Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2010-0184

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF a motion by the Consumers Council of Canada in relation to section 26.1 of the *Ontario Energy Board Act, 1998* and Ontario Regulation 66/10.

BEFORE: Howard Wetston
Chair

DECISION WITH REASONS

August 5, 2010

THE PROCEEDING

On April 26, 2010, a Notice of Motion was filed by the Consumers Council of Canada ("CCC") regarding the assessments issued by the Ontario Energy Board (the "Board") pursuant to section 26.1 of the *Ontario Energy Board Act, 1998* (the "Act").

On May 11, 2010, the Board issued a Notice of Hearing and Procedural Order No. 1 (the "Notice") in which the Board decided that before determining whether or not it would hear the motion, the Board intended to hear argument on a number of preliminary questions that were set out in the Notice. The preliminary questions set out in the Notice included, but were not limited to, the following:

(a) given Rule 42.02 of the Rules, does CCC have standing to bring the Motion;
(b) does the Board have the authority to cancel the assessments issued under section 26.1 of the Act;
(c) does the Board have the authority to determine whether section 26.1 of the Act (and Ontario Regulation 66/10 made under the Act) are constitutionally valid in the absence of another proceeding (i.e., can the constitutionality of the legislation be the only issue in the proceeding); and
(d) would stating a case to the Divisional Court be a better alternative?

A number of intervenors provided written argument in response to the questions in the Notice. On July 13, 2010, the Board held an oral hearing to hear further argument on the preliminary questions. In their pre-filed materials relating to the preliminary issues, certain intervenors made arguments in favour of staying the assessments resulting from the application of section 26.1 of the Act until the motion to determine whether the assessments were constitutional was heard on its merits. However, no party had brought a formal motion to stay the assessments that was supported by evidence. The Attorney General of Ontario (the "Attorney General") argued in its responding materials that the granting of a stay had not been identified by the Board as one of the preliminary issues to be heard on July 13, 2010, and that the issue should therefore not be heard that day. In the alternative, the Attorney General argued that the test for a stay had not been met and should therefore be denied.

At the hearing on July 13, 2010, the Board determined that it would hear argument on the stay issue. After hearing the arguments and reviewing the pre-filed materials, the Board determined that it was not satisfied with the state of the record regarding the stay issue. As the request for a stay had not been made through a fully supported motion, the Board,

through Procedural Order No. 4, afforded parties the opportunity to file additional materials, including evidence to support their request for a stay.

On July 19, 2010, Canadian Manufacturers & Exporters ("CME") filed a notice of motion seeking a stay of the assessments issued by the Board on April 9, 2010 until such time as matters pertaining to the constitutional validity of Ontario Regulation 66/10 (the "Regulation") have been decided on their merits (the "CME Motion"). The CME Motion was opposed by the Attorney General. The CME Motion was argued before the Board on July 26, 2010. Several other intervenors adopted their original submissions from the July 13, 2010 hearing relating to the stay and provided some additional comments in support of CME's Motion. The Board issued a decision and order (without reasons) later that day dismissing the CME Motion. The Board's reasons for that decision and order are included below.

THE SPECIAL PURPOSE CHARGE AND THE ROLE OF THE BOARD

Sections 26.1 and 26.2 of the Act provide for a special purpose charge ("SPC") to be assessed to certain persons with respect to the expenses incurred and expenditures made by the Ministry of Energy and Infrastructure in respect of its energy conservation programs or renewable energy programs.

The Regulation provides the details for the overall amount of the SPC, how the SPC is to be allocated between the persons required to pay the assessments, and how the persons required to pay the SPC assessments may recover the amounts.

The Regulation sets out that the total amount of the SPC is $53,695,310. The Regulation clearly states how the Board is to apportion that amount among the Independent Electricity System Operator (the "IESO") and licensed electricity distributors. In the simplest terms, the Regulation contains a formula, with corresponding definitions, that sets out how the Board is to calculate an amount. The Board then uses that amount in other formulas set out in the Regulation to apportion the SPC among the IESO and licensed electricity distributors. The Board's role is to perform the calculation identified in the Regulation and as such, the Board's role is not discretionary or adjudicative.

Similarly, the manner in which the IESO and licensed electricity distributors may recover the assessments they are required to pay under the Regulation is also set out in the

Regulation. The Board has no discretion in how those amounts are calculated or the mechanism for recovery.

CCC'S STATUS

Submissions were made regarding the issue of standing and more particularly whether or not CCC needed leave to bring the motion. The Attorney General was satisfied that Aubrey LeBlanc had standing to bring the motion. The Attorney General argued, however, that CCC itself did not have standing to bring the motion and should be considered an intervenor. For the purposes of this proceeding, the Board finds that CCC should be considered an intervenor.

THE BOARD'S AUTHORITY TO HEAR THE CONSTITUTIONAL ISSUE

The constitutional issue before the Board is whether the SPC is an unconstitutional indirect tax or a valid regulatory charge. Before hearing the question on its merits, the Board first had to satisfy itself that it had the authority to determine the constitutional question.

Section 19 of the Act provides that the Board has "in all matters within its jurisdiction authority to hear and determine all questions of law and of fact." There was no disagreement among the intervenors that the Board had the jurisdiction to hear the constitutional issue. As stated by the Attorney General, when an administrative tribunal has the explicit or implicit jurisdiction to deicide questions of law arising under a legislative provision, it is presumed that the tribunal also has jurisdiction to decide the constitutional validity of that provision.

The Board agrees that it has the jurisdiction to determine the constitutional issue regarding the SPC.

BOARD HEARING VERSUS A STATED CASE

While there was agreement that the Board has the jurisdiction to hear the constitutional issue, intervenors also acknowledged that the Board has the authority to state a case to the Divisional Court under section 32 of the Act. Most parties argued that the Board should hear the constitutional question rather than state a case to the Divisional Court. Intervenors submitted that the Board should develop the evidentiary record necessary to

state a case and that it would be more efficient for the Board to hear the matter. However, the Association of Power Producers of Ontario ("APPrO") and Union Gas Limited ("Union") argued that stating a case to the Divisional Court would be the preferred option, once the evidentiary record was developed by the Board, since the matter would likely ultimately be resolved by the Courts in any event.

The Attorney General argued that the Board should hear the case and determine the questions of fact and law rather than stating a case to the Divisional Court. The Attorney General contended that it would be more expeditious for the Board to determine the entire matter rather than to have an evidentiary hearing before the Board, an argument on the law before the Divisional Court, have the matter referred back to the Board from the Divisional Court, and then have the Board consequently apply the Court's opinion.

The Board agrees with the Attorney General and the other parties that argued that the Board should hear the matter and not state a case to the Divisional Court. The Board finds that it would be more efficient and expeditious for the Board to determine the facts and law with respect to the constitutional question in this matter. The Board will set a date for the filing of the evidence by the Attorney General by procedural order in due course.

STAYING THE ASSESSMENTS

Positions of the Intervenors

In its motion materials, CME argued that the Board has a duty and an obligation to consider the constitutionality of its actions taken in response to the Regulation. By failing to consider the legality of the Regulation prior to issuing the assessments, CME submitted that the Board erred and that it should now stay the assessments pending this consideration. CME's position was that the presumption of constitutional validity does not apply to actions taken by a quasi-judicial tribunal in response to enactments of questionable validity requiring the tribunal to perform particular actions, and cited *R.* v. *Conway*, [2010] S.C.J. No. 22 ("*Conway*") in support of this argument. In particular, counsel argued that the administration of justice is irreparably harmed where a tribunal presumes its own actions are valid prior to assessing their legality.

Although CME argued that the test for a stay established in *RJR-MacDonald Inc.* v. *Canada (Attorney General)*, [1994] 1 S.C.R. 311 ("*RJR-MacDonald*") did not apply to this case, it did

submit that irreparable harm would result if the assessments were not stayed. CME argued that any assessments paid by distributors might not be returned by the government if the assessments were ultimately found to be unconstitutional. CME further submitted that even if the assessed amounts were refunded to the distributors, returning the money to individual ratepayers would be problematic, and that distributors might face class action law suits requiring the return of the assessed amounts, including significant legal costs.

Union also argued in favour of a stay, and relied on the three part test for a stay from *RJR-MacDonald*, namely:

(a) is there a serious issue to be tried;
(b) will the moving party suffer irreparable harm prior to the determination of the matter if the stay is refused; and
(c) does the balance of convenience, taking into account the public interest, favour the granting of a stay?

All three branches of the test must be satisfied if a stay is to be granted.

Union argued that the threshold for a serious issue was low and that it was proven in this case.

Union submitted that irreparable harm in the form of class action law suits brought by ratepayers against distributors could result if the assessed amounts are ultimately found to be unconstitutional. Even if the government were to return the assessed amounts to the distributors, such amounts could not be returned on a dollar for dollar basis to the ratepayers from whom the distributors initially recovered the money. A class action law suit could impose serious financial harm on distributors. Union also submitted that distributors may suffer a loss of profits and that the loss of profits would constitute irreparable harm.

Union further argued that the balance of convenience in this case favours ratepayers and distributors over the Province, largely on the basis that, once paid, it would be very difficult to return the amounts either to distributors or to ratepayers.

The request for a stay was also supported by CCC, VECC, and APPrO.

The CME Motion was opposed by the Attorney General. The Attorney General relied on

the three-part test in *RJR-MacDonald*. The Attorney General agreed that the threshold for establishing a serious issue is not high but submitted that the moving party cannot succeed on this branch of the test.

The Attorney General argued that even if the Board finds that the serious issue branch of the test has been met, that the CME Motion meets neither the irreparable harm nor the balance of convenience branches of the test.

The meaning of "irreparable" was discussed at paragraph 59 in *RJR-MacDonald*:

> "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.

The Attorney General argued that any alleged harm that may be suffered if the assessments are ultimately found to be unconstitutional can be quantified in monetary terms because the amount of the assessments is known and that any harm can be remedied. In *Kingstreet Investments Ltd.* v. *New Brunswick (Finance)*, [2007] 1 S.C.R. 3 ("*Kingstreet*"), the Supreme Court held that where the government collects a tax that is found to be unconstitutional, those who paid the tax are entitled to restitution. The Attorney General further observed that irreparable harm must relate to the applicant's own interests, and that here the moving party (CME) was not alleging harm to itself, but rather to distributors. Finally, the Attorney General argued that the courts have already decided in *Canada (Attorney General)* v. *Amnesty International Canada*, [2009] F.C.J. 545, and *Canadian National Railways* v. *Leger*, [2000] F.C.J. 243, that potential legal costs incurred by distributors to defend against class proceedings do not constitute irreparable harm.

The Attorney General argued that the CME Motion also fails the balance of convenience branch of the test because CME must demonstrate that the balance of convenience operates in favour of granting a stay. The Attorney General cited a number of cases which stand for the principle that, in constitutional cases, the balance of convenience is a very low hurdle for governments, and a very high hurdle for applicants. In *RJR-MacDonald*, the Court held:

> In order to overcome the assumed benefit to the public interest

> arising from the continued application of the legislation, the applicant who relies on the public interest must demonstrate that the suspension of the legislation would itself provide a public benefit. (para. 80)

The Attorney General argued that CME cannot satisfy the balance of convenience branch of the test.

The Attorney General submitted that tribunals perform their duties under the presumption that statutes passed by the legislature are constitutionally valid until determined to be otherwise. The Attorney General argued that CME's submission that a tribunal should not act pursuant to legislation until it has considered the constitutional validity of the legislation is incorrect.

Decision

The Board finds that the appropriate test for granting a stay in these circumstances is the three part test identified in *RJR-MacDonald.*

The Board accepts that there is a serious issue to be tried in this case. However, it is not satisfied that irreparable harm will result if a stay is not granted, nor is it satisfied that the balance of convenience rests in favour of CME or the intervenors seeking the stay.

The potential harm identified in support of the motion is not irreparable. The harm identified is monetary and quantifiable; indeed, the total amount of the assessments is already known. The *Kingstreet* decision determined that, at a minimum, restitution would be available if the assessments are ultimately found to be unconstitutional. In the event that the assessments were returned to distributors, although a dollar for dollar refund to each ratepayer that paid their share of the original assessment would be impractical, the Board would have the ability to return these amounts to ratepayers by requiring the refunded amounts to be placed in a variance account or a deferral account. This amount could then be cleared through rates and act as an offset to each distributor's revenue requirement.

The Board also agrees with the Attorney General that the possibility of a class action law suit does not constitute irreparable harm.

CME argued that the Board should stay the assessment based on *Conway*. CME submitted that the Board had an obligation and a duty to determine the constitutional validity of the legislation and that that obligation and duty constituted a threshold legal requirement that the Board had to take into account when issuing the assessments. CME submitted that the assessments must be set aside until the threshold constitutional question had been answered. The Board is not persuaded by this argument. *Conway* deals with a tribunal's authority to determine constitutional questions; it does not deal with matters of interlocutory relief or stays. The Board does not find that the *Conway* case provides authority for the Board to stay the assessments.

The Board does not agree with CME's argument that the administration of justice would be irreparably harmed if the Board presumes the actions it took pursuant to the Regulation are legal. There is no basis for a finding that the presumption of legislative validity should not apply in this case.

The Board also does not accept Union's argument that any alleged loss of profits to the distributors would amount to irreparable harm to distributors. The amounts the electricity distributors pay as assessments will be recovered from consumers within a twelve month period. The variance account which has been established by the Board to record this recovery will ensure that there is no over or under recovery. In addition, the variance account allows distributors to recover their carrying charges for the assessed amounts.

The Board accepts the Attorney General's arguments with respect to the balance of convenience. CME has failed to meet the high threshold of establishing that the balance of convenience weighs in its favour.

As previously stated, in order to overcome the assumed benefit to the public interest from the continued application of the legislation, it must be demonstrated that the suspension of the legislation would itself provide a public benefit. The intervenors that argued for a stay suggested that the public interest to be gained by staying the legislation and Regulation is that electricity distributors and the IESO, and their consumers, will not have to pay the costs of the SPC.

Arguments that suggest that the suspension of the assessments would amount to a public interest which outweighs the public interest in the continued application of the legislation are not supportable. These arguments relate only to an economic and personal interest in

not paying the SPC. The Supreme Court addressed similar arguments in *RJR-MacDonald* relating to the increased price of tobacco products. The Supreme Court stated that "such an increase is not likely to be excessive and is purely economic in nature. Therefore any public interest in maintaining the current price of tobacco products cannot carry much weight." (*RJR-MacDonald* at para. 93)

The Board agrees that there is a high threshold for applicants to overcome in constitutional cases, and the parties seeking the stay have not provided clear evidence to meet this threshold.

COSTS

The Notice stated that the Board did not intend to grant cost awards in this proceeding. The Board had decided that no costs were warranted as the original Notice limited the extent of participation in the hearing to four parties, namely CCC, the Attorneys General of Ontario and Canada, and the Ministry of Energy and Infrastructure. However, as the hearing progressed, the Board allowed further participation in the hearing and a number of other parties intervened in the proceeding. Given the expanded participation in the proceeding, and the value the Board sees in having the expanded participation, the Board will allow for costs. Costs were requested by a number of intervenors, namely CCC, CME, VECC, and APPrO.

Under the circumstances, the Board will not rely on section 30 of the Act for costs. Distributors and the IESO should not be entirely responsible for paying the costs of this proceeding. The electricity distributors and the IESO are required to pay the SPC by virtue of the Regulation; this was not within their control. The Board also notes that the assessments may be extended to the natural gas sector in the future. Section 26.1 of the Act contemplates gas distributors being included in the assessments. Therefore, natural gas utilities and customers will also benefit from having the constitutional issue decided.

The Board has therefore determined that it would be more efficient for the Board to provide funding to groups representing the interests of customers that may be affected by this proceeding through section 26 of the Act. The rates for legal counsel's hourly fees will be determined in accordance with the Tariff in the Board's Practice Direction on Cost Awards (the "Practice Direction") and the Board will follow the principles set out in section 3 of the Practice Direction when determining eligibility for costs and the principles in section 5 of the

Practice Direction amount of the costs it will allow the intervenors to recover.

Based on section 3 of the Practice Direction, the Board finds that CCC, CME, and VECC are eligible to apply for their costs of participating in this proceeding.

APPrO has also requested costs in this proceeding. APPrO represents the interests of power producers who are not eligible under the Practice Direction unless they are a customer of the applicant or there are special circumstances. APPrO is not a customer of the "applicant" in this proceeding because the "applicant" in this proceeding is Aubrey LeBlanc/CCC (or for the motion for the stay, CME) and APPrO is not a customer of those parties. Therefore, the Board must consider whether there are special circumstances to warrant granting cost eligibility to APPrO.

APPrO has been granted intervenor status and of course may participate in this proceeding. While it is true that generators will pay the SPC assessments as load customers, is that sufficient to amount to special circumstances in this proceeding? The Board is of the opinion that it is not. APPrO's position as a consumer (as load) in this proceeding is not unique compared to the other consumer groups. APPrO would also not appear to have any greater expertise with respect to the constitutional issue being determined by the Board in this proceeding than any other consumer group. The Board therefore finds there are no special circumstances to warrant granting APPrO costs in this proceeding. This is in no way a comment on the contributions made by APPrO, to date, in this matter.

DATED at Toronto, August 5, 2010

ONTARIO ENERGY BOARD

Original signed by

Howard Wetston
Chair

Case Name:

Reference re: British North America Act, 1867 s. 24

Between
Henrietta Muir Edwards and others, appellants, and
Attorney General for Canada and others, respondents.

[1929] J.C.J. No. 2

[1930] A.C. 124
[1930] 1 D.L.R. 98
[1929] 3 W.W.R. 479

Judicial Committee of the Privy Council
London, England

Lord Sankey L.C., Lord Darling, Lord Merrivale, Lord Tomlin, and Sir Lancelot Sanderson

Heard: July 22, 23, 25 and 26, 1929.
Judgment: October 18, 1929.

(78 paras.)

FROM THE SUPREME COURT OF CANADA

Canada — Constitution — Senate — Eligibility of Women — "Persons" — British North America Act, 1867 (30 & 31 Vict. c. 3), ss. 23, 24.

The word "persons" in s. 24 of the British North America Act, 1867, includes members of either sex; accordingly women having the qualifications enacted by s. 23, can be summoned by the Governor General to the Senate of Canada.

So held upon an examination of the Act, earlier Canadian legislation being inconclusive as to the intention of the Imperial Parliament in the matter and decisions in England based upon the disability at common law of women to hold public office being inapplicable to the interpretation of the Act.

The provisions of the British North America Act, 1867, enacting a constitution for Canada should not be given a narrow and technical construction, but a large and liberal interpretation, so that the Dominion to a great extent, but within certain fixed limits, may be mistress in her own house, as the Provinces to a great extent, but within certain fixed limits, are mistresses in theirs.

Judgment of the Supreme Court of Canada [1928] S.C.R. 276 reversed.

APPEAL (No. 121 of 1928) by special leave from a judgment of the Supreme Court of Canada, dated April 24, 1928, in answer to a question referred to that Court by the Governor General under s. 60 of the Supreme Court Act.

The question referred was "Does the word 'persons' in s. 24 of the British North America Act, 1867, include female persons?"

By s. 24: "The Governor General shall from time to time, in the Queen's name, by instrument under the Great Seal of Canada, summon qualified persons to the Senate; and, subject to the provisions of this Act, every person so summoned shall become and be a member of the Senate and a senator."

By s. 23: "The qualifications of a senator shall be as follows: (1.) He shall be of the full age of thirty years: (2.) He shall be either a natural-born subject of the Queen, or a subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the legislature of one of the provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the union, or of the Parliament of Canada after the union: (3.) He shall be legally or equitably seised as of freehold for his own use and benefit of lands or tenements held in free and common socage, or seised or possessed for his own use and benefit of lands or tenements held in francalleu or in roture, within the province for which he is appointed, of the value of four thousand dollars, over and above all rents, dues, debts, charges, mortgages, and incumbrances due or payable out of or charged on or affecting the same: (4.) His real and personal property shall be together worth four thousand dollars over and above his debts and liabilities: (5.) He shall be resident in the province for which he is appointed: (6.) In the case of Quebec he shall have his real property qualification in the electoral division for which he is appointed, or shall be resident in that division."

The effect of other sections of the Act material to the question, more particularly ss. 41, 84, 133, is stated in the judgment printed below.

The Supreme Court of Canada unanimously answered the question referred in the negative. Anglin C.J., whose judgment was concurred in by Lamont and Smith JJ., and substantially by Mignault J., came to the above conclusion because of the common law disability of women to hold public office. Duff J., while of opinion that that consideration should not be applied, came to the same conclusion upon an examination of the provisions of the Act. The proceedings are reported at [1928] S.C.R. 276.

1929. July 22, 23, 25, 26. Rowell K.C., with him Lyndburn (A.-G. for Alberta) and Frank Gavan for the appellants.

Lafleur K.C., Hon. Geoffrey Lawrence K.C., with them Theobald Mathew, for the respondents.

The arguments relied upon, both for the appellants and for the respondents, and the cases cited, appear from the judgment of the Judicial Committee.

The judgment of their Lordships was delivered by

1 LORD SANKEY L.C.:-- By s. 24 of the British North America Act, 1867, it is provided that "The Governor General shall from time to time, in the Queen's name, by instrument under the Great Seal of Canada, summon qualified persons to the Senate; and, subject to the provisions of this Act, every person so summoned shall become and be a member of the Senate and a senator."

2 The question at issue in this appeal is whether the words "qualified persons" in that section include a woman, and consequently whether women are eligible to be summoned to and become members of the Senate of Canada.

3 Of the appellants, Henrietta Muir Edwards is the Vice-President for the Province of Alberta of the National Council of Women for Canada; Nellie L. McClung and Louise C. McKinney were for

several years members of the Legislative Assembly of the said Province; Emily F. Murphy is a police magistrate in and for the said Province; and Irene Parlby is a member of the Legislative Assembly of the said Province and a member of the Executive Council thereof.

4 On August 29, 1927, the appellants petitioned the Governor General in Council to refer to the Supreme Court certain questions touching the powers of the Governor General to summon female persons to the Senate, and upon October 19, 1927, the Governor General in Council referred to the Supreme Court the aforesaid question. The case was heard before Anglin C.J., Duff, Mignault, Lamont, and Smith JJ., and upon April 24, 1928, the Court answered the question in the negative; the question being understood to be "Are women eligible for appointment to the Senate of Canada."

5 The Chief Justice, whose judgment was concurred in by Lamont and Smith JJ., and substantially by Mignault J., came to this conclusion upon broad lines mainly because of the common law disability of women to hold public office and from a consideration of various cases which had been decided under different statutes as to their right to vote for a member of Parliament.

6 Duff J., on the other hand, did not agree with this view. He came to the conclusion that women are not eligible for appointment to the Senate upon the narrower ground that upon a close examination of the British North America Act, 1867, the word "persons" in s. 24 is restricted to members of the male sex. The result therefore of the decision was that the Supreme Court was unanimously of opinion that the word "persons" did not include female persons, and that women are not eligible to be summoned to the Senate.

7 Their Lordships are of opinion that the word "persons" in s. 24 does include women, and that women are eligible to be summoned to and become members of the Senate of Canada.

8 In coming to a determination as to the meaning of a particular word in a particular Act of Parliament it is permissible to consider two points -- namely: (i.) The external evidence derived from extraneous circumstances such as previous legislation and decided cases. (ii.) The internal evidence derived from the Act itself. As the learned counsel on both sides have made great researches and invited their Lordships to consider the legal position of women from the earliest times, in justice to their argument they propose to do so and accordingly turn to the first of the above points -- namely: (i.) The external evidence derived from extraneous circumstances.

9 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. Such exclusion is probably due to the fact that the deliberative assemblies of the early tribes were attended by men under arms, and women did not bear arms. "Nihil autem neque publicae neque privatae rei, nisi armati, agunt": Tac. Germ., c. 13. Yet the tribes did not despise the advice of women. "Inesse quin etiam sanctum et providum putant, nec aut consilia earum aspernantura ut responsa neglegunt": Germ., c. 8. The likelihood of attack rendered such a proceeding unavoidable, and after all what is necessary at any period is a question for the times upon which opinion grounded on experience may move one way or another in different circumstances. This exclusion of women found its way into the opinions of the Roman jurists, Ulpian (A.D. 211) laying it down. "Feminae ab omnibus officiis civilibus vel publicis remotae sunt": Dig. 1.16.195. The barbarian tribes who settled in the Roman Empire, and were exposed to constant dangers, naturally preserved and continued the tradition.

10 In England no woman under the degree of a Queen or a Regent, married or unmarried, could take part in the government of the State. A woman was under a legal incapacity to be elected to serve in Parliament and even if a peeress in her own right she was not, nor is, entitled as an incident of peerage to receive a writ of summons to the House of Lords.

11 Various authorities are cited in the recent case of Viscountess Rhondda's Claim, [1922] 2 A.C. 339, where it was held that a woman was not entitled to sit in the House of Lords. Women

were, moreover, subject to a legal incapacity to vote at the election of members of Parliament: Coke, 4 Inst., p. 5; Chorlton v. Lings, (1868) L.R. 4 C.P. 374; or of town councillor: Reg. v. Harrald, (1872) L.R. 7 Q.B. 361; or to be elected members of a County Council: Beresford-Hope v. Sandhurst, (1889) 23 Q.B.D. 79. They were excluded by the common law from taking part in the administration of justice either as judges or as jurors, with the single exception of inquiries by a jury of matrons upon a suggestion of pregnancy: Coke, 2 Inst. 119, 3 Bl. Comm. 362. Other instances are referred to in the learned judgment of Willes J. in Chorlton v. Lings, (1868) L.R. 4 C.P. 374.

12 No doubt in the course of centuries there may be found cases of exceptional women and exceptional instances, but as Lord Esher M.R. said in De Souza v. Cobden, [1891] 1 Q.B. 687, 691: "By the common law of England women are not in general deemed capable of exercising public functions, though there are certain exceptional cases where a well recognised custom to the contrary has become established." An instance may be referred to in the case of women being entitled to act as churchwardens and as sextons, the latter being put upon the ground that a sexton's duty was in the nature of a private trust: Olive v. Ingram, (1738) 7 Mod. 263. Also of being appointed as overseer of the poor: Rex v. Stubbs, (1788) 2 T.R. 395. The tradition existed till quite modern times: see Bebb v. Law Society, (1914) 1 Ch. 286, where it was held by the Court of Appeal that by inveterate usage women were under a disability by reason of their sex to become attorneys or solicitors.

13 The passing of Lord Brougham's Act in 1850 does not appear to have greatly affected the current of authority. Sect. 4 provided that in all acts words importing the masculine gender shall be deemed and taken to include female unless the contrary as to gender is expressly provided.

14 The application and purview of that Act came up for consideration in Chorlton v. Lings, (1868) L.R. 4 C.P. 374, where the Court of Common Pleas was required to construe a statute passed in 1861, which conferred the parliamentary franchise on every man possessing certain qualifications and registered as a voter. The chief question discussed was whether by virtue of Lord Brougham's Act the words "every man" included women. Bovill C.J., having regard to the subject-matter of the statute and its general scope and language and to the important and striking nature of the departure from the common law involved in extending the franchise to women, declined to accept the view that Parliament had made that change by using the term "man" and held that the word was intentionally used expressly to designate the male sex. Willes J. said: "It is not easy to conceive that the framer of that Act, when he used the word 'expressly,' meant to suggest that what is necessarily or properly implied by language is not expressed by such language."

15 Great reliance was placed by the respondents to this appeal upon that decision, but in our view it is clearly distinguishable. The case was decided on the language of the Representation of the People Act, 1867, which provided that "every man" with certain qualifications and "not subject to any legal incapacity" should be entitled to be registered as a voter. Legal incapacity was not defined by the Act, and consequently reference was necessary to the common law disabilities of women.

16 A similar result was reached in the case of Nairn v. University of St. Andrews, [1909] A.C. 147, where it was held under s. 27 of the Representation of the People (Scotland) Act, 1868, which provided that every person whose name is for the time being on the register of the general council of such university shall, being of full age and not subject to any legal incapacity, be entitled to vote in the election of a member to serve in any future Parliament for such university, that the word "person" did not include women, but the Lord Chancellor, Lord Loreburn, referred to the position of women at common law, and pointed out that they were subject to a legal incapacity. Both in this case and in the case of the Viscountess Rhondda the various judgments emphasize the fact that the legislature in dealing with the matter cannot be taken to have departed from the usage of centuries, or to have employed loose and ambiguous words to carry out a so momentous and fundamental change.

17 The judgment of the Chief Justice in the Supreme Court of Canada refers to and relies upon these cases, but their Lordships think that there is great force in the view taken by Duff J. with regard to them, when he says that s. 24 of the British North America Act, 1867, must not be treated as an independent enactment. The Senate, he proceeds, is part of a parliamentary system, and in order to test the contention based upon this principle that women are excluded from participating in working the Senate or any other institution set up by the Act one is bound to consider the Act as a whole and its bearings on this subject of the exclusion of women from public office and place.

18 Their Lordships now turn for a moment to the special history of the development of Canadian legislature as bearing upon the matter under discussion.

19 The Province of Canada was formed by the union under the Act of Union, 1840, of the two Provinces of Upper and Lower Canada respectively, into which the Province of Quebec as originally created by the royal proclamation of October 7, 1763, and enlarged by the Quebec Act, 1774, had been divided under the Constitutional Act of 1791. In the Province of Quebec from its first establishment in 1763 until 1774, the Government was carried on by the Governor and the Council, composed of four named persons and eight other "persons" to be chosen by the Governor from amongst "the most considerable of the inhabitants or of other persons of property in Our said Province."

20 The Quebec Act of 1774 entrusted the government of the Province to a Governor and Legislative Council of such "persons" resident there, not exceeding twenty-three, nor less than seventeen, as His Majesty shall be pleased to appoint.

21 The Constitutional Act of 1791 upon the division of the Province of Quebec into two separate Provinces to be called the Provinces of Upper and Lower Canada established for each Province a legislature composed of the three estates of Governor, Legislative Council and Assembly empowered to make laws for the peace, order and good government of the Provinces. The Legislative Council was to consist of a sufficient number of discreet and proper "persons" not less than seven for Upper Canada and fifteen for Lower Canada.

22 Under the Act of Union, 1840, these two Provinces were reunited so as to constitute one Province under the name of the Province of Canada, and the Legislative Council was to be composed of such "persons" being not fewer than twenty as Her Majesty shall think fit.

23 In 1865 the Canadian legislature under the authority of the Imperial Act passed an Act which altered the constitution of the Legislative Council by rendering the same elective.

24 The new constitution as thus altered continued till the Union of 1867.

25 It will be noted that in all the Acts the word "persons" is used in respect of those to be elected members of the Legislative Council, and there are no adjectival phrases so qualifying the word as to make it necessarily refer to males only.

26 In Quebec, just as in England, there can be found cases of exceptional women and exceptional instances. For example, in certain districts -- namely, at Trois Rivieres in 1820 -- women apparently voted, while in 1828 the returning officer in the constituency of the Upper Town of Quebec refused to receive the votes of women.

27 In 1834 the Canadian Parliament passed an Act of Parliament excluding women from the vote, but two years later the Act was disallowed, because the Imperial Government objected to another section in it.

28 The matter, however, was not left there, and in 1849 by a statute of the Province of Canada (12 Vict. c. 27), s. 46, it was declared and enacted that no woman is or shall be entitled

to vote at any election, whether for any county or riding, city or town, of members to represent the people of this Province in the Legislative Assembly thereof.

29 The development of the maritime Provinces proceeded on rather different lines. From 1719 to 1758 the Provincial Government of Nova Scotia consisted of a Governor and a Council, which was both a legislative and an executive body composed of such fitting and discreet "persons," not exceeding twelve in number, as the Governor should nominate. A general assembly for the Province was called in 1757, and thereafter the legislature consisted of a Governor and Council and General Assembly. In 1838 the executive authority was separated from the Legislative Council, which became a distinct legislative branch only.

30 In 1784 a part of the territory of the Province of Nova Scotia was erected into a separate Province to be called New Brunswick, and a separate government was established for the Province, consisting of a Governor and Council composed of certain named persons and other persons "to be chosen by you from amongst the most considerable of the inhabitants of or persons of property," but required to be men of good life and of ability suitable to their employment. In 1832 the executive authority was separated and made distinct from the Legislative Council. In the Province of Nova Scotia there was in the early Acts governing the election of members of the General Assembly no express disqualification of women from voting, but by the revised statutes of Nova Scotia (second series) in 1859 the exercise of the franchise was confined to male subjects over twenty-one years of age, and a candidate for election was required to have the qualification which would enable him to vote.

31 In the Province of New Brunswick by the Provincial Act (11 Vict. c. 65), s. 17, the Parliamentary franchise was confined to male persons of the full age of twenty-one years who possessed certain property qualifications.

32 It must, however, be pointed out that a careful examination has been made by the assistant keeper of public records of Canada of the list containing the names of the Executive and Legislative Councils and Houses of Assembly in Quebec (including those of Upper and Lower Canada), of the Province of Canada, of the Province of Nova Scotia, and of the Province of New Brunswick down to 1867, and on none of the lists did he find the name of a person of the female sex.

33 Such briefly is the history and such are the decisions in reference to the matter under discussion.

34 No doubt in any code where women were expressly excluded from public office the problem would present no difficulty, but where instead of such exclusion those entitled to be summoned to or placed in public office are described under the word "person" different considerations arise.

35 The word is ambiguous, and in its original meaning would undoubtedly embrace members of either sex. On the other hand, supposing in an Act of Parliament several centuries ago it had been enacted that any person should be entitled to be elected to a particular office it would have been understood that the word only referred to males, but the cause of this was not because the word "person" could not include females but because at common law a woman was incapable of serving a public office. The fact that no woman had served or has claimed to serve such an office is not of great weight when it is remembered that custom would have prevented the claim being made or the point being contested.

36 Customs are apt to develop into traditions which are stronger than law and remain unchallenged long after the reason for them has disappeared.

37 The appeal to history therefore in this particular matter is not conclusive.

38 As far back as Stradling v. Morgan, (1559) 1 Plow. 199, it was laid down that extraneous circumstances may be admitted as an aid to the interpretation of a statute, and in Herron v.

Rathmines and Rathgar Improvement Commissioners, [1892] A.C. 498, 502, Lord Halsbury L.C. said: "The subject matter with which the legislature was dealing, and the facts existing at the time with respect to which the legislature was legislating, are legitimate topics to consider in ascertaining what was the object and purpose of the legislature in passing the Act," but the argument must not be pushed too far, and their Lordships are disposed to agree with Farwell L.J. in Rex v. West Riding of Yorkshire County Council, [1906] 2 K.B. 676, 716, "although it may, perhaps, be legitimate to call history in aid to show what facts existed to bring about a statute, the inferences to be drawn therefrom are extremely slight": see Craies, Statute Law, 3rd ed., p. 118.

39 Over and above that, their Lordships do not think it right to apply rigidly to Canada of today the decisions and the reasons therefor which commended themselves, probably rightly, to those who had to apply the law in different circumstances, in different centuries, to countries in different stages of development. Referring therefore to the judgment of the Chief Justice and those who agreed with him, their Lordships think that the appeal to Roman law and to early English decisions is not of itself a secure foundation on which to build the interpretation of the British North America Act of 1867.

40 Their Lordships fully appreciate the learned arguments set out in his judgment, but prefer, on this part of the case, to adopt the reasonings of Duff J., who did not agree with the other members of the Court, for reasons which appear to their Lordships to be strong and cogent. As he says: "Nor am I convinced that the reasoning based upon the 'extraneous circumstances' we are asked to consider (the disabilities of women under the common law and the law and practice of Parliament in respect of appointment to public place or office) establishes a rule of interpretation for the British North America Act, by which the construction of powers, legislative and executive, bestowed in general terms is controlled by a presumptive exclusion of women from participating in the working of the institutions set up by the Act."

41 Their Lordships now turn to the second point -- namely, (ii.) the internal evidence derived from the Act itself.

42 Before discussing the various sections they think it necessary to refer to the circumstances which led up to the passing of the Act.

43 The communities included within the Britannic system embrace countries and peoples in every stage of social, political and economic development and undergoing a continuous process of evolution. His Majesty the King in Council is the final Court of Appeal from all these communities, and this Board must take great care therefore not to interpret legislation meant to apply to one community by a rigid adherence to the customs and traditions of another. Canada had its difficulties both at home and with the mother country, but soon discovered that union was strength. Delegates from the three maritime Provinces met in Charlottetown on September 1, 1864, to discuss proposals for a maritime union. A delegation from the coalition government of that day proceeded to Charlottetown and placed before the maritime delegates their schemes for a union embracing the Canadian Provinces. As a result the Quebec conference assembled on October 10, continued in session till October 28, and framed a number of resolutions. These resolutions as revised by the delegates from the different Provinces in London in 1866 were based upon a consideration of the rights of others and expressed in a compromise which will remain a lasting monument to the political genius of Canadian statesmen. Upon those resolutions the British North America Act of 1867 was framed and passed by the Imperial legislature. The Quebec resolutions dealing with the Legislative Council -- namely, Nos. 6-24 -- even if their Lordships are entitled to look at them, do not shed any light on the subject under discussion. They refer generally to the "members" of the Legislative Council.

44 The British North America Act planted in Canada a living tree capable of growth and expansion within its natural limits. The object of the Act was to grant a Constitution to Canada. "Like all written constitutions it has been subject to development through usage and convention": Canadian Constitutional Studies, Sir Robert Borden (1922), p. 55.

45 Their Lordships do not conceive it to be the duty of this Board -- it is certainly not their desire -- to cut down the provisions of the Act by a narrow and technical construction but rather to give it a large and liberal interpretation so that the Dominion to a great extent, but within certain fixed limits, may be mistress in her own house, as the Provinces to a great extent, but within certain fixed limits, are mistresses in theirs. "The Privy Council, indeed, has laid down that Courts of law must treat the provisions of the British North America Act by the same methods of construction and exposition which they apply to other statutes. But there are statutes and statutes; and the strict construction deemed proper in the case, for example, of a penal or taxing statute or one passed to regulate the affairs of an English parish, would be often subversive of Parliament's real intent if applied to an Act passed to ensure the peace, order and good government of a British Colony": see Clement's Canadian Constitution, 3rd ed., p. 347.

46 The learned author of that treatise quotes from the argument of Mr. Mowat and Mr. Edward Blake before the Privy Council in St. Catherine's Milling and Lumber Co. v. The Queen, (1888) 14 App. Cas. 46, 50: "That Act should be on all occasions interpreted in a large, liberal and comprehensive spirit, considering the magnitude of the subjects with which it purports to deal in very few words." With that their Lordships agree, but as was said by the Lord Chancellor in Brophy v. Attorney General of Manitoba, [1895] A.C. 202, 216, the question is not what may be supposed to have been intended, but what has been said.

47 It must be remembered, too, that their Lordships are not here considering the question of the legislative competence either of the Dominion or its Provinces which arise under ss. 91 and 92 of the Act providing for the distribution of legislative powers and assigning to the Dominion and its Provinces their respective spheres of Government. Their Lordships are concerned with the interpretation of an Imperial Act, but an Imperial Act which creates a constitution for a new country. Nor are their Lordships deciding any question as to the rights of women but only a question as to their eligibility for a particular position. No one, either male or female, has a right to be summoned to the Senate. The real point at issue is whether the Governor General has a right to summon women to the Senate.

48 The Act consists of a number of separate heads.

49 The preamble states that the Provinces of Canada, Nova Scotia and New Brunswick have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland with a constitution similar in principle to that of the United Kingdom.

50 Head No. 2 refers to the union.

51 Head No. 3, ss. 9 to 16, to the executive power.

52 It is in s. 11 that the word "persons," which is used repeatedly in the Act, occurs for the first time.

53 It provides that the persons who are members of the Privy Council shall be from time to time chosen and summoned by the Governor General.

54 The word "person," as above mentioned, may include members of both sexes, and to those who ask why the word should include females the obvious answer is why should it not? In these circumstances the burden is upon those who deny that the word includes women to make out their case.

55 Head No. 4 (ss. 17-20) deals first with the legislative power. Sect. 17 provides there shall be one Parliament for Canada consisting of the Queen, an upper house styled the Senate, and the House of Commons. Sects. 21-36 deal with the creation, constitution and powers of the Senate. They are the all important sections to consider in the present case, and their Lordships return to

them after briefly setting out the remaining sections of the Act.

56 Sects. 37-57 deal with the creation, constitution and powers of the House of Commons with special reference to Ontario, Quebec, Nova Scotia and New Brunswick, which were the first Provinces to come in under the scheme, although power was given under s. 146 for other Provinces to come in, which other Provinces have availed themselves of.

57 Head No. 5 (ss. 58-90) deals with the Provincial constitutions, and defines both their executive and legislative powers; head No. 6 (ss. 91-95) deals with the distribution of legislative powers; head No. 7 (ss. 96-101) deals with the judicature; head No. 8 (ss. 102-126) deals with revenues, debts, assets and taxation; head No. 9 (ss. 127-144) deals with miscellaneous provisions; head No. 10 (s. 145) deals with the intercolonial railway; and head No. 11 (ss. 146, 147) deals with the admission of other colonies.

58 Such being the general analysis of the Act, their Lordships turn to the special sections dealing with the Senate.

59 It will be observed that s. 21 provides that the Senate shall consist of seventy-two members, who shall be styled senators. The word "member" is not in ordinary English confined to male persons. Sect. 24 provides that the Governor General shall summon qualified persons to the Senate.

60 As already pointed out, "persons" is not confined to members of the male sex, but what effect does the adjective "qualified" before the word "persons" have?

61 In their Lordships' view it refers back to the previous section, which contains the qualifications of a senator. Sub-ss. 2 and 3 appear to have given difficulties to the Supreme Court. Sub-s. 2 provides that the qualification of a senator shall be that he shall be either a natural born subject of the Queen, naturalized by an Act of Parliament of Great Britain or of one of the Provincial Legislatures before the union or of the Parliament of Canada after the union. The Chief Justice in dealing with this says that it does not include those who become subjects by marriage, a provision which one would have looked for had it been intended to include women as being eligible.

62 The attention of the Chief Justice, however, was not called to the Aliens Act, 1844 (7 & 8 Vict. c. 66), s. 16 of which provides that any woman married or who shall be married to a natural born subject or person naturalized shall be deemed and taken to be herself naturalized, and have all the rights and privileges of a natural born subject. The Chief Justice assumed that by common law a wife took her husband's nationality on marriage, but by virtue of that section any woman who marries a natural born or naturalized British subject was deemed and taken to be herself naturalized. Accordingly, s. 23, sub-s. 2, uses language apt to cover the case of those who become British subjects by marriage.

63 Their Lordships agree with Duff J. when he says: "I attach no importance to the use of the masculine personal pronoun in s. 23, and, indeed, very little importance to the provision in s. 23 with regard to nationality," and refer to s. 1 of the Interpretation Act, 1889, which in s. 1, sub-s. 2, provides that words importing the masculine gender shall include females.

64 The reasoning of the Chief Justice would compel their Lordships to hold that the word "persons" as used in s. 11 relating to the constitution of the Privy Council for Canada was limited to "male persons," with the resultant anomaly that a woman might be elected a member of the House of Commons but could not even then be summoned by the Governor General as a member of the Privy Council.

65 Sub-s. 3 of s. 23 provided that the qualification of a senator shall be that he is legally and equitably seised of a freehold for his own use and benefit of lands and tenements of a certain value. This section gave some trouble to Duff J., who says that sub-section points to the exclusion

of married women, and would have been expressed in a different way if the presence of married women had been contemplated. Their Lordships think that this difficulty is removed by a consideration of the rights of a woman under the Married Women's Property Acts. A married woman can possess the property qualification required by this sub-section. Apart from statute a married woman could be equitably seized of freehold property for her own use only, and by an Act respecting certain separate rights of property of married women, consolidated statutes of Upper Canada, cap. 73, s. 1, it was provided: "Every woman who has married since May 4, 1859, or who marries after this Act takes effect, without any marriage contract or settlement, shall and may, notwithstanding her coverture, have, hold and enjoy all her real and personal property ... in as full and ample a matter as if she continued sole and unmarried ...."

66 Their Lordships do not think it possible to interpret the word "persons" by speculating whether the framer of the British North America Act purposely followed the system of Legislative Councils enacted in the Acts of 1791 and 1840 rather than that which prevailed in the maritime Province for the model on which the Senate was to be formed, neither do they think that either of these subsections is sufficient to rebut the presumption that the word "persons" includes women. Looking at the sections which deal with the Senate as a whole (ss. 21-36) their Lordships are unable to say that there is anything in those sections themselves upon which the Court could come to a definite conclusion that women are to be excluded from the Senate.

67 So far with regard to the sections dealing especially with the Senate -- are there any other sections in the Act which shed light upon the meaning of the word "persons"?

68 Their Lordships think that there are. For example, s. 41 refers to the qualifications and disqualifications of persons to be elected or to sit or vote as members of the House of Assembly or Legislative Assembly, and by a proviso it is said that until the Parliament of Canada otherwise provides at any election for a member of the House of Commons for the district of Algoma in addition to persons qualified by the law of the Province of Canada to vote every male British subject aged twenty-one or upwards being a householder shall have a vote. This section shows a distinction between "persons" and "males." If persons excluded females it would only have been necessary to say every person who is a British subject aged twenty-one years or upwards shall have a vote.

69 Again in s. 84, referring to Ontario and Quebec, a similar proviso is found stating that every male British subject in contradistinction to "person" shall have a vote.

70 Again in s. 133 it is provided that either the English or the French language may be used by any person or in any pleadings in or issuing from any court of Canada established under this Act and in or from all of any of the courts of Quebec. The word "person" there must include females, as it can hardly have been supposed that a man might use either the English or the French language but a woman might not.

71 If Parliament had intended to limit the word "persons" in s. 24 to male persons it would surely have manifested such intention by an express limitation, as it has done in ss. 41 and 84. The fact that certain qualifications are set out in s. 23 is not an argument in favour of further limiting the class, but is an argument to the contrary, because it must be presumed that Parliament has set out in s. 23 all the qualifications deemed necessary for a senator, and it does not state that one of the qualifications is that he must be a member of the male sex.

72 Finally, with regard to s. 33, which provides that if any question arises respecting the qualifications of a senator or a vacancy in the Senate the same shall be heard and determined by the Senate that section must be supplemented by s. 1 of the Parliament of Canada Act, 1875, and by s. 4 of c. 10 of R.S. Can., and their Lordships agree with Duff J. when he says, "as yet, no concrete case has arisen to which the jurisdiction of the Senate could attach. We are asked for advice on the general question, and that, I think, we are bound to give. It has, of course, only the force of an advisory opinion. The existence of this jurisdiction of the Senate does not, I think, affect the question of substance. We must assume that the Senate would decide in accordance

with the law."

73 The history of these sections and their interpretation in Canada is not without interest and significance.

74 From confederation to date both the Dominion Parliament and the Provincial legislatures have interpreted the word "persons" in ss. 41 and 84 of the British North America Act as including female persons, and have legislated either for the inclusion or exclusion of women from the class of persons entitled to vote and to sit in the Parliament and Legislature respectively, and this interpretation has never been questioned.

75 From confederation up to 1916 women were excluded from the class of persons entitled to vote in both Federal and Provincial elections. From 1916 to 1922 various Dominion and Provincial Acts were passed to admit women to the franchise and to the right to sit as members in both Dominion and Provincial legislative bodies. At the present time women are entitled to vote and to be candidates: (1.) At all Dominion elections on the same basis as men. (2.) At all Provincial elections save in the Province of Quebec.

76 From the date of the enactment of the Interpretation Acts in the Province of Canada, Nova Scotia and New Brunswick prior to confederation and in the Dominion of Canada since confederation and until the franchise was extended, women have been excluded by express enactment from the right to vote.

77 Neither is it without interest to record that when upon May 20, 1867, the Representation of the People Bill came before a Committee of the House of Commons, John Stuart Mill moved an amendment to secure women's suffrage, and the amendment proposed was to leave out the word "man" in order to insert the word "person" instead thereof: see Hansard, 3rd series, vol. clxxxvii., col. 817.

78 A heavy burden lies on an appellant who seeks to set aside a unanimous judgment of the Supreme Court, and this Board will only set aside such a decision after convincing argument and anxious consideration, but having regard: (1.) To the object of the Act -- namely, to provide a constitution for Canada, a responsible and developing State; (2.) that the word "person" is ambiguous, and may include members of either sex; (3.) that there are sections in the Act above referred to which show that in some cases the word "person" must include females; (4.) that in some sections the words "male persons" are expressly used when it is desired to confine the matter in issue to males; and (5.) to the provisions of the Interpretation Act; 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, and they will humbly advise His Majesty accordingly.

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