

What's in a Name?

Clara Brett Martin was:

- a) **Canada's first woman lawyer**
- b) **A feminist idol**
- c) **The name on the new Ontario law building**
- d) **An anti-Semite**
- e) **All of the above**

By Edward Hore

The Clara Brett Martin Building, eleven storeys of rosy Italian marble, stands just up Bay Street from Toronto's financial district. Completed and dedicated in 1989, the building is the sumptuous new headquarters of the Ontario Ministry of the Attorney General, and the big blue letters blazoning "Clara Brett Martin" above the main entrance commemorate Canada's first woman lawyer, called to the bar in 1897. So far so good.

But for someone with a building named after her, Martin didn't leave posterity much to go on: some old newspaper clippings, three photographs, the yellowing records of her struggle in the 1890s against the Benchers of the Law Society — and, as it turned out, one bizarre letter. And therein lies a tale.

The story begins in 1891, when Martin, a seventeen-year-old Toronto native and mathematics graduate (Trinity College), petitioned the Law Society of Upper Canada to allow her to study law. The Benchers refused, on the grounds that the word "person" in the relevant statute did not include women.

Six months later, Martin end-ran them: she got a private member's bill introduced in the Ontario legislature to require that "person" in the Statute be interpreted to include women. The hotly contested bill passed, but only after compromises were made: women would be allowed to be solicitors — advisers on the law — but not barristers — pleaders in the courts — and the new act would be permissive, not mandatory; that is, the Benchers would still have the final say. The Benchers duly exercised their discretion and turned Martin down again.

But Martin now (we don't know how) enlisted a formidable champion, the seventy-two year-old Sir Oliver Mowat, who had been the Liberal premier and attorney general of Ontario for twenty years. Mowat personally made a motion directing the Benchers to "proceed to frame rules for the

admission of women.” The motion passed by a whisker, twelve to eleven. Martin accordingly became Canada’s first female law student. She embarked on three years as an articled clerk in a law firm while taking part-time lectures at Osgoode Hall - the procedure at the time for becoming a solicitor in Ontario.

When the three years were up, in 1895, Mowat spoke in the legislature in support of another bill on Martin’s behalf, this time to allow women to be barristers as well as solicitors. The bill passed. But it too was not mandatory and, shortly afterwards, the curmudgeonly Benchers again exercised their discretion and refused to let Martin be called to the bar. Mowat intervened yet again and got another motion passed by the Benchers. On February 2, 1897, Martin became, so far as is known, the first female barrister and solicitor in the British Empire.

Why did Mowat go to bat for Martin? Perhaps because women’s suffrage was becoming a hot issue for the first time. Advocating votes for women in the 1890s meant risking defeat at the polls. On the other hand, progressive opinion-makers and the growing women’s movement needed to be kept happy. Support for Martin’s bid to become a lawyer was a perfect way for Mowat to look politically up to date without actually opening the dreaded votes-for-women floodgates.

Once called to the bar, Martin seems to have practised quietly in Toronto, mostly doing mortgages, wills, and family law. Her files have not survived. According to her obituary, she served for ten years as a trustee on the Toronto Board of Education, and later ran for alderman but was defeated. She does not seem to have campaigned for women’s rights or been active in the suffragist movement. She lived with her brother and sister at 41 Roxborough Street East, in Toronto’s upscale Rosedale neighborhood, and never married. A contemporary described her as “well bred.” Not much else is known about her. In 1923, at forty-nine, Martin died of a heart attack and was pretty much forgotten for almost sixty years.

Then, in the 1980s, Martin was plucked from obscurity by feminist scholars. The first article, by Alexandra Anderson, appeared in *Canadian Woman Studies*, a small feminist quarterly. Though short on biographical fact, it presented Martin as a heroic pioneer in the struggle against male chauvinism. The next article was by Theresa Roth, head of Reference Services of the Great Library at Osgoode Hall; it appeared, complete with extensive footnotes, in the *Gazette*, the quarterly of the Law Society of Upper Canada. Roth had painstakingly reconstructed Martin’s struggle by examining the relevant Benchers’ records and legislative proceedings, but she hadn’t had much luck with the personal history. “No-one who knew her ever seemed to write about her,” said Roth. “It took me a year just to find out when she was born.”

Roth shared her research with Constance Backhouse, a feminist law professor at the University of Western Ontario, who was working on her own appreciation. “To Open the Way for Others of My Sex”; *Clara Brett Martin’s Career as Canada’s First Woman Lawyer*” was published in the *Canadian Journal of Women and the Law*. It hailed Martin as a woman of tremendous strength

and dedication,” and appealed for funds for a portrait of Martin to be commissioned and hung at Osgoode Hall.

By the late 1980s Martin’s star was at its height. The University Of Toronto Law School had the Clara Brett Martin Workshop Series. A full-size painting of Martin, done from one of the photographs, hung at the University of Western Ontario’s Faculty of Law. Plans were afoot for the new institute of women’s studies at Osgoode Hall Law School to be called the Clara Brett Martin Institute.

And Ian Scott, then attorney general of Ontario, had read Backhouse’s article and decided to name his ministry’s splendid new building after Martin. The announcement surprised Theresa Roth. “After all,” she said, “we still didn’t know much about her. No-one ever said she was a brilliant lawyer or anything.”

But events now had their own momentum. On September 22, 1989, a gala reception called “Rendezvous with Time” was held to mark the official opening of the Clara Brett Martin Building. Specially printed, oversized invitations with drawings of Martin went out to prominent women lawyers and judges, including the three women judges of the Supreme Court of Canada. Six hundred people came. White-gloved policemen in 1890s uniforms greeted guests at the door. Inside, elaborate displays re-created typical rooms from the 1890s, complete with mannequins in period costumes. Three actors performed a deeply moving play about Martin’s struggle. Doug Spencer, a ministry employee involved in setting up “Rendezvous with Time,” recalls that when the actress playing Martin made her final speech many women in the audience, and some men, broke down and wept.

That was before anyone present at the gala had heard about the letter.

The letter has its own story. In 1985 or 1986 (he can’t remember exactly) Peter Sibenik, a graduate student at Osgoode Hall Law School, was working his way through the files of old correspondence with the attorney general’s office in the Archives of Ontario, researching his doctoral thesis on the criminal-justice system in Toronto from 1894 to 1919. In the index for the 1915 file, the name C.B. Martin caught Sibenik’s eye. Could this be Clara Brett Martin? It was.

The letter, typewritten on Martin’s legal stationery, was addressed to a lawyer in the attorney general’s offices, and was dated March 26, 1915. It was a complaint about the way titles to property were being “clouded” by the registration of fake agreements of purchase and sale.

Under the Registry Act, where a property deal has a long closing period or is conditional, the purchaser can register the agreement, so that the vendor can’t sell to anyone else in the

meantime, or mortgage the property in question.

But in Martin's day, a crook could register a bogus agreement, and an owner, who wanted to sell, or get a mortgage, would unexpectedly find his transaction blocked unless he went to court or paid off the crook. So Martin's letter identified a legitimate problem. Her suggested solution, however, that "all agreements or assignments... now registered should be declared void," made no sense. It was like saying all cheques in existence should be declared void just because people sometimes forge cheques.

But what really caught Sibenik's attention was the letter's feverish and unequivocal anti-Semitism. The words "Jew" or "Jews" appear nine times in the fairly short text. Martin writes: "There are ... nearly 100,000 foreigners of which about 40,000 are Jews. These Jews find buying and selling property a very profitable business." She describes various instances of invalid agreements of purchase and sale being registered; in each a person referred to only as a "Jew" is accused of having abused the registry system to blackmail innocent people. The letter concludes with a request "to have the Registry Act amended to prevent this scandalous work of foreigners."

There is a reply in the file which makes no mention of the letter's anti-Semitism but does offer dryly "I beg to say that some of the proposals you make in your letter are rather drastic." No follow-up correspondence has been uncovered.

Sibenik found the letter astonishing, but did nothing much with it except keep a copy to incorporate into his doctoral thesis, which is still unfinished. A few other copies seem to have circulated among members of the faculty at Osgoode, as a quirky antiquarian curiosity, but no one went public with it. Sibenik eventually went to work as a researcher of parliamentary procedure at Queen's Park, and, at some point in early 1990, happened to show the letter to a woman colleague at the legislature. Sibenik won't identify her, saying he asked her if she wanted to be interviewed for this article and she declined. But he knows she sent copies to acquaintances in legal academia.

And someone or other faxed one anonymously to Robert Martin, a law professor at the University of Western Ontario's Faculty of Law, and therefore a faculty colleague of Constance Backhouse's. Martin (no relation to Clara) pounced on the 1915 letter and wrote a gleeful column about it in *The Lawyers Weekly* in July, 1990. He included a reference to Backhouse's admiring article on Martin, describing it pointedly as "hagiography not history." *The Globe and Mail* got wind of the skirmish and a story on the letter appeared on July 19, 1990.

That was that: ten months after the emotional gala in her honour, Martin was out of fashion. The women-and-the-law caucus at the University Of Toronto Law School changed the name of the Clara Brett Martin Workshop Series to the Feminist Workshop Series. The Clara Brett Martin

Institute at Osgoode Hall Law School became the Institute for Feminist Legal Research. The funds for the full-sized portrait at Osgoode Hall dried up. Backhouse began to write an agonizing scholarly reappraisal of Martin.

Within the ministry of the attorney general, the revelations sparked a debate. Should the building be renamed or not? Weren't there some buildings named after racist men? Wasn't a double standard being applied? "We eventually decided we wouldn't change the name," said Ian Scott. "Her views were probably typical of the profession at the time. Besides, no-one called on us to change the name." That was in July, 1990. Two months later the Liberals were out of office.

The New Democrats, who came to power in September, felt differently. In April, 1991, the new attorney general, Howard Hampton, after consulting with Premier Bob Rae, decided to change the name after all.

So why is it still the Clara Brett Martin Building? "It will probably be named after a woman again," said the minister's spokesperson, Rosemary Hnatiuk. "But this time we're going to do better research."