

tried to hide the scepticism in his voice when he asked, "What's so interesting?"

The physician pointed at the bed. "How'd he fall out with the rails up?"

The resident, annoyed with himself for missing such an obvious detail, thought for a moment, then smiled and waved his hand dismissively. "I'll tell you what happened." Then, sotto voce so that the nurse in attendance could not hear (there was no use making enemies), "Someone forgot to put the rail up last night, and so her friend here did it for her before she called us." Then, shrugging, "Alas, the horse was already out of the barn."

"Or maybe," one of the interns offered hesitantly, "he climbed over the rail and slipped during the night?"

"Maybe," the resident reluctantly admitted after a pause, clearly prefer-

ring his own theory. "Okay, let's get back to morning report," he said, heading back to the doctor's lounge. The interns followed dutifully.

The attending physician stood there a moment, watching the sun's red ascent and trying to recall something. It was Martin Heidegger, wasn't it, who had said that man could not postpone his concern about death, but must be concerned with it always? Yet it never ceased to amaze him how these young doctors, surrounded as they were by death, could be so unconcerned about it.

Or about sunrises.

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All forgiveness

Confession of our faults is the next thing to innocence.

— Publius Syrus, maxim 1060

The art of confession has an illustrious history: think of St. Augustine and Rousseau. A fault admitted is more readily forgiven than a fault denied. And sometimes there's a good story in it. The Left Atrium welcomes short poems and prose submissions of up to 1000 words. Confide in us at todkia@cma.ca

Lifeworks

The Famous 5 and the infamous Lizzie

Living tree. Any law student worth his or her salt instantly identifies these two words with *Edwards v. A.G. of Canada*,¹ more commonly known as the "Persons" case. This 1929 ruling overturned an earlier decision of the Supreme Court of Canada that the provisions of the *British North America Act* for the appointment of "qualified persons" to the Canadian Senate did not include women. In those days our highest court of appeal was the Judicial Committee of the British Privy Council; and so it was that a British court, not a Canadian one, opened the doors of our Senate to women.

Law students are taught that the "Persons" case marked a turning-point in the development of Canadian constitutional law. It gave new meaning to the term "responsible government" by ruling that the *BNA Act* was to be interpreted progressively, like a "living tree ... capable of growth and expansion."² And so, in keeping with the times, the Act could now be read as including

women in the governance of our society. In the words of Emily Murphy, one of the "Famous 5" who brought the case before the courts, "We, and the women of Canada whom we had the high honour to represent, are not considering the pronouncement of standing as a sex victory, but rather, as one which will permit our saying 'we' instead of 'you' in affairs of State."³

In reaching their decision the British law lords reviewed external evidence such as case law and other legal precedents, and in so doing acknowledged and gave further validity to the changing role of women in Canadian society. But the history of this case, fraught with many interesting twists and turns, is also telling. Consider one of the items of external evidence reviewed by the Privy Council, the case of Lizzie Cyr.

Lizzie Cyr was a prostitute who in 1917 was brought before magistrate Alice Jamieson, in Calgary, on a charge of vagrancy. In the early decades of the

20th century, prostitution was controlled primarily by vagrancy laws. Societal prejudices that laid the blame at the feet of the prostitutes, combined with the rising fear of the spread of venereal disease, caused Lizzie to receive harsh treatment at the hands of Jamieson, the second female magistrate to be appointed in the British Empire. David Bright observes that "an enduring sexual discrimination existed at the core of legislative measures — regulation, prohibition and rehabilitation — adopted by the state to combat prostitution."⁴ In reviewing Jamieson's handling of the case, Bright concludes that she acted prematurely and unfairly in handing down a sentence of six months' hard labour without allowing the defence to present its case.

Cyr's lawyer appealed the case on a number of grounds, one of which was that Jamieson, as a woman, did not have the legal capacity to hold the public office of magistrate. The Alberta Court of Appeal addressed this argument head