

The Persons Case

A message from the Honourable Elaine McCoy
Minister Responsible for Women's Issues



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On October 18, 1929, a landmark decision changed the face of Canadian politics. A battle had been won – women were declared “persons” under the law and were granted the right to be appointed to the Senate. This victory was the result of an arduous struggle by five Alberta women, later to be known as the “Famous Five.”

Henrietta Edwards, Nellie McClung, Louise McKinney, Emily Murphy, and Irene Parlby helped to pave the way for a more equitable, just society.

In the spirit of the “Famous Five,” women of Alberta have continued to make significant strides towards equality, and governments have been partners in this progress. As Minister Responsible for Women’s Issues, I’m proud of the Government of Alberta’s commitment to improving the status of women. Over the years, we have implemented a number of initiatives that have created new opportunities and exciting challenges for the women of this province.

Each October, on the anniversary of the Persons Case, we salute the “Famous Five”. In many ways these truly unique individuals exemplify the qualities of Alberta women – pioneering in spirit, strong in their conviction, and committed to the community.

The anniversary of the Persons Case allows us to reflect on women’s past achievements, but more importantly it inspires us to look forward and set new goals that will help women achieve equality – equality in a real and full sense; economically, socially, and politically.



Elaine McCoy, Q.C.
Minister Responsible for
Women’s Issues

The Persons Case

“Women are persons in matters of pains and penalties, but are not persons in matters of rights and privileges.”

This 1876 British Common Law ruling was the stumbling block which, in the early part of this century, prevented Canadian women from taking an active part in public office and affairs of state.

In 1916 this situation came to the attention of Judge Emily Murphy, the first woman magistrate in the British Empire. As magistrate of the newly-created Women's Court in Edmonton, she had just severely sentenced a bootlegger when the latter's attorney challenged her ruling on the grounds that she was not a “person” and was therefore occupying the office of magistrate illegally. Judge Murphy reportedly handled the situation calmly, making a note of the lawyer's objection, but proceeded with the case. Apparently the lawyer repeated his objection every time he appeared in her court.



National Council of Women meeting in Edmonton, c.1900
Provincial Archives of Alberta

Magistrate Alice Jamieson of Calgary was similarly challenged a year later. However, the Alberta Supreme Court, in 1917, made the provision that “there is . . . no legal disqualification for holding public office in the government of this



country on the basis of sex.” Thus the authority of Judges Murphy and Jamieson was upheld and it was established that, in Alberta at any rate, women were “persons.”


However, the situation was by no means clear at a federal level. Emily Murphy became aware that the federal government would not appoint a woman to the Canadian Senate on the grounds that, according to *The British North America Act*, women were not “persons.”

For the next decade a number of Canadian women’s groups, including the Federated Women’s Institutes, the National Council of Women, and the Montreal Women’s Club, made representations to the federal government to open the doors of the Upper House to women. Promises were made by Prime Minister Meighan and later, Prime Minister Mackenzie King, to make changes in the *BNA Act*, but time passed and nothing happened.

In 1927 Emily Murphy decided to take matters into her own hands, and after consultations with several lawyers, learned that any five persons could initiate an appeal to the Supreme Court of Canada for clarification of any part of *The British North America Act*. So, Emily Murphy gathered around her four other determined Alberta women: Henrietta Edwards, Nellie McClung, Louise McKinney, and Irene Parlby. Together they were to become known as the “Famous Five.”

The “Persons Case” came before the Supreme Court of Canada on April 24, 1928 and the question asked by the Famous Five was very straightforward: “Does the word ‘person’ in Section 24 of The British North America Act include female persons?”





Their appeal was denied. The justification given for this decree was that since persons required for public office must be "fit and qualified," only men would be eligible for appointment. The women were shocked and disappointed at such a paternalistic ruling but, as Nellie McClung expressed it, *"This ruling leaves us abashed, but not despairing; humbled but not hopeless. Acts can be amended and we believe they will."*

The five women were true to this sentiment and did not let the matter rest. There was a further recourse – the Privy Council of England. And so, with Prime Minister King's support, they referred the petition to what was at that time Canada's highest court of appeal.

On October 18, 1929, Lord Sankey, Lord Chancellor of the Privy Council, announced the decision that *"women are eligible to be summoned and may become Members of the Senate of Canada."*

The battle was won and an important milestone in women's formal rights and responsibilities, with

respect to public affairs, was reached. As Emily Murphy stated to the press after the Privy Council's decision:

"We, and the women of Canada whom we had the high honour to represent, are not considering the pronouncement as standing for a sex victory, but rather, as one which will permit our saying 'we' instead of 'you' in affairs of State."

The Canadian government promptly appointed two women to the Senate as soon as vacancies became available: Honourable Cairine Wilson, from Ottawa, and later, Honourable Iva E. Fallis, from Peterborough, Ontario. However, none of "The Famous Five" were to receive that honour, and it would not be until 1979 that the Honourable Martha Bielish would become the first woman from Alberta appointed to the Senate.



Henrietta Edwards

Henrietta Edwards (née Muir) was 78 years old when the petition was signed and forwarded to Ottawa. She was a journalist and an accomplished artist, painting miniature portraits and china which were exhibited at the Chicago World's Fair in 1893. In 1875 she organized the Montreal Working

Girls' Association, a forerunner of the Young Women's Christian Association. The purpose of that organization was to provide poor working girls with vocational training and help in finding employment, as well as housing and recreational facilities. Being a legal expert, she worked as Convenor of Laws for the National Council of Women. Prison reform was one of her chief interests. She also worked helping to organize public

libraries, urged the establishment of mothers' allowances and equal parental rights, and pressed for divorce to be granted on equal grounds. Her book, *The Legal Status of Women in Canada*, was published by the federal government and she was a member of the Alberta Government Advisory Committee on Health.



Nellie McClung

Nellie McClung (née Mooney), well-known novelist, teacher, social reformer, and suffragist, served as a member of the Alberta Legislature between 1921 and 1926. During that time she actively campaigned for mothers' allowances, birth control, free medical and dental treatment for school

children, public health regulations, temperance, and the rights of women. She also campaigned for fairer property rights for women and the rights of women in divorce. In 1936 she became the first woman on the Board of Governors for the Canadian Broadcasting Corporation, and in 1939 was Canada's sole woman representative to the League of Nations.



Louise McKinney

Louise McKinney (née Crummy) had the distinction of being the first woman to be elected to a legislature in the British Empire. Active in the Alberta farm community as a social reformer, she was instrumental, along with Emily Murphy, in having *The Dower Act* passed in Alberta. She also helped

introduce laws for immigrants and more effective liquor laws and, she aroused public opinion against the unjust status of widows and separated wives.



Emily Murphy

Emily Murphy (née Ferguson) strongly believed women's associations could help with social reforms and worked to establish several women's clubs in Canada, as well as serving as President of the Canadian Women's Press Club. Her efforts resulted in *The Dower Act* being passed.

She believed that insanity was a disease, not a crime. Writing under the pen name of "Janey Canuck," she spoke out on drug addiction in her book *The Black Candle* and on birth control in *Pruning the Family Tree*. In 1930 she saw the first mental health clinic established in Alberta. She also worked toward the establishment of public playgrounds and the election of women as school trustees.



Irene Parlby

Irene Parlby (née Marryat) began her public life in 1916 when she took over the presidency of the United Farm Women of Alberta. Later elected to the Alberta Government, she became the second woman in the British Empire to serve as a cabinet minister, and was Minister without

Portfolio in the Alberta Cabinet from 1921 to 1935. During her years in public office, she supported 18 laws affecting the lives of women and children. These included a bill to improve the quality of rural education, legislation to provide municipal hospitals and public health nurses to rural districts in the province, and *The Minimum Wage For Women Act*. She was also responsible for having obstetrical nurses placed in outlying districts of the province not having doctors, and establishing child welfare clinics.

Women in Alberta and Canada 1876–1990

The Persons Case was only one of several significant events in Alberta's past. History also reveals other achievements that highlight women's courage and leadership, as well as the steady improvement in the status of women in Alberta. The following timeline summarizes some of these important events.

1876

A British common law ruling states that “women are persons in matters of pains and penalties, but are not persons in matters of rights and privileges.”

1881

Dr. Charlotte Ross becomes the first woman to practice medicine in Western Canada.

1885

In Alberta, unmarried women property owners gain the right to vote and hold office in school matters.

1889

Mary Ellen Birtles starts work as a nurse in the new two-nurse hospital at Medicine Hat.

1890

In Alberta, only male British subjects may serve as jurors. Fathers in Alberta are ruled to be the sole guardians of their children under 14.

1894

Unmarried women in Alberta gain the right to vote in municipal elections, but they cannot hold office.

1895

The Local Council of Women (Edmonton Chapter) is organized by Lady Ishbel Aberdeen, wife of the Governor-General.



Mrs. Wolf Child of Cardston, 1906
Provincial Archives of Alberta

1906

Katherine Hughes joins the staff of the *Edmonton Bulletin* as a journalist. She also becomes the first provincial archivist for Alberta.

1908

Gertrude Watt, women's editor and columnist for the *Edmonton Saturday News*, forms the Edmonton Chapter of the Canadian Women's Press Club.

1909

At a joint convention the Alberta and Saskatchewan provincial Women's Christian Temperance Unions pledge to work more actively for women's suffrage, that is, for women's right to vote.

1910

The Alberta Married Woman's Relief Act provides for a grant (from the husband's estate) to widows who do not receive enough from their husband's will.

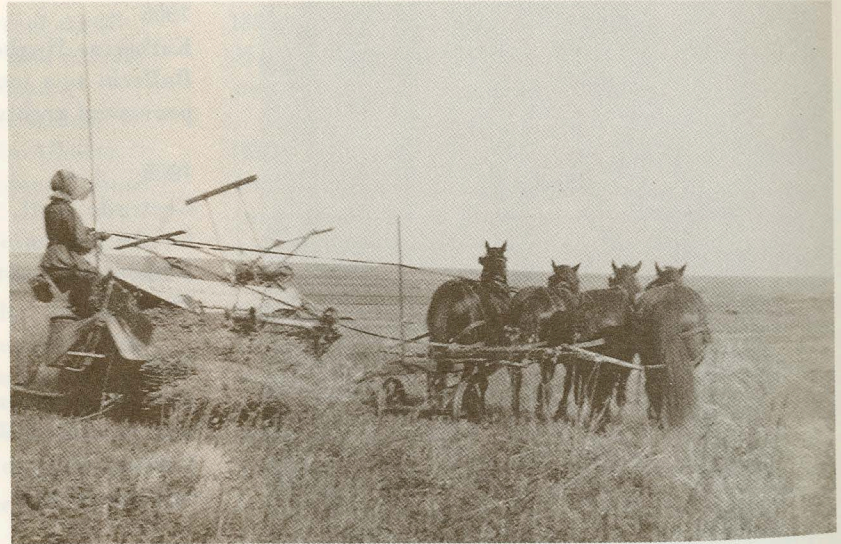
1912

The *Alberta Rural Municipality Act*, the *Town Act* and the *Village Act* (1913) empower any Alberta ratepayer to vote in municipal elections, but restrict office-holding to men.

The United Farmers of Alberta endorse women's suffrage.

1913

Alberta's *An Act Respecting Infants* allows a mother to petition the court for custody of her children.



Harvesting, Okotoks, c.1906

Provincial Archives of Alberta



Hillhurst Presbyterian Sunday School, Calgary, c.1914

1914

Alice Jamieson is appointed judge of the juvenile court in Calgary.

The Edmonton Equal Franchise League and the Calgary Local Council of Women present a petition to the government on behalf of 12,000 signers and 44 associations.

1915

Under the *Alberta Married Women's Home Protection Act*, a wife can prevent any transaction involving her homesite.

The Edmonton Grads begin their career. They will rule the basketball courts for twenty-five years, winning 502 of their 522 games, including all the exhibition matches held at four Olympic Games.

Nellie McClung publishes *In Times Like These*.



Voting, Westcott, Alberta, 1917

1916

The United Farm Women of Alberta is formed with Irene Parlby as President.

The *Alberta Equal Suffrage Act* gives women “absolute equality” with men in provincial, municipal, and school affairs, and thus permits women to vote in all Alberta-based elections.

Emily Murphy becomes the first female police magistrate in the British Empire.

1917

Louise McKinney and Roberta MacAdams are elected to the Alberta Legislature and become the first women elected to a political assembly in the British Empire.

The Dower Act is passed in Alberta providing a wife with a life interest in a homestead which cannot be disposed of without her consent.

Wives, daughters and sisters of male rate-payers in Alberta, as well as all ratepayers regardless of gender or marital status, are allowed to participate in school politics.



1918

Women in Canada gain the right to vote in federal elections.

Female delegates are admitted to the convention of the Alberta Federation of Labour.

1919

Under the federal *Naturalization Act*, a British subject who marries an "alien" is permitted to retain her citizenship.

In Alberta, the *Municipal Hospitals Act*, as drafted by Irene Parlby and committee, is passed. Alberta mothers whose husbands are dead or insane may apply for relief under the *Mothers' Allowances Act*.

1920

The Alberta Infants Act makes mother and father joint and equal guardians of their children.

1921

Nellie McClung is elected as a Liberal member in the Alberta Legislature, a position she will hold until 1926.

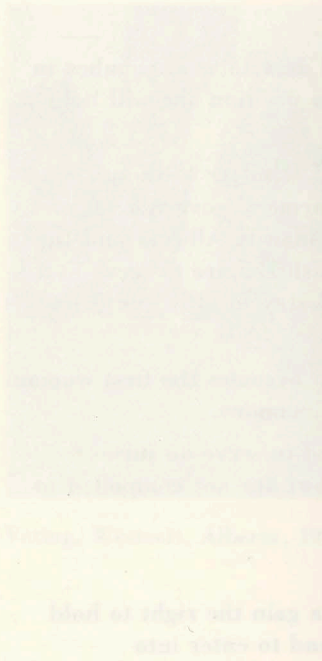
Irene Parlby is appointed Minister Without Portfolio in the United Farmers' government, and thus becomes the first woman in Alberta and the second woman in the British Empire to serve as a cabinet minister. She will stay in office until her retirement in 1935.

Agnes McPhail of Ontario becomes the first woman elected to the House of Commons.

Alberta women are allowed to serve on juries except in criminal cases but are not compelled to serve.

1922

Married women in Alberta gain the right to hold and dispose of property and to enter into contracts.



Ukrainian Women's Association of Olga Kobelianska, Smoky Lake, 1930
Provincial Archives of Alberta

1923

The Alberta *Children of Unmarried Parents Act* makes the father responsible for the support of his child.

1927

Dr. Emma Mary Johnstone arrives in Alberta to provide medical care in isolated northern communities.

1928

After a petition from Emily Murphy, Nellie McClung, Louise McKinney, Irene Parlby, and Henrietta Edwards, the Supreme Court of Canada decides that under the terms of *The British North America Act* women are not persons and, therefore, cannot be appointed to the Senate.



Provincial Archives of Alberta



Mechanics at No.2 Air Observer School, 1943
Provincial Archives of Alberta

1929

The “Persons Case” goes to the British Privy Council which overturns the decision of the Supreme Court of Canada: women are deemed to be “persons” and are qualified to sit in the Senate.

1930

In Alberta, the *Sex Disqualification Removal Act* allows women to enter any profession and to hold any civic, judicial, or government position.

Honourable Cairine Wilson of Ontario becomes the first woman senator in Canada and gives full credit to the work of Emily Murphy and friends.

1937

Alberta’s *Married Women’s Act* establishes that married women have the same rights as any other person except that spouses cannot sue each other.

1941

Cora Casselman of Edmonton becomes the first Alberta woman elected to the House of Commons.



1954

The Women's Bureau, Federal Department of Labour, is created.

1966

The *Alberta Human Rights Act* is passed and prohibits discrimination on the basis of race, religious beliefs, colour, ancestry, or place of origin. Discrimination on the basis of gender is not included.

1967

The Royal Commission on the Status of Women is appointed.

Lola Lange, an active member of the Alberta Farm Women's Union, is appointed to the Royal Commission.

1970

The report of the Royal Commission includes 167 recommendations, 78 of which apply to Alberta.

1971

Alberta becomes the first province to appoint a Citizen's Advisory Board to study the Royal Commission Report.

Alberta women are called to serve equally with men on juries and can no longer refuse to serve.

The *Alberta Human Rights Act* is amended to include gender, marital status, and age as protected categories.

The federal government creates the cabinet portfolio of Minister Responsible for the Status of Women.

1972

Alberta's *Domestic Relations Act* is amended so that either spouse may be granted alimony.

In Alberta, the *Individual's Rights Protection Act* is amended so that men and women performing similar work in the same establishment will receive the same pay.



1973

Helen Hunley becomes Alberta's first Solicitor General and the first woman cabinet minister in Alberta with a full portfolio.

The "Murdoch Case" judgement by the Supreme Court of Canada states that a "farm wife has no legal interest in land belonging to her husband." Only the financial contribution of the wife was considered.

Edith Lavell loses her case in the Supreme Court of Canada which refuses to declare sections of the *Indian Act* discriminatory to women and against the Canadian Bill of Rights.

The Canadian Advisory Council on the Status of Women is established.

1975

International Women's Year sees the following federal statutes changed to allow for more equality between men and women: *Criminal Code*, *Canada Pension Act*, *National Defense Act*, *Canada Elections Act*, *Unemployment Insurance Act*.

1977

Alberta women gain an entitlement to 18 weeks unpaid maternity leave after one year's service with one employer under the *Employment Standards Act*.

1978

Under criminal law in Alberta, both females and males are considered to be adults at the age of 16.

1979

The Government of Alberta creates the cabinet post of Minister Responsible for Women's Issues.

Alberta's *Matrimonial Property Act* gives judicial discretion in recognizing the contributions of a wife as homemaker and mother in the division of assets upon marriage breakdown.

Honourable Martha Bielish becomes the first woman from Alberta appointed to the Senate.



On March 8, 1980, Edmonton women marked International Women's Day with a march at the Legislature Building.

Provincial Archives of Alberta



1981

The United Nations Human Rights Commission finds Canada in breach of the International Covenant on Civil and Political Rights over sexual discrimination in the *Indian Act*.

1982

Honourable Bertha Wilson of Ontario is appointed as the first woman to the Supreme Court of Canada.

Sections 15 and 28 of the *Canadian Charter of Rights and Freedoms* guarantees equality between women and men.

1984

The Alberta Women's Secretariat is established as the central coordinating structure within the Government of Alberta to address the wide range of issues which impact on women in the province.

The Office for the Prevention of Family Violence is established by the Alberta Government to provide support and leadership in developing an effective approach to the problem of family violence in Alberta.

The findings of the Royal Commission on Equality in Employment (Abella Report) are published.

Honourable Jeanne Sauvé becomes Canada's first female Governor-General.

1985


Bill C-31 is passed in the House of Commons to eliminate sexual discrimination from the *Indian Act* and to offer full reinstatement to all those born with Indian status.

Alberta's *Individual's Rights Protection Act* is amended to ensure that women employees are protected from dismissal because of pregnancy.

Alberta's *Maintenance Enforcement Act* is passed to ensure that, in the event of a divorce, all who are entitled to court-ordered maintenance receive payments regularly.



Canada's Governor-General Jeanne Sauvé signs Lieutenant-Governor Helen Hunley's guest book during her Edmonton visit in 1985.
Provincial Archives of Alberta



The *Charter Omnibus Act* is enacted in Alberta in response to the *Canadian Charter of Rights and Freedoms*, for the purpose of eliminating all statutory provisions in Alberta that were discriminatory on the basis of gender.

The Honourable Helen Hunley becomes the first female Lieutenant-Governor in Alberta.

1986

The Alberta Advisory Council on Women's Issues is established as a separate citizen's advisory body with a mandate to identify specific matters relating to women and to make recommendations to the Government.

Women's Career Resources, an office within Alberta Career Development and Employment, is established to provide information, consultation and training to career practitioners on women's issues in employment.

1987

Honourable Claire L'Heureux-Dubé of Quebec is appointed to the Supreme Court of Canada.

1988


The Access Initiatives Branch is established within the Apprenticeship and Trade Certification Branch of Alberta Career Development and Employment. Its mandate is to design programs and services to increase the representation of women and other designated groups in Apprenticeship Programs.

Alberta's *Employment Standards Code* is amended to provide for unpaid adoption leave.

1989

Honourable Beverly McLachlin, a graduate of the Faculty of Law at the University of Alberta, is appointed to the Supreme Court of Canada.

The Government of Alberta announces the Alberta Plan for Action for Women, a long-term framework for government-wide action in the areas of family, workplace, education and training, health, community, and the public service.



The Supreme Court of Canada makes landmark decisions upholding women's reproductive rights, finding that sexual harassment is a form of sex discrimination and affirming pregnant women's entitlement to their employers' sickness benefits.

A Royal Commission on New Reproductive Technologies is established to examine the medical and scientific developments of the technologies, as well as their social, ethical, health, research, legal and economic implications.

Audrey McLaughlin, Member of Parliament from the Yukon, is elected as leader of the federal New Democratic Party and becomes the first woman ever to lead a national political party in Canada.

1990

Alberta's *Individual's Rights Protection Act* is amended to expand the protection of pregnant women in all areas of discrimination covered by the *Act* and to extend protection from sexual harassment to domestic and live-in farm workers.

The Declaration on Violence Against Women is released by the Federal/Provincial/Territorial Ministers Responsible for the Status of Women at their meeting in Lake Louise, Alberta. The Declaration is in recognition that violence against women continues to be a major impediment to women's equality and that action must be taken to eliminate this violence.

The second year of the Alberta Plan for Action for Women begins with the announcement of 11 initiatives. This brings the total number of initiatives introduced under the Plan to 31.

1991

The third year of the Alberta Plan for Action for Women begins with the announcement of 15 initiatives. This brings the total number of initiatives introduced under the Plan to 46.

The Federal/Provincial/Territorial Ministers Responsible for the Status of Women release *Building Blocks: Framework for a National Strategy on Violence Against Women*. This document outlines measures that can be taken by individuals, communities, and governments to eliminate violence against women.

British Columbia's Rita Johnston becomes Canada's first female premier.

The Canadian Panel on Violence Against Women is established to examine violence against women in all its dimensions, to seek solutions, and to make recommendations for action.

Nellie Cournoyea is elected government leader of the Northwest Territories, and becomes the first woman to sit at the first ministers' table.

December 6 is declared a National Day of Remembrance and Action on Violence Against Women to commemorate the massacre of 14 female engineering students at the Ecole Polytechnique in Montreal in 1989.



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