

The Person's Case (1929)

On October 18, 1927, the Minister of Justice submitted a report to the Governor General of Canada regarding a petition submitted by Henrietta Muir Edwards, Nellie McClung, Louise McKinney, Emily Murphy and Irene Parlby. The Famous 5's petition requested the Governor General to direct the Supreme Court of Canada to consider whether women were eligible to become Senators under the British North America Act, the Act of British Parliament which governed the country at this time. The Minister's report to the Governor General stated that while the government was of the view that only men were eligible to become Senators, it would nevertheless be "an Act of justice to the women of Canada to obtain the opinion of the Supreme Court of Canada upon the point." The Minister put forward the following question for the Court's consideration:

Does the word "Persons" in section 24 of the British North America Act 1867, include female persons?

Prior to the mid-1800s legal language distinguished when the law applied to male persons and female persons and when the law applied to one sex only. However, sometime between 1822 and 1878 there was a decision made to stop referring to both sexes expressly. Male terms such as "he" would be sufficient to include women when the law applied to both sexes. The language

no longer made it clear when "person" meant only male persons. From 1850 on, "person" became synonymous with male person. This was the reason that Canadian women had to put forward the above question in the first place.

The Supreme Court of Canada replied that the word "person" did not include female persons. Fortunately for Canadian women, the Famous 5 were able to appeal to an even higher court, the British Privy Council. The question was duly submitted to them and on October 18, 1929 they overturned the decision of the Supreme Court by deciding that the word "person" did indeed include persons of the female gender.

The word "person" always had a much broader meaning than its strict legal definition, and it therefore had been used to exclude women from university degrees, from voting, from entering the professions and from holding public office. The definition of "person" became a threshold test of women's equality. Only when Canadian women had been legally recognized as persons could they gain access to public life. After 1929, the door was open for women to lobby for further changes to achieve equality. As women across Canada can confirm today, that struggle continues.

Source: "The Person's Case (1929)." Global Perspectives on Personhood. <http://people.ucalgary.ca/~gpopconf/person.html>