

W. GLEN HOW, Q.C. – IN MEMORIAM

I Remember Glen How

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For most of the 65 years he practised law—most-recently in Georgetown, ON—W. Glen How Q.C. maintained a modest wooden lecturn, from which he painstakingly rehearsed trial and appellate arguments for cases he conducted in every Canadian province and Supreme Court of Canada, as well as in the United States, Japan and Singapore. As his co-counsel in many of them since 1987, I was submitted by him to the same rigorous preparation. Often, he conscripted me in the role of opposing counsel. Responding to his cogent, acidic, relentless advocacy—more oration than argument—guaranteed frontstall preparation (especially considering he frequently and curtly challenged content, structure, style and demeanor of my every oral presentation).

He became one of my invaluable professional mentors. Much his junior at the Bar, I marvelled—with considerable trepidation—at jousting with this icon of Canada's barristers; whose cases I had studied in law school (Dalhousie's Faculty of Law, 1967).

During a recess—about 3:30 AM—in an 8-hour lecturn rehearsal of an appeal scheduled for later the same day, he recounted to me one of his few court experiences for which preparation proved pointless.

How Q.C. was among trial counsel for Emile Boucher, charged for seditious libel because he publicly distributed some of the 1.575-million copies of a tract, entitled "Quebec's Burning Hate", printed by Jehovah's Witnesses in response to acute oppression they suffered in Quebec during the premiership of Maurice Duplessis.

As he recalled, Boucher's trial was conducted in rural Quebec in November 1947. Inexplicably, all windows in the St-Joseph-de-Beauce courtroom were open on the frigid autumn day when How and co-counsel commenced their jury addresses. Without warning, their voices were overridden by a cacophany of squealing sounds, emitting from a truckload of domestic swine—by chance or design—being discharged onto the adjoining street. If a coincidence, said How, "the timing was precise." But he wasn't convinced the event was fortuitous: "Letting loose a herd of pigs, immediately below open windows of a courtroom in session, did nothing to serve the pork bellies markets." Nonetheless, he was compelled by the court to compete with the porkers for the jury's attention. The pigs, who appeared to linger near the windows for much of the defence jury address, apparently proved, How said, "more attention-fetching and persuasive than me, because the jury later deliberated for about half an hour and convicted my humble farmer client."

How's successful appeal, in 1951, of Boucher's conviction to Supreme Court of Canada was the first of a quintette of largely-successful appeals he argued before that Court; resulting in decisions which impacted enactment of the Canadian Bill of Rights in 1960, and the Charter, in 1982.

As recently as 2003, age 84, he readied, at his office lecturn, for his last case; before Quebec Court of Appeal.

Sometimes vehement in avowing civil rights of Jehovah's Witnesses to preserve, practise and propagate their religious convictions, How, Q.C. was blunt, not infrequently controversial, in deprecating those who sought to denigrate Witness beliefs and deny their promotion. While his religious beliefs were incongruent with mine (as a practising member of United Church of Canada), he was unerringly respectful of my faith during 21 years (1987-2008) he engaged my

legal assistance.

W. Glen How, O.C., Q.C., L.S.M., 89, who died 30 December 2008 at his Georgetown, ON home, profoundly advanced Canada's civil liberties. Resolutely and dauntlessly, he challenged intense legal and popular persecution of Jehovah's Witnesses, as their general counsel from 1943 to 2008.

"Throughout the course of his long career," stated American College of Lawyers (08 September 1997) in conferring on him—the only Canadian lawyer recipient—its Courageous Advocacy Award, "[he] demonstrated courage and commitment as a trial lawyer, as an appellate lawyer, and as a human being." (Comparable sentiments had been expressed by MacLean's magazine in designating him, in 1963, an outstanding Canadian.)

His penchant for law became an adult life-long pre-occupation. He adroitly employed legal precepts as vehicles to overcome public, state and church (particularly, Roman Catholic) attitudes and actions—freighted with derision, distemper, distain, and discrimination—against the Witnesses.

Incontestable is How Q.C.'s impact on recognition, development and growth of Canada's civil liberties, since his admission to the Bar (Law Society of Upper Canada) in September 1943. He was also a member of the Alberta and Quebec Bars.

During 65 years of lawyering—including a private Toronto law practise (1954-1984)—How Q.C. served as counsel for Jehovah's Witnesses—always pro bono—in every Canadian province and in New York (Federal Court of Appeals [2nd Circuit]), New Jersey and Illinois (Supreme Court), Texas, Washington, and Nebraska, and as counsel or consultant counsel in Italy, Trinidad, Japan and Singapore.

Undisputably, however, How, Q.C.—born 25 March 1919 in Montreal—established his legal legacy in Quebec in the 1940s and 1950s. There and then, during Maurice Duplessis's premiership (1936-39 and 1944-59) opined former British Columbia Supreme Court Justice Thomas R. Berger, in *Fragile Freedoms* [:] *Human Rights and Dissent in Canada*, "Church and State joined in persecuting Jehovah's Witnesses, who carried their struggle for freedom of speech and freedom of religion to the Supreme Court of Canada again and again. The fervour of this small Protestant sect had more than a little to do with establishing the intellectual foundations for the [Canadian] Charter [of Rights and Freedoms]." Principal public face of their legal struggle—in confirming, protecting and asserting civil liberties for themselves and, by extension, all Canadians—was W. Glen How.

In the 1940s, How, Q.C. gained enormous litigation experience, primarily in Ontario and Quebec. His clientele, at one time, included about 22 per cent—some 1,600—of all Jehovah's Witnesses then living in Canada; who had been charged—mainly in Quebec—under the Criminal Code or provincial or municipal legislation, for practising their religious faith. Nonetheless, he then managed to author two influential articles for the prestigious *Canadian Bar Review*.

The first, in 1947 (25 *Can. Bar Rev.* 573), recommended reforms of Supreme Court of Canada; incorporated by Parliament in 1949 legislation which facilitated How Q.C.'s Supreme Court litigation.

The second, in 1948 (26 *Can. Bar Rev.* 759), materially contributed, 12 years later, to enactment of The Canadian Bill of Rights.

In 1949, How Q.C. received the first of a series of Supreme Court of Canada judgments, in *R. v.*

Boucher, one of a quintette of appeals—the others being Saumur, Chaput, Roncarelli, and Lamb—he brought (or assisted to bring) to the Court.

Boucher was convicted of seditious libel (now Criminal Code s. 59(2)) for publicly distributing "Quebec's Burning hate", a tract Jehovah's Witnesses published (1,575,000 copies) in response to oppression they were experiencing. A 5-member panel of Supreme Court set aside Boucher's conviction and ordered a new trial (3-2). Boucher successfully applied (9-0) for a re-hearing, which quashed the conviction (5-4). (1949), 93 C.C.C. 371 (S.C.C.); (1950), 96 C.C.C. 48 (S.C.C.); [1951] S.C.R. 265.

The Saumur case began as Damase Daviau's application to enjoin Quebec from enforcing a municipal by-law which authorized the police chief to license or prohibit circulation of printed matter. Daviau decided not to pursue the application in Supreme Court. A willing replacement—charged more than 100 occasions for his Jehovah's Witness activities—was Laurier Saumur. A complex Supreme Court decision held the by-law could not enjoin Jehovah's Witness distribution activities. [1947] S.C.R. 492; [1953] 2 S.C.R. 299; [1964] S.C.R. 252.