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THE PERSONS CASE
L'AFFAIRE DES FEMMES NON RECONNUES CIVILEMENT

The Persons Case is a landmark legal decision in the struggle of Canadian women for equality. Although most women were given the right to vote in federal elections and to hold seats in the House of Commons in 1918, their eligibility for appointment to the Senate and other positions of "privilege" remained in question. When five Alberta women, Emily Murphy, Henrietta Muir Edwards, Louise McKinney, Nellie McClung and Irene Parlby, campaigned to have a woman named to the Senate, their request was denied on the grounds that women were not "persons" eligible for such appointments under the terms of the British North America Act (1867). This interpretation was upheld when the matter was referred to the Supreme Court of Canada in 1928. The women appealed to the Judicial Committee of the Privy Council, at the time the highest court in the British Empire. On 18 October 1929 the Committee ruled that the word "persons" in Section 24 of the Act included women as well as men.

(982 spaces)
Approved by the full Board, 20 July 1998

Cette affaire représente un point tournant sur le plan légal dans la lutte des Canadiennes pour l'égalité. Bien que la plupart des femmes aient obtenu le droit de vote au fédéral et celui de siéger à la Chambre des communes en 1918, leur accession au Sénat et à d'autres fonctions désignées continuait de leur être refusée. Cinq Albertaines -Emily Murphy, Henrietta Muir Edwards, Louise McKinney, Nellie McClung et Irene Parlby -lancèrent alors une campagne en vue d'obtenir la nomination d'une sénatrice, mais on leur opposa un refus sous prétexte que les femmes n'étaient pas des «personnes» admissibles à de telles fonctions aux termes de l'Acte de l'Amérique du Nord britannique (1867). Cette interprétation ayant été confirmée en 1928 par la Cour suprême du Canada, elles en appelèrent au Comité judiciaire du Conseil privé à Londres, à l'époque le plus haut tribunal de l'Empire britannique. Le 18 octobre 1929, le Comité déclara que le mot «personne» dans l'article 24 de l'Acte de l'Amérique du Nord britannique désignait tout autant les femmes que les hommes.

(1020 frappes)
Approuvé par la Commission, le 20 juillet 1998

John Grenville
Parks Canada

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INSTITUT CANADIEN DES DROITS HUMAINS

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July 28, 2000

The Honourable Gildas L. Molgat,
Speaker of the Senate,
The Senate,
Ottawa, Ontario
K1A 0A4

Dear Speaker Molgat,

RE: FAMOUS FIVE FOUNDATION
MISREPRESENTATIONS OF PERSONS CASE

Thank you for your letter of 4 July, and for arranging to have me sent copies of the materials relating to the maquette and statues and materials relating to the Privy Council decision on October 18, 1929.

There are major problems relating to the materials of the Famous Five Foundation, including the statues themselves.

Enclosed is a copy of my letter of even date to Mr. Paul Bélisle which sets out those problems.

This is a matter that will attract increasing publicity as it becomes known. If you would have your office give me a call with suggested dates to meet you and Mr. Bélisle to discuss the matter, I will do my best to accommodate my time to yours.

With best regards,

(Dr.) Marguerite E. Ritchie, C.M., Q.C., LL.M., LL.D.
PRESIDENT

ENCL.

MER/le

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OTTAWA, ONTARIO
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July 28, 2000

Mr. Paul C. Bélisle,
Clerk of the Senate,
The Senate,
Ottawa, Ontario
K1A 0A4

Dear Mr. Bélisle:

Thank you for your letter of July 7, 2000 with respect to the Institute's recommendation that the Senate obtain paintings of the Famous Five by noted Canadian artist Alice Tyler, for hanging in the Lobby of the Senate.

Alice Tyler received the Persons Award in 1996 for her lifelong concern with the lives of Judge Emily Murphy and her four colleagues, and the realism with which she has rendered them. Her expertise is unique.

I note your statement that "Current policies do not allow us at this time to hang portraits other than those presently displayed in the foyer and in the corridors of the Senate Chamber." Your letter indicates that there is no present intention to review the policy.

Mr. Bélisle, policies are not set in stone. I have received from Ms. Tyler a copy of your very encouraging letter to her dated June 29, 2000. That letter suggests that the recommendation with respect to the Senate obtaining paintings from her to be hung within the Senate precinct is now under consideration.

There appears to be a contradiction. Would you please help me and the Institute understand the situation, by sending me a copy of the policies to which you refer, and informing me what is needed to have these policies reviewed and updated?

Would you also send me a copy of the materials provided to the Senate by the Famous Five Foundation, and information about how the Senate was able to make such extraordinary arrangements for statues dealing inaccurately with the decision by the Privy Council on October 18, 1929?

I am sure that you know that there has been controversy about the statues. They misrepresent the decision of the Privy Council. The paintings within the premises of the Senate will provide an appropriate recognition by the Senate of the actual decision. Judge Murphy and her colleagues wanted women to be within the Senate. It is surely time that they are given their place.

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Your letter to me also outlined the support of the Senate for the maquette display and for the statues that are to be put up on Parliament Hill on October 18, 2000.

I am totally in support of recognition of these women by statues on Parliament Hill. The statues unfortunately falsify the event. It is important to examine how they do so. There are three important ways:

1. The imaginary bilingual Newspaper

   There were no such newspapers in 1929. Historical details should not be changed.

2. The message on the imaginary newspapers is also wrong.

   The message states: "Women are Persons", and "Les femmes sont des personnes." That is not what the Privy Council decided. Nor did the newspapers of the day claim that it did. They were clear that the case dealt with appointmen

   The Institute has copies of newspapers of that time. The Ottawa Citizen declared: "Privy Council Rules That Women Eligible to Become Members of the Canadian Senate." Le Devoir stated: "Les femmes sont éligible au Sénat du Canada."

   That is the correct message. In the words of Lord Sankey, the case decided

   > "that women are eligible to be summoned to and become members of the Senate of Canada, and they will humbly advise His Majesty accordingly."

   That was the only goal of the Alberta Five (as they were also known).

3. The representation of the five women reduces Judge Emily Murphy, the single person responsible for the case, to a minor role.

   The statues show Mrs. McClung and Irene Parlby holding up the imaginary newspaper announcing the victory, while Judge Murphy, who was directly responsible for the case from beginning to end, is shown rising from her chair and reaching out in surprise or consternation to the other two women who are shown as the leaders.

   I can only describe such a representation as false history. Whether it is deliberate or done out of ignorance, the situation is the same. I have a copy of the actual Department of Justice file. It was Emily Murphy who planned and organized the case, and who wrote the letters to the Government.

   After the victory, the other women gave Emily Murphy the credit publicly. None of them claimed that it had been a joint work. They understood that their names were needed. They supported the case. They deserve credit for

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their support. The statues are, however, pure revisionism. It is inexcusable because I provided Mrs. Wright and her supporters with access to our file from that case, and countless important papers.

The authoritative book on the subject is "Emily Murphy Crusader" by Byrne Hope Sanders (MacMillan, 1945). At page 250, responding to public statements by the other women recognizing that she was solely responsible, Emily Murphy is quoted in a letter as follows:

> "Wasn't Mrs. McClung a big soul to come out and say what she did? She need not have, either, because it was a wonderful thing for those four women to have left their names and reputations in my hands, not knowing what I was going to do or say. It was a matter of implicit trust on their part, and is one of the most beautiful things which has happened to me."

The book quotes the words in brass on her crypt:

> "Originator and leader of movement admitting women to the Senate."

WHAT CAN BE DONE?

The Senate has a direct interest in ensuring that this part of its history is correct.

I have always supported the Senate for its ability to do in-depth research on matters of public interest. Here the Senate is dealing with an historic case deciding who is eligible to be appointed to the Senate, and the Senate has failed.

The invitations sent out by the Senate to the unveiling of the maquette on June 29, 2000, described the 1929 Privy Council decision wrongly as "redefining the word 'persons'". The impression given was that the 1929 case had nothing to do with the Senate. Many of the speeches given at the ceremony, and the actress who spoke there and afterwards when tourists visited the maquettes, stated over and over again that this case decided that women were persons. Or that women were persons and were therefore eligible for political office "including judges and the senate." Such statements are nonsense. Judge Murphy was a judge in Alberta before the case began.

You might also like to know that the Parliament of Canada had recognized that women were persons in the 1918 Act giving them the right to vote. The first sentence reads:

> "1. (1) Every female person shall be entitled to vote at a Dominion election who..." (An Act to confer the Electoral Franchise upon Women (ch. 20) 8-9 George V).

The Act refers repeatedly to "a female person".

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If the Senate does not take steps now to deal with this issue, it will become a matter of continuing and increasing embarrassment. It is certainly possible to change the first and second of the three falsifications noted above, by an appropriate tablet (in English and French) at the base of the monument, giving the correct story of Emily Murphy and the four women to whom she looked for public support and who recognized publicly that theirs was a nominal role.

Whether it is possible to correct the monument itself is another matter that must be discussed. The problem was known to Mrs. Wright and the sculptress. It cannot be covered over.

I think you will understand from the above, why it is very important to have the Alice Tyler paintings if it is possible to get them at a reasonable price, to provide accuracy on this matter within the Senate Lobby itself.

I have spent a great deal of time with Mrs. Wright and her group, and provided very important documents to them. Alice Tyler has been untiring in her efforts to convince them of the actual decision of the Privy Council. So has the distinguished Judge Marjorie Bowker, also of Edmonton. Mrs. Wright assured me of many things, including a definite promise that the false claim "Women are Persons" would not be used. She has not carried out those promises.

It is important to resolve this matter. I understand that Mrs. Wright's Foundation is receiving or will be receiving Federal funds to contact Provincial Departments of Education to provide the same misinformation to them. There is a major question about the lack of research before such funds were approved.

It is important to resolve this matter urgently. I will be prepared to meet with you and with Speaker Molgat and any other persons you wish, in order to help put accurate history on Parliament Hill.

Yours very truly,

Marguerite E. Ritchie

(Dr.) Marguerite E. Ritchie, C.M., Q.C., LL.M., LL.D.
President

MER/le

cc the Honourable Gildas L. Molgat
Speaker of the Senate

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August 14, 2000

The Honourable Sheila Copps
Minister of Canadian Heritage
House of Commons
Ottawa, Ontario
K1A 0A6

No. Invitation IN 2000-02347
Resp. / Lead CIDOCPM
CC: PRONY, SWC, CIADI
ACK - FILE

Dear Minister Copps:

Thank you very much for your congratulations on my citation as a Member of the Order of Canada.

I appreciate your comments on my lifelong work for Canada. I am therefore asking you, as Minister of Canadian Heritage, to meet with me to discuss what can be done to correct the misrepresentations of Canadian history on the statues of the Famous Five that are intended to be erected on Parliament Hill on October 18, 2000.

Enclosed are copies of my letters of July 28 last, to Mr. Paul Bélisle, Clerk of the Senate, and to the Honourable Gildas Molgat, Speaker of the Senate.

Would you please read these letters personally and have your office set up a meeting with me.

I have no desire to embarrass the Government by this issue. As Minister of Canadian Heritage, your voice will be influential in ensuring that the corrections are made so that the ceremony can be carried out on the due date.

Thank you again for your congratulations. I will look forward to hearing from you urgently.

Sincerely yours,

Marguerite E. Ritchie

(Dr.) Marguerite E. Ritchie, C.M., Q.C., LL.M., LL.D.
PRESIDENT

Encl. - Copy of letter of July 28 to Mr. Paul C. Bélisle
Copy of letter of July 28 to Speaker Gildas L. Molgat

MER/lmm

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7275-14-2

Canadian Heritage

Canadian Heritage/Patrimoine canadien
MCS

2001/02/21 - 16:26

Docket No.:	CH2001-03354	Document date:	2001/02/14
Previous/Précédent :	CH2001-03246	Date received:	2001/02/21

BF date:
Due date:
Campaign code:
Priority/Priorité: #

Lead/Responsable: CPDGPA

Author/Auteur: Gagliano, Alfonso

COPY

Title/Organization: Minister
Public Works and Government

Subject: Fwds copy of ltr to Frances Wright, Famous 5 Foundation, re the addition of a small plaque beside the Famous Five Monument and the reasoning behind not allowing individual cititzens' names to be enshrined on the Hill

Action: Information

c.c.: M. BELISLE (MO)
c.c.: CIDCI / PCECO
c.c.:

Charged To: DG Portfolio Affairs/Affaires port
Information

Comments:

Approved by: _____ DG (or designate) _____ (Date)

_____ ADM/CEO/RExD (or designate) _____ (Date)

Signature [ ] required _____ DM _____ (Date)

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CH2001-03354
cm

Cabinet du ministre
des Travaux publics et des
Services gouvernementaux

Receveur général du Canada

Office of the Minister
of Public Works and
Government Services

Receiver General for Canada

Ottawa, Canada K1A 0S5

FEB 14 2001

Mrs. Frances Wright
President and Chief Executive Officer
Famous 5 Foundation

s.19(1)

Dear Mrs. Wright:

This refers to your letter of December 5, 2000, to the Right Honourable Jean Chrétien, a copy of which you sent to the Honourable Alfonso Gagliano, concerning the addition of a small plaque beside the Famous Five Monument. Minister Gagliano has asked me to reply to you on his behalf.

Indeed, the unveiling of the monument that the Famous 5 Foundation (F5F) donated to Canadians was one of the memorable highlights of the year 2000, for the symbolism it conveys. In your letter, you request that the government considers engraving on the new bronze interpretative plaque of the monument the names of the five principal private donators who made the gift possible. Please allow me to provide you with the following information.

As you know, a few precedents were allowed recently on the grounds of Parliament Hill in order to recognize national organizations whose members and benefactors contributed partly or wholly to two new permanent commemorations. I am referring to the Peace and Police Officers Memorial and the Victoria Tower Bell. In both cases, the associations involved with these commemorations were duly noted on interpretation plaques by simply including the organizations' logo and name. I believe that the same acknowledgement is planned for the F5F as the legal organization representing all its benefactors.

Please allow me to explain the reasoning behind our position of not allowing individual citizens' names to be permanently enshrined in the landscape of the Hill.

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Canada

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As you may know, in the case of a Prime Minister, it has been customary to wait two years or more after the death of the Prime Minister before erecting a statue to their memory. This sobering period gave the government a reasonable period of time to protect both the government institutions and the memory of the deceased against unnecessary criticism, which may surface following their death. In the case of the monument sponsors, we must consider that since they are still alive and well, there could be a chance that one or more of these people's past actions or indeed future actions could raise concerns and reflect on the national institutions represented by Parliament Hill.

As well, the persons you have identified may not be representative of all the benefactors. There may be other smaller contributors to the F5F who may feel left out. Likewise, there are many people who contributed countless hours to the realization of the monument who may not be recognized.

Finally, the government receives gifts from many other sources. By allowing a precedent, such as you are requesting, it may force the government to likewise acknowledge private donators on the grounds of Parliament Hill or in other public areas of the Parliamentary Buildings. As you will note, there are serious concerns to consider. I am pleased to inform you, however, that many of these concerns will be answered by a new draft policy on Commemorations on Parliament Hill which Public Works and Government Services Canada (PWGSC) is spearheading.

I understand that a formal written agreement between F5F and PWGSC outlining the conditions for the Government of Canada to accept the gift was signed on October 16, 2000. The paragraph pertaining to the plaque specifies that "PWGSC will be responsible for the design of the Interpretative Plaque which will be provided with the Sculpture. The F5 Foundation or the National Capital Commission will provide PWGSC the text to be included in the Interpretative Plaque. Approval of the text by all parties must be obtained prior to its fabrication."

We will ensure that PWGSC fully respects both the intent and the letter of the signed agreement. The new permanent interpretative plaques to be cast in bronze, which are to replace the temporary plastic ones, will be prepared in full consultation and with the approval of all parties involved. I can also assure you that the name of the F5F will be appropriately acknowledged. However, I regret that we cannot endorse including the names of individual private citizens on a plaque on the grounds of Parliament Hill.

.../3

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In closing, let me congratulate you on the manner in which you led this very important initiative to its successful conclusion. Please accept my best wishes for the future in your new endeavours.

Yours sincerely,

Original Signed by
Original signé par

Jean-Marc Bard
Executive Assistant

c.c. The Right Honourable Jean Chrétien, P.C., M.P.
The Honourable Sheila Copps, P.C., M.P.
The Honourable Hedy Fry, P.C., M.P.

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Canadi. . Heritage

Canadian Heritage/Patrimoine canadien
MCS

2002/01/23 - 11:07

dossier Famous Five

Docket No.:	CH2002-02105	Document date:	2002/01/09
Previous/Précédent :	CH2001-16486	Date received:	2002/01/23
		BF date:	
		Due date:	
		Campaign code:	
		Priority/Priorité:	#

Lead/Responsable: CIDCI

Author/Auteur: Gagliano, Alfonso

Title/Organization: Minister
Public Works

Subject: Forwards copy of response to [redacted] regarding the Famous Five monument on Parliament Hill

Action: Information

s.19(1)

c.c.:
c.c.:
c.c.:

Charged To: Can. Ident Direct/Direct Identité can. Information

Comments:

Approved by: _____ DG (or designate) _____ (Date)

_____ ADM/CEO/RExD (or designate) _____ (Date)

Signature [ ] required _____ DM _____ (Date)

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CM2002 - 02105 JD

Cabinet du ministre des Travaux publics et des Services gouvernementaux

Receveur général du Canada

Office of the Minister of Public Works and Government Services

Receiver General for Canada

Ottawa, Canada K1A 0S5

JAN 9 2002

Dear [redacted]

This refers to your letter dated July 9, 2001, with attachments, to Mr. Gilles Pineau, a copy of which he forwarded to the Honourable Alfonso Gagliano, regarding the Famous Five monument. Minister Gagliano has asked me to reply to you on his behalf.

I should explain that the text for the interpretative plaques was initially developed by the Famous Five Foundation and then sent to the Human Rights Institute in Ottawa for comments. The Institute made modifications which we accepted and we also obtained a copy of its file on the Persons Case. We then requested a thorough review of the interpretative texts by historians from the National Archives of Canada. However, the final plaques are yet to be installed on Parliament Hill because of technical difficulties in engraving the bronze.

We are confident that the plaques will reflect historical accuracy. When they are installed, they will read:

"The 'Persons' Case of 1929 is a celebrated landmark victory in the struggle of Canadian women for equality. For years, groups had repeatedly requested that a woman be appointed to the Senate, often naming Judge Emily Murphy as their candidate. However, five successive federal governments maintained that women were ineligible to serve in the Senate on the basis that they were not "qualified persons" according to Section 24 of the British North America Act of 1867.

In 1927, Judge Murphy invited four Alberta leaders - Henrietta Muir Edwards, Louise McKinney, Nellie McClung and Irene Parlby - to join her and petition the Government for an interpretation of the word "persons" in Section 24. In 1928, the Supreme Court ruled that, according to the British North America Act, women were not qualified for the Senate. The Famous Five then persuaded the Prime Minister to appeal the decision to the Judicial Committee of the Privy Council of Great Britain, the final court of appeal for Canada until 1949.

.../2

Canada

s.19(1)

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On October 18, 1929, the Privy Council reversed the Supreme Court decision: "... their Lordships have come to the conclusion that the word "persons" in s. 24 includes members both of the male and female sex, and that, therefore, the question propounded by the Governor General should be answered in the affirmative, and that women are eligible to be summoned to and become members of the Senate of Canada..." In the decision, the Chancellor of the Privy Council, Lord Sankey, compared the British North America Act to "a living tree capable of growth and expansion". He added that "the exclusion of women from all public offices is a relic of days more barbarous than ours, but it must be remembered that the necessity of the times often forced on man customs which in later years were not necessary."

Thereafter, women were eligible for appointment to the Senate. Although none of the Famous Five became senators, these determined nation builders achieved a victory of great symbolic importance, and their many contributions paved the way for women to participate in other aspects of public life."

The interpretative plaques will also include biographical notes pertinent to the five persons represented in the sculpture, as visitors will want to know who they were. While the contribution of four of the persons who lent their names to the Persons Case was limited, they were prominent personalities in their own right.

I trust that the foregoing information is of assistance. Please accept my best wishes.

Yours sincerely,

Original Signed by
Original signé par

Jean-Marc Bard
Executive Assistant

c.c. The Right Honourable Jean Chrétien, P.C., M.P.
The Honourable Sheila Copps, P.C., M.P.
The Honourable Anne McLellan, P.C., M.P.
The Honourable Vivienne Poy, Senator