

PROFILE

The accidental activist

Nearly 13 years ago, lawyer Martha McCarthy landed the case of a lifetime. She was only 26—barely a year out of Osgoode—when the indignant M., a lesbian seeking financial support from her prosperous ex, arrived at her office. “I knew

nothing, but *nothing*, about equality law,” says McCarthy, who had been referred by another client. “I had to ask an articling student to get me a copy of the Charter.” Not only was she unschooled in the complexities of Charter litigation, but her circle contained barely a touch of pink. “I called a pal from Branksome Hall who jokes that she was the only gay person

in my life then—which wasn’t far from the truth.” So began a legal odyssey that would take her through all three levels of court, twice, en route to two complementary victories. First came gay divorce (or the right to equitable post-breakup support), then marriage—recognized by our highest court in December. As McCarthy puts it, “M. walked into my office

and changed the course of Canadian legal history.”

When we meet, she has just returned to the Epstein Cole offices atop the Simpson Tower after a Friday morning of wrangling in court. The 39-year-old (“That’s the last birthday I’m celebrating”) is soon to depart for a ski weekend up north. She’s still wearing her white tabbed shirt and black vest; the



Straight shooter: how did Martha McCarthy, a heterosexual lawyer and practising Catholic, become the country’s loudest champion of same-sex marriage? It all started with a divorce

PHOTOGRAPHS, ABOVE BY GREGG SHAPIRO, TOP RIGHT BY PATRICK WALLEN

rest of her barrister’s robes are in a monogrammed velvet bag slung over her shoulder. Her corner office, which looks north over the Eaton Centre, has a certain more-is-more aesthetic—which, I quickly learn, reflects its occupant. She swiftly annotates its contents: dozens of photos of her three children (“I was so pregnant with Peter during our hearing in the Divisional Court that they asked me to take a seat”); a handful of her primary-caregiver husband (“I have a non-traditional family as well”); one of herself water-skiing barefoot (“On my breaks from law school, I taught ‘footing’ in Florida”); and a smattering of yellowing editorial cartoons (from *The New Yorker*, “Young man, just wait ‘til your other mother gets home”).

McCarthy followed her two younger brothers into competitive water-skiing, and there’s a residual tomboy, anything-you-can-do-I-can-do-her feel to her. Her competitive nature has served her well in her early career: the numerous trials surrounding both the gay divorce and gay marriage cases have pitted her against many of the top senior litigators in the country. “It’s really a David and Goliath sort of story,” she says. “Here I was, two years in, up against Mary Eberts—I mean, Mary fucking Eberts, the mother of Canadian equality law—and she’d be talking to the judges about all these past cases she’d argued. You know: ‘I submitted such-and-such to the Court of Appeal.’ And I’d be like, ‘Could you give me a brief of the cases you’re talking about, because, um, I wasn’t there.’”

McCarthy grew up in north Toronto, not far from where she lives now (she requests that I don’t mention the street name because, she says, she gets “hundreds of letters threatening harm to me and my family”). She went to the same Catholic primary school that her kids now attend and doesn’t see any conflict between her own Catholicism and her advocacy on these cases, citing a dictum from Vatican II. “It said something like, ‘About intimate choices in life, we have a profound understanding of our religion.’ But then she guffaws: “Not that

I need Vatican II to give me permission to have my own views.”

And after so many years of dedicated pro bono work on these cases, her views are firmly entrenched. M. once described herself as an “accidental activist,” and McCarthy readily adopts the sobriquet. “I was accidental, at least at first, then I became so committed to the cause that some friends and family members found me abrasive,” she recalls. “I would say things like, ‘If you think gays and lesbians should have a different word’—an ‘marriage,’ then you also believe that Roma Parks belonged at the back of the bus.’ Now all I say is, ‘Go to a gay wedding, hear them say their vows—these couples who have lived on the fringes their whole lives. If that doesn’t transform you, doesn’t move you, then you’ve just got a hard heart.’”

McCarthy’s signal contribution to the cases was to keep the focus on her clients’ emotions. In the divorce case, she drew attention to a copy of M.’s bank statement: “Three bucks. She had three bucks to her name after they split up, after years of building a successful company with her ex.” In the subsequent marriage case, Robbie, the child of two lesbians, visited her office and dictated an affidavit explaining the importance of the marriage to his family. “It was one of the most amazing pieces of work a 12-year-old has ever done,” says McCarthy. “I read it aloud in the Supreme Court. It was hard to keep my voice from breaking.”

Maybe it was this ability to work the operatic end of the human emotional register, or maybe, McCarthy quips, it was her lucky pointed black Prada boots (“I wore them at every appearance”) in the courtroom fight, she rarely lost a round. For McCarthy, one of the crowning moments came when she and M. sat together in the Ontario legislature to watch the Harris government reluctantly amend 67 provincial statutes as a result of M.’s win. “I turned to her,” says McCarthy, taking a dramatic pause, “and I said, ‘Sixty-seven laws changed.’” Another pause: “I said, ‘Look what one woman can do.’” “What one woman can do,” a little help. —Alec Scott