Emily Ferguson Murphy (1868-1933)

Emily was a best-seller author under the name Janey Canuck. She served on many local boards and committees and was especially interested in women and children’s causes. She was very instrumental in the passing of the Dower Act and the Married Women’s Protection Act 1910 – 1911.

Before that time, women were prohibited from owning property and, upon the death of her husband any property went to a male relative or other male, leaving the widow at his mercy for her support. One particular instance is attributed as having precipitated the movement to change to this deplorable law. A woman with a large number of children living on their farm was told, to her complete surprise, that her husband had sold everything before he left, and that she and her family had to move out. News of this woman’s plight reached Emily and her cohorts and they commenced their efforts for change.

As a result, the Dower Act was passed, but this act was not seen as being encompassing enough and the women pressed on. Ultimately, the Married Women’s Protection Act was passed whereby a widow was assured of one-third of her husband’s estate no matter what his will said.

Several years later in 1916, the Local Council of Women was attending court when a case involving prostitution came up. The judge asked the ladies to leave because the details would
be too unseemly for the delicate ears of “decent women.” The ladies related this to Emily Murphy and she promptly visited the Attorney General and asked why it wouldn’t have made more sense to ask the men to leave and have an all-woman court with a woman judge. His reply was, “Good idea.” A few days later he asked Emily to take the job of magistrate for the newly organized Women’s Court. Although she had no legal training, she accepted and became the first female magistrate in the British Empire.

She studied law notes and cases and sought advice from her Ontario lawyer brothers. But it wasn’t legislation that tripped her up. It was the narrow interpretation of the British North America Act of 1867 (Constitution of Canada). On her very first day one of the lawyers challenged her right to preside over a court case since, under the B.N.A. Act, she wasn’t a person. She did preside and that night she checked the B.N.A. Act. Sure enough, According to the wording in the Act, she (a woman) wasn’t a person and couldn’t be appointed to the Senate.

In 1919, women’s organizations from across Canada submitted her name as a candidate for the Senate. Once again, Emily was told she was not a person. Three Prime Ministers from 1920 to 1927 refused to appoint her because she was not a person. She became tired of hearing she was not a person when she knew she was! One of her brothers found an obscure clause in the Supreme Court of Canada Act that would allow “five persons” acting as a unit to ask for an interpretation of any part of the B.N.A. Act. She picked her co-appellants Nellie McClung, Louise McKinney, Henrietta Muir Edwards, and Irene Parlby.

In 1927, the five women signed a petition to be sent to the Supreme Court asking, “Does the word ‘person’ in Section 24 of the B.N.A., 1867, include female persons?” That is, did it mean female persons as well as male persons? In 1928, the Supreme Court said, “No. It does not include women.” This was likely one of the lowest points of the Government of Canada.
The women met again for a “pink tea” and decided to appeal the decision of the Supreme Court to the final court of appeal, The Privy Council of England. They also agreed it was best to send their trusted lawyer to handle it. On October 18, 1929, five judges of the Privy Council said, “Yes. Women are persons and eligible to be appointed to the Senate.”

The many “pink tea” meetings, the research, and letters carefully and tactfully written by Emily and her four supporters and advisors show the determination of these women. They celebrated their victory as “persons” in the Crystal Ballroom of the Palliser Hotel in Calgary.

Women of Canada waited for Emily to be named to the Senate. She wasn’t, possibly because Mackenzie King viewed her in power at the time, as being too much of a potential “trouble maker.” Cairine Wilson from Ontario became the first woman Senator. It should be noted, however, that Cairine herself was a leader of lesser but still impressive prominence in women’s and social reform issues. She further distinguished herself in the Senate by continuing her reform minded work and by being one of the few Canadians to protest the restrictive immigration policies that barred safe haven to many Jews and others fleeing Nazi persecution in the 1930s. Emily Murphy died in her sleep from a heart attack in 1933.