

Deeply principled jurist Herbert Marx was 'the ultimate mensch on the bench'

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TEXTE INTÉGRAL

For Herbert Marx, a personable, plainspoken lawyer, judge and politician, justice was not carved from stone and immutable, with one side winning absolutely over the other. Rather, he saw it as something that was nuanced, couched in empathy, understanding and heartbreak.

When presiding over custody cases in the Quebec Superior Court, for example, it often wasn't enough for Mr. Marx to listen to both sides, then make a ruling. He also wanted to hear from the children involved, in his chambers, away from the oft-bitter claims of the parents and their lawyers.

"Herb had this amazing sense of right and wrong, but he applied it in ways that reflected his preference not to hurt people unnecessarily," said Joel Silcoff, a retired Quebec Superior Court justice who shared an anteroom with Mr. Marx. "He was my mentor, a man who would never say outright that I was wrong in a decision, only that it was one interpretation I could have, with the unspoken implication that I could do better. He was the ultimate mensch on the bench."

Mr. Marx, whose storied curriculum vitae includes stints as Quebec's justice minister, the province's human-rights commissioner and a consultant to the Law Reform Commission of Canada, died on March 19 in Montreal after a long illness. He had turned 88 only three days earlier.

As Mr. Marx was in the courts, so he was in politics. John Parisella, the former provincial Liberal Party strategist who first met the future provincial attorney-general in January, 1980, recalls the one time he ran for office: It was in the Montreal riding of Mercier in 1985, where his opponent was the popular incumbent Péquiste, poet Gérald Godin. One night at a riding meeting, there was a debate between pro-choice and anti-abortion groups, and Mr. Parisella, who raised a Catholic, wasn't sure what to do.

"I told Mr. Marx and he suggested I listen to a recent speech by Mario Cuomo, the New York State governor, a Catholic politician governing in a pluralistic society," he said. "When I did, he said, 'John, you have to respect people's personal convictions, but if you're in a position of governing, you have to do so for the good of all.'"

He was a progressive and a person of great conviction, Mr. Parisella continued - a proud Canadian who defined himself not as an anglophone, but as a Quebecker first and foremost.

His wife, Eva Marx, said that her husband was tolerant and forgiving, and was completely incapable of remembering who had insulted or slighted him.

"He was self-deprecating and able to admit when he was wrong," she said. "Then again, he also liked to be right."

He was born in Montreal on March 16, 1932, the surprise youngest child of Robert and Miriam Marx (née Rabinovitch). His one brother and three sisters were all much older than he was, for his parents had each been married before with children and emigrated from Latvia with them all in tow.

"When my mother-in-law was in her 40s, she thought she was going through her change of life," Mrs. Marx said.

"She wasn't, though."

Back in the old country, the father had been a wine merchant but to support his family in Montreal during the Great Depression, he became a dry-cleaner. The business didn't do well; in an interview posted on the website of his high school alma mater, Baron Byng, Mr. Marx said: "We were the downtown Jews, the poor Jews, [but we] never thought of ourselves as being poor."

To help out, Herbert worked at a variety of jobs, from delivering telegrams to stocking grocery shelves. But he was also an indifferent student for much of high school, preferring to spend his time smoking and playing pool and cards, and he failed in his first attempt to graduate after he got a mark of only 33 on his final French exam. A second attempt to graduate proved successful because he was given the option of taking an algebra test instead, a subject at which he was more proficient.

Two years at McGill University soon followed, but he was asked to leave because he was again underperforming. He sold encyclopedias door to door before going to work for a brother-in-law's lighting company in 1955, eventually becoming a vice-president.

At the same time, Mr. Marx returned to school, getting a BA in 1958 from what is now called Concordia University and, eventually, a master's in English literature and a law degree from the University of Montreal and, in 1969, a master's in law from Harvard University. His impetus, his wife said (herself a teacher), was both having a young family to support and discovering that he loved the field of law.

"Herb was very practical by nature and the law appealed to his sense of order and logic," Mrs. Marx said. "When he went to Harvard, his thesis was on the emergency powers in the Canadian constitution and coincidentally, it was when Pierre Elliott Trudeau invoked the War Measures Act. His work was very apropos."

In 1968, Mr. Marx was awarded the Prix du Barreau after coming first in the Quebec Bar exams. And after getting his master's, the boy who flunked out of high school because of his poor French, he taught law at the French-language University of Montreal for a decade before his friend Claude Ryan, the leader of the provincial Liberal Party, recruited him to run in a by-election in the Montreal riding of D'Arcy-McGee.

As the province's attorney-general and justice minister, Mr. Marx fought for the civil rights of racial minorities, women and the poor, and he was most proud of his role in helping to establish a network of battered women's shelters throughout the province.

His principles came to the fore when he resigned from the provincial cabinet in 1988 to protest then-premier Robert Bourassa's decision to use the notwithstanding clause in the Canadian Charter of Rights and Freedoms so that French would be the only language to appear on outdoor commercial signs throughout the province. (He was joined by two other cabinet ministers, Clifford Lincoln and Richard French.) On Dec. 2 of that year, he resigned from the caucus altogether.

"It was a very difficult decision and he consulted a lot of people before making it," Mrs. Marx said. "It was an important issue in D'Arcy-McGee and he was someone who had always believed in the fundamental right to free expression."

In 1989, the federal government appointed Mr. Marx to the Quebec Superior Court on the recommendation of Mr. Bourassa - a position he held until 2007. Upon retirement, he and his wife stepped up their travels, in the end visiting 60 countries. That included 27 trips to Israel, where for many years he sat on the board of Tel Aviv University.

Said Mrs. Marx: "In his high-school yearbook, he was called 'Marco Polo.' He was always curious, an explorer, an adventurer, a man who was fascinated in the world."

Mr. Marx leaves his wife, Eva Marx; his children, Robert Marx and Sarah Shalit; their spouses; and four grandchildren.

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