Canada and the Métis. Writing in dissent in Mikisew Cree First Nation v. Canada (Governor General in Council), Justice Abella held that the duty to consult Indigenous Peoples applied during the development phase of legislation and that the legislative phase is not excluded from the honour of the Crown.

## 3. ROBERT HARRIS, A MEETING OF THE SCHOOL TRUSTEES – 1885 A104

Painted shortly after Harris' return from Paris, this work depicts a young teacher asserting herself before an indifferent board of commissioners in a school room on Prince Edward Island. The artist clearly conveys the men's resistance through their facial expressions. The defiant pose of the teacher reflects the way in which women came to challenge authority and change the shape of society.

*Commentary:* Achieving equality for women in the workplace has been a constant theme of Justice Abella's work and jurisprudence. Her ground-breaking Equality in Employment: A Royal Commission Report had a fundamental impact on employment and human rights law, and on public policy, by shaping our understanding of the concept of employment equity. In Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux, Justice Abella found that Quebec pay equity legislation discriminated against women by perpetuating the undervaluation of female work. Her contributions to substantive equality culminated in 2020 with Fraser v Canada, where she held that the RCMP pension plan infringed section 15(1) of the Charter by discriminating against female members who had participated in job share programs. In the education context, Justice Abella's jurisprudence has also helped ensure meaningful access to education. In Moore v. British Columbia (Education), writing for the majority, she held that the failure of a school board to accommodate a learning disability was discriminatory.

#### **4. EMILY CARR, FIR TREE AND SKY – c. 1935-1936 A108**

In the mid-1930s, Carr – inspired by Lawren Harris – began searching for the divine within nature. However, unlike him, she used a modernist yet representational style to depict the forest with powerful, sculptural forms inhabiting shallow space. The spiritual elevation is shown in rising rhythms of brushstrokes that swirl into the lyrical, sublime light above.

*Commentary:* *Fir Tree and Sky* is a wonderful example of Emily Carr's later work. The National Gallery describes these works this way: "Her later paintings of the vast Canadian West Coast sky and monumental trees, with their sweeping brushstrokes, demonstrate her continued desire to paint in a "big" way that she felt was in keeping with the expansiveness of her environment." In *Castonguay Blasting Ltd. v. Ontario (Environment)*, 2013 SCC 52, Justice Abella, writing for the Court noted the importance of adopting an "expansive approach" to environmental legislation. Justice Abella's approach to legislative interpretation is both purposeful and context driven. There are fascinating connections between Carr's desire to paint in a manner that reflected her subject, and Justice Abella's attention to the social context of litigants, and of the issues confronted by the Court.

#### **5. ALMA DUNCAN, ARMY WOMEN IN WAREHOUSE – 1943 A109**

Although not an official war artist, Duncan was given special permission in 1943 to document the work of the Canadian Women Army Corps. Even though this canvas is mostly occupied by boxes, the broad figures – perhaps influenced by the artist's teacher Ernst Neumann – are the central point of focus. The artist gives the painting a wonderful texture and a luminous quality that shows her interest in the work of the women depicted.

*Commentary:* In her writings and jurisprudence, Justice Abella has recognized the fundamental importance of work to an individual's sense of identity, dignity, and self-worth. Seeking to redress the power imbalance between workers and employers, writing for the majority in *Saskatchewan Federation of Labour v. Saskatchewan*, Justice Abella overturned three decades of jurisprudence and held that the right of workers to strike is an indispensable component of the right to engage in collective bargaining and is constitutionally protected under s. 2(d) of the Charter. In the employment context, Justice Abella's decisions in cases such as *Wilson v Atomic Energy of Canada Ltd*, which confirmed that federally regulated employees cannot be terminated without just cause, and *British Columbia Human Rights Tribunal v. Schrenk*, which extended protection in the workplace to discrimination resulting from the actions of co-workers, also reflect these themes.

#### **6. PRUDENCE HEWARD, ROLLANDE – 1929 A109b**

Heward's paintings of strong, independent models offer a new interpretation of Canadian women in the 1920s. Rollande's thoughtful expression and no-nonsense posture, with hands on her hips and one leg thrust forward, shows that she is in complete control of her environment. Her placement outside of the fence is deliberate, serving to emphasize her independence and strength.

*Commentary:* While the vibrant pink apron makes this wonderful work of art an obvious candidate for inclusion in this gallery tour, the connections go beyond colourful sartorial choices. Rollande presents as a fearless, independent challenge to the status quo. She appears entirely comfortable in her placement as an outsider. Her gaze is direct and determined. Her stance is open and powerful. The viewer senses that Rollande, just like the dedicated jurist and independent woman we honour at this conference, has a strong work ethic, tenacity, and commitment ... as well as a wonderful flair for colour!

## **7. WILLIAM KURELEK, THE UKRAINIAN WOMAN IN THE OLD COUNTRY – 1966-1967 A112**

In his characteristic faux-naïf style, Kurelek presents an account of life in his ancestral homeland. In a four-part narrative, the central panel illustrates the election of a Cossack leader – the warrior class of the Tartar peoples who lived in present-day Ukraine. The side panels illustrate women working the land, as well as poverty and hardship. Commissioned by the Ukrainian Women's Association of Canada at a time of burgeoning nationalism around the centenary of Confederation, the work is a tribute to Ukrainian immigrants to the Canadian Prairies.

*Commentary:* Like Kurelek, Justice Abella's personal history and her own family's immigrant story has been formative to her work and jurisprudence and her concept of equality, dignity, and fairness. Born to Holocaust survivors in a displaced persons camp in Germany, she came to Canada at the age of four. As she herself has recognized, her parents' experiences and her childhood has shaped her: "It's ... where I got a very strong sense of not tolerating injustice, if I could do anything about it. ... [It is] certainly where I got my commitment to human rights and where I developed an intense aversion to discrimination or bullying of any kind — probably all unconsciously from my upbringing." Justice Abella has applied those same notions in her immigration law jurisprudence. For example, in *Kanthasamy v. Canada (Citizenship and Immigration)*, she broadened the scope and definition of humanitarian and compassionate grounds under the Immigration and Refugee Protection Act.

## **8. RIDEAU CHAPEL**

The Rideau Street Chapel was originally part of Our Lady of the Sacred Hearts, a girls' boarding school in Ottawa, run by the Sisters of Charity. The school first opened in 1849 and moved to Rideau Street in 1869. The Chapel was added in 1887–1888, designed by priest-architect Georges Bouillon. It is the only example of its kind in North America from this period to include a Tudor style fan-vaulted ceiling supported by slim iron columns. The school was sold in 1970 and the entire property was scheduled for demolition in 1972. Although the school was demolished, the chapel interior was purchased by the National Gallery of Canada. With the help and collaboration of the National Gallery of Canada Foundation, the Friends of the National Gallery of Canada, various government bodies and heritage conservation groups, the Gallery was able to relocate the chapel and its original altar and altar screen – all 1123 pieces of it – to its current location inside the National Gallery of Canada's new building in 1988, preserving this rare example of Canadian architectural history.

## **9. JANET CARDIFF: FORTY-PART MOTET**

This brilliant sound sculpture by Canadian artist Janet Cardiff is a reworking of *Spem in Alium*, a piece by 16th-century English composer Thomas Tallis. Forty separately-recorded choir voices are played back through 40 speakers positioned around the Rideau Chapel in the Indigenous and Canadian Galleries. The effect of the work on visitors is deeply moving.

*Commentary:* This powerful and evocative piece allows listeners to "climb inside the music" by physically choosing to listen to an individual voice, or a group of voices, or the work in its entirety by positioning themselves differently within the chapel space. The concrete, experiential connections to Justice Abella's equality jurisprudence are inescapable. The piece makes the interdependence between the individual and the group obvious. Appreciating the work requires the listener to pay attention to the individual, unique capacities and vulnerabilities of each voice, while noticing the ways in which those individual voices contribute to the whole. Careful listening, and attention to voice (either present or excluded) is a hallmark of Justice Abella's equality jurisprudence. This work brings those ideas to life.