

“Everybody Called Her Frank”¹: The Odyssey of an Early Woman Lawyer in New Brunswick

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Abstract

In February 1934 Frances Fish was called to the bar of New Brunswick and spent the next forty years practising law in her home town of Newcastle (now City of Miramichi) NB. In 1918 she had been both the first woman to graduate LLB from Dalhousie University and the first woman to be called to the bar of Nova Scotia. Though she initially intended to remain in Halifax, she instead left Nova Scotia almost immediately, abandoning the practice of law altogether. She spent the next fifteen years working as a paralegal in Ottawa and Montreal before returning to New Brunswick and resuming the practice of law. This article is a study of Fish’s career in New Brunswick, framed within the experience of the first women lawyers in Canada, of whom she was the seventh.²

Résumé

En février 1934, Frances Fish a été reçue au Barreau du Nouveau-Brunswick. Pendant les quarante années qui ont suivi, elle a pratiqué le droit dans sa ville natale, Newcastle (qui fait maintenant partie de la ville de Miramichi), au Nouveau-Brunswick. En 1918, elle a été la première femme à obtenir un baccalauréat en droit de la Dalhousie University et la première femme reçue au Barreau de la Nouvelle-Écosse. Bien qu’elle avait, au début, l’intention de rester à Halifax, elle a quitté la Nouvelle-Écosse presque immédiatement après ses études, abandonnant complètement la pratique du droit. Elle a travaillé comme technicienne juridique pendant quinze ans avant de revenir au Nouveau-Brunswick et de reprendre la pratique du droit. Le présent article est une étude de la carrière de Fish au Nouveau-Brunswick en tant que l’une des premières femmes juristes du Canada, soit la septième.²

The subject of this article is one of the ten first women lawyers in Canada. Its central theme is the interaction of the personal and the professional and consequences arising therefrom that affect an individual career path. It is an essay in life as career, and the slow and deliberate progress towards that fateful decision—evading Hobson’s choice before ultimately making it. New Brunswicker Frances Fish’s life journey was replete with inconsistencies and contradictions. She had no apparent interest in law as a career before she became a law student at age twenty-five. She did not enter law school for another two years, and then not in her home province but in neighbouring Nova Scotia, a place with which she had no connection and where there had never been a woman law undergraduate. The first woman called to the bar in Nova Scotia, Fish did not return to New Brunswick to practise law. Nor did she remain in Nova Scotia; instead she abandoned both Halifax and her budding law practice almost as soon as it had begun. With a profession but without a professional career, Fish seemed to lack a focus for her life. For some fifteen years she worked as a solicitor’s assistant and paralegal in Ottawa and Montreal, where (in Ontario) she could have become a lawyer had she wished to. She finally found her “sailor’s legs” and second life as a practising lawyer in, of all places, her hometown, where she was from “the right side of the tracks.” (Novelist David Adams Richards, who was born and grew up in Newcastle while Fish was the resident deputy county magistrate there, has described it as “a great town with a grand tradition”³). In early middle age she finally settled down, dabbled unsuccessfully in politics and survived and flourished as a small-town woman lawyer on the Miramichi—a novelty if not an oddity in her own time and place. Her life is the stuff of fiction and reads like a novel.

Frances Fish was typical of Canada’s first women lawyers in that she defies classification. These “famous ten,” as it were, spanned different generations and backgrounds. They were not homogeneous or typical of one another, having little in common apart from the same professional aspiration and achievement. They were not representative of women or women professionals. They had an ambiguous relationship with the women’s movement. They also held different views on the interface between profession and career, and had different experiences of bar admission and “making it” as a

woman lawyer among male lawyers. Not all of them practised law for long, if at all, and fewer still made a living and built careers practising law. The first women lawyers, initially barred from entering the legal profession by gender prejudice, suffered gender discrimination in their professional lives once they had succeeded in doing so. Ironically, the more difficult challenge proved to be not bar admission, but law practice—not profession, but career.

Canada's first women lawyers tend to be studied not from the perspective of women-in-the-professions but as an internal development of the traditionally masculine legal profession:⁴ its modernization or evolution articulated in terms of a patriarchal privilege begrudgingly conferred.⁵ Women lawyers seem to belong less to women's history or the history of the professions than to internal legal history. Nevertheless, and generally speaking, Canada's first women lawyers have been well-served by historians.⁶ Studies of them appear as biographical articles or essays,⁷ or are embedded in thematic treatments;⁸ some remain unpublished.⁹ None of the ten pioneer women lawyers (1897–1942) has attracted a biography, however, nor is there a book-length study that explores all of them collectively.¹⁰ There is nothing remotely resembling Richard Sorabji's compelling 487-page study of his aunt, Cornelia Sorabji (1866–1954), the first woman called to the bar of India in 1924.¹¹ (A near and noteworthy exception will be Gail Campbell's study of New Brunswick's Muriel McQueen Fergusson.)¹² The closest one gets to a monograph is Mary Jane Mossman's *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions*. This magisterial work compares and contrasts the experience of trailblazers in five common-law jurisdictions: the United States, Canada, Britain, New Zealand, and India.¹³

Mainstream women's historians approach the subject of women lawyers gingerly. The second edition of *Changing Patterns: Women in Canada* submerges women lawyers in a chapter entitled "Law, Gender, Equality" and misleadingly characterizes the legal struggles of would-be women lawyers attempting to penetrate the profession as "early 'persons' cases."¹⁴ Such an approach conflates basic constitutional questions and matters of statutory interpretation with common-law perspectives on the gatekeeping aspect of professional regulation. An even more striking example of the tendency to marginalize women lawyers, or exclude them from consideration altogether, is the substantial volume of essays edited by Elizabeth Smyth et al.: *Challenging Professions: Historical and Contemporary Perspectives on Women's Professional Work*,¹⁵ which disposes of women lawyers in a few sentences as victims of discrimination in their professional life.¹⁶ The Canadian women professionals who are the subject of this book worked as religious, university teachers, doctors, nutritionists, nurses, foresters, accountants, schoolteachers, and pharmacists. Lawyers are conspicuous by their absence.

New Brunswicker Frances Lilian Fish (1888–1975) was representative of an evolution occurring in Canada between the 1890s and the 1940s that saw a gradual transition from an all-male to a bi-gendered legal profession. It was a process to which New Brunswick contributed significantly. As early as October 1893, twenty-three-year-old Edith Hanington of Saint John became the first woman law student in Atlantic Canada.¹⁷ At the time, women lawyers were unheard of anywhere in Great Britain or its overseas empire. The very first, Clara Brett Martin, was called in Ontario in 1897 after a protracted legal and legislative struggle. No sooner had Martin been called than a bill to provide for the admission of women to the bar was introduced in the Nova Scotia Legislature. The bill failed to pass, but the writing was on the wall.¹⁸ New Brunswick was the second Canadian jurisdiction to open the bar to women, and the first woman lawyer there (Mabel French, 1906) also went on to become the first woman lawyer in British Columbia (in 1912).¹⁹

Asserting in later life that she had always wanted to be a lawyer—the claim is doubtful—Frances Fish was an athletic, husky-voiced woman who played basketball in university and ice hockey into her mid-twenties, and who later on relaxed by hunting and swimming. Popular and "smart," she experienced a broken engagement and never married, instead becoming a lifelong advocate for the oppressed, the exploited, and the disadvantaged, especially women, children, minorities, and the underclass. Influenced by the social gospel, the prevailing ideology of the Presbyterian Church in Canada in which she had been raised and which she followed into the United Church of Canada, she developed and retained throughout her life a sensitive social conscience. Fish was also famous for her tulip garden and love of children.²⁰

She was by various accounts a garrulous, gossipy, superstitious, eccentric, and credulously *religieuse* woman who told fortunes by reading playing cards or tea leaves, believed in spirits, and talked to Jesus. In her late fifties she provided "considerable amusement" to the people of Newcastle and Chatham by hitchhiking between the two towns on either side of the Miramichi River in order to discharge her duties as deputy county magistrate.²¹ She was also disingenuous,

claiming an academic doctorate she did not possess and membership in the Ontario bar, which she did not have.²² Her tendency to refract the truth about herself has led to mistaken inferences and counterfactual assertions. An academic study of women in New Brunswick politics, for example, describes her as leaving “a successful law practice in Toronto” in order to return to the Maritimes;²³ she never lived in Toronto, much less practised law there.

“F.L. Fish” (as she appeared, accidentally-on-purpose, on her letterhead stationery) receives only a passing mention in Mossman’s discussion of “the context for the first women lawyers in Canada: reformist ideas about professionalism and women’s roles.”²⁴ If Fish held reformist ideas they were not about professionalism or women’s roles, but about social justice; in relation to the legal profession she was a complete traditionalist, only too happy to work within the system—provided the system would accept her. She saw women’s roles as any role a woman cared to assume. Fish would probably have agreed with the male law-professor author of the history of Dalhousie Law School, who gives ample coverage to early women graduates, of whom Fish was the first, before expressing relief and satisfaction that their motivation had nothing to do with feminism. They were worthy and able to be lawyers because they thought like men, and—perhaps more importantly—were *not* advocates of women’s rights or beneficiaries of the women’s rights movement.²⁵

In a wide-ranging interview given to a Saint John newspaper in 1963, Fish pointed out that “she was never a suffragette or crusader for women’s rights.”²⁶ In law school she was treated as one of the boys (“I got a fine reception from the other members of my class”²⁷), and she kept quiet about student poker games in the law library. In 1934, on entering practice in Newcastle, she realized that in order to win acceptance by, or at least the toleration of, men lawyers, she had to prove herself as good as they were. In others words, she had to develop a conventional law practice, including taking on clients who were “tough characters” and defending them successfully in criminal cases. This she did.

The middle of five sisters—two older brothers died young—Fish was born in Newcastle, the shiretown of Northumberland County, in December 1888, the granddaughter of Mainers who had emigrated to the Miramichi after the War of 1812. Her father, Charles Elijah Fish, was a sawmill owner, quarryman, and building contractor who did not have a head for business—one was referred to him as having been “associated with the firm Lumber, Earth and Rockwork.”²⁸ A latter-day Don Quixote, “Charley” Fish also went into public life—at the municipal, provincial, and federal levels. Over a period of twenty-five years he served in every capacity from town councillor to MP. The early deaths of both sons meant that the entire hope of the family was vested in the five precocious and hardy daughters, all of whom lived to an advanced age, the youngest dying as recently as 1988. Very unusually for the time, Frances and all her sisters were university educated, a reflection perhaps of their father’s progressive idealism and the false belief held by their socially pretentious mother, a Willard from the elite Loyalist family of that name, that she was the granddaughter of President Joseph Willard of Harvard University.²⁹ Three of the sisters took their undergraduate degree at the University of New Brunswick and one at the University of Manitoba. The youngest, Ruth Foster Fish Davidson, became a pioneer woman lawyer in North Carolina.³⁰

Frances completed the final two years of Newcastle’s Harkins Academy high school in one year, passed the university matriculation examination, and entered the University of New Brunswick in autumn 1906. She graduated with a BA in 1910 at the head of her class, classics being her major and ancient Greek her specialty. While at UNB Fish was president of the Ladies Society, even playing the male lead in their acclaimed production of W.S. Gilbert’s *Pygmalion and Galatea*, and she was twice awarded the Montgomery-Campbell prize for excellence in classics. After graduation she proceeded on scholarship to the University of Chicago, where she studied under the eminent classical philologist Paul Shorey, and in 1913 gained her MA on the strength of a thesis entitled “The Tendency to Repeat a Word or Phrase Within a Single Play of Aeschylus and of Sophocles.” She also commenced doctoral studies, though she did not complete them.³¹

Fish had obtained her teacher’s licence before leaving New Brunswick and she spent the academic year 1911–12 teaching school in Winnipeg, where her brother-in-law, Murdoch Stewart McDonald, PhD (Cornell), was professor of philosophy, politics, and economics at what is now the University of Winnipeg. The McDonalds were well connected in the city’s New Brunswick expatriate community, which included fast-rising young lawyers like Andrew Knox Dysart (brother of a future Liberal premier of New Brunswick), Walter Harley Trueman—both afterwards superior court judges in Manitoba—and Solomon Hart Green, MLA, and the first Jewish person called to the bar of New Brunswick.³² Though Winnipeg (“the Chicago of the North”) was experiencing something of a golden age,³³ Fish seems to have been unhappy

or unhealthy there and did not remain. Returning to New Brunswick, she taught at the Grammar School in Campbellton from 1912 to 1915, spending the summer of 1913 at the University of Chicago working on her doctorate. Then she suddenly abandoned postgraduate study altogether and switched career paths entirely. There is no evidence to suggest why she did so, other than that she had decided to be a lawyer rather than a professor of classics—clearly her first love.

In October 1913 Frances Fish became a student-at-law. As she held a BA from the provincial university, the preliminary examination was waived and the period of studentship reduced from four years to three.³⁴ Why law and why then?³⁵ Fish was in the second year of her arts course at UNB when Mabel French, New Brunswick's first woman lawyer, became a fully fledged barrister in November 1907. French left the province five years later and, in the intervening years, had had no successor either in New Brunswick's law school or at the bar. By 1913 women lawyers were permitted in five other jurisdictions—Ontario, British Columbia, Manitoba, Saskatchewan, and Newfoundland³⁶—so were not yet to be found everywhere in Canada. Ontario, where Clara Brett Martin still practised, led in numbers,³⁷ while Quebec resolutely opposed any attempt to open the Barreau to women. Fish's sojourn in Winnipeg coincided with the successful campaign to open the bar of Manitoba to women, though none was called until 1915. That year also saw a woman called to the bar of Alberta—without any agitation at all, much less legislation.³⁸

Fish was thus the first woman in New Brunswick to become a student-at-law since French in 1902. The Campbellton lawyer who accepted her as a pupil, William Alder Trueman, was a prominent older practitioner and probably also a distant cousin of Walter Trueman in Winnipeg. Not every lawyer in New Brunswick in 1913, especially one of Trueman's generation (he had been called to the bar in 1877), would have been willing to accept a woman as a student.³⁹ Rather unusually, moreover, Fish was neither attending, nor about to attend, law school. By 1913 that had become the exception rather than the rule for intending lawyers in the Maritimes.⁴⁰ For the first two years of her studentship, Fish also continued to teach at the Grammar School in Campbellton, which was against the spirit if not the letter of the regulations governing law studentship in New Brunswick.⁴¹ The intent was that the prospective lawyer should study law full time, whether by working under supervision in a lawyer's office or by attending a university law school. Compliance with the regulations was not policed, however; it was a matter of due diligence on the part of both teacher and pupil. Once the council of the law society had approved an applicant for admission as a student-at-law, by examination or otherwise, arrangements between lawyer and student were left largely to the discretion of the parties.

Perhaps in order to finance legal studies, or because she was still uncertain as to her future course, Fish deferred entering law school for two years. Deciding against King's College School of Law in Saint John (now the Faculty of Law, University of New Brunswick), she chose Dalhousie University, which was the school of choice for intending lawyers from New Brunswick's North Shore.⁴² New Brunswick law students had been entering Dalhousie Law School since its foundation in 1883; the first graduating class included one Albert Watson Bennett, an older cousin of the future prime minister, Richard Bedford Bennett, who himself graduated in 1893. The flow of New Brunswick law students to Halifax was not stanchied by the establishment of a university school of law in Saint John in 1892. By 1911 there were still almost as many New Brunswick law students at Dalhousie as there were at King's College Law School in Saint John.⁴³ That year the New Brunswick contingent at Dalhousie petitioned the council of the Barristers Society of New Brunswick for equal standing with graduates of King's College so that they could be called to the bar without any further examinations other than for the LLB.⁴⁴

Though Dalhousie Law School had never had a woman student, it was probably decisive to Fish's timing that in the spring of 1915 the Nova Scotia Barristers Society had admitted its first woman articled-clerk⁴⁵—Emelyn Laura MacKenzie. There was no point taking a law degree if one could not be called to the bar, which was the situation faced by Mabel French upon graduating BCL from King's College in 1905. Unlike its New Brunswick counterpart a decade earlier, the Nova Scotia Barristers Society took the enlightened view that if a woman could be admitted as a law student, then a woman could also be called to the bar. So it was in the autumn of 1915 that Fish went to Dalhousie.⁴⁶

Despite the man-drain wrought by the First World War, the freshman law class in 1915 was unexpectedly large, a development that the president of the university attributed to raising the minimum academic requirements for admission to one year of the Arts course.⁴⁷ Fish far exceeded that threshold and may also have found appealing the fact that the new (1914) dean of law, Donald Alexander MacRae, had an academic background identical to her own: ancient Greek classics.

Also, like her brother-in-law McDonald, he held a PhD from Cornell.⁴⁸ In 1916 she was joined by the two other women articulated-clerks—MacKenzie and Caroline Isabel McInnes.⁴⁹ In her third and final year of law school she lived through the Halifax Harbour explosion (6 December 1917). According to family tradition, she was standing on the steps of Dalhousie's Macdonald Memorial Library at the moment of the blast. She was knocked unconscious, and when she came to found the severed head of another victim frozen to her leg. She was treated at the time for severe emotional distress due to this event.⁵⁰ Despite illness and injury, and perhaps homesickness—she spent all her vacations with family in Newcastle—Fish did well among her small class, graduating with an LLB in 1918. Like French before her, she would be the first woman called to the bar in the province where she was also the first woman to graduate from law school.

After Alder Trueman's sudden death in July 1917, Fish transferred her studentship first to Edward Perley Williston, Northumberland County treasurer and clerk of the circuit court, and then to Robert Forsyth Yeoman, a sole practitioner in Halifax. Yeoman was a native of Newcastle and a fellow Dalhousie LLB who had been called to the Nova Scotia bar in 1915. The council of the Nova Scotia Barristers Society went out of their way to accommodate Fish, it being extremely unusual for a law student from another jurisdiction to be allowed to transfer time served.⁵¹ She could not be a student-at-law in New Brunswick and an articulated clerk in Nova Scotia at the same time.

Fish spent the summer after graduation working for Yeoman, perhaps in the hope of an invitation to join his firm, which was not forthcoming.⁵² Called to the bar on 10 September 1918, she did not, like the other New Brunswick graduates of Dalhousie Law School, return home to be called and to practise, but instead announced her intention to settle permanently in Nova Scotia.⁵³ After her call Fish worked briefly in Halifax's elite Liberal law firm, MacLean, Paton, Burchell & Ralston (now Burchells LLP), whose senior partner, Alexander Kenneth MacLean, MP, was minister without portfolio in Prime Minister Sir Robert Borden's Unionist coalition government. Fish was nothing if not well-connected politically, her father being head of the Unionist organization in Newcastle, where the local MP was a Unionist Liberal like MacLean himself.⁵⁴ Within months, however, Fish left Burchells and went to work as assistant counsel to Yeoman, who had been appointed head of the legal department of the Halifax Relief Commission, set up in the spring of 1918 to manage reconstruction of the city's explosion-devastated north end.

This was a confusing, perhaps even tumultuous, time for Fish, who did not remain long either with the relief commission or in Halifax. We do not know exactly when or why she left—perhaps it had something to do with a broken engagement to fellow law student James Hugh McDonald, a Cape Bretoner who was possibly Professor Stewart McDonald's younger brother. One wonders whether the engagement foundered on Fish's declared interest in becoming a practising lawyer. At that time, women lawyers who married could not remain in practice nor could married women lawyers commence it. Such was the customary prohibition, the unwritten law. At issue, of course, was gender role definition and the impact of prevailing social attitudes towards married women's respectability—not to mention their husbands'.

Fish's removal from Nova Scotia put her career as a lawyer on indefinite hold. She did not return to New Brunswick, where she could easily have been called to the bar, nor did she ever resume her career in Nova Scotia.⁵⁵ The division within the family occasioned by her parents' separation about this time perhaps explains her lack of interest in returning to the fishbowl that was upper-middle-class Newcastle; all her sisters came to the same conclusion, probably for the same reason. Fish's mother, Annie Eliza Willard Fish, had recently left the matrimonial home in Newcastle and gone to live with her eldest daughter Anne Mildred in New York and then Montreal. The cause of the permanent estrangement is not known, though it may have had something to do with Mr. Fish's suing his older brother James's widow (who was also Mrs. Fish's sister's sister-in-law) for a substantial legacy from his wealthy late brother, which the widow as sole executor and residuary beneficiary refused to pay. Fish was successful at trial and on appeal,⁵⁶ and his sister-in-law was preparing to appeal the decision to the Supreme Court of Canada when she agreed to settle out of court and pay the legacy. These proceedings took place while Frances was in law school and perhaps impressed on her the usefulness of having a lawyer in the family. (It also helps explain why in her mature law practice she avoided litigation.)

Unable or unwilling to offer Fish a place in his law firm, A.K. MacLean came to the rescue in another way, obtaining for her a post in Ottawa at the Department of Finance, of which he had briefly been acting minister.⁵⁷ Fish afterwards left federal government employment for the legal department of Metropolitan Life, which in 1924 established its Canadian head office in Ottawa. While in the national capital Fish kept in touch with the legal profession and with her

primary alma mater. In the summer of 1927 she attended the annual meeting of the Canadian Bar Association in Toronto, and she claimed at the same time to have been made an honorary member of what is now the Women's Law Association of Ontario.⁵⁸ In April 1925 she became founding secretary-treasurer of the University of New Brunswick Club of Ottawa,⁵⁹ an elite undertaking. Among the prominent expatriates involved were Senator Sir George Eulas Foster and Harrison Andrew McKeown, formerly chief justice of New Brunswick's Court of King's Bench and from 1924 chair of the Board of Railway Commissioners (now the Canadian Transportation Agency).

About 1929 Fish moved to Montreal, where her sister Mildred ran an independent epidemiological laboratory.⁶⁰ Fish went to work for Lord Beaverbrook's former lawyer, Charles Hazlitt Cahan, a Conservative MP and (in 1927) unsuccessful candidate for leader of the federal party. Fish's entrée with Cahan—a sole practitioner who was formerly a corporate lawyer in Halifax—can only be surmised, though both he and her father became Conservative MPs in 1925. C.E. Fish was also a delegate to the October 1927 leadership convention that elected R.B. Bennett leader of the federal Conservative party, and it is possible that Fish supported Cahan rather than the New Brunswick expatriate Bennett. Paradoxically, after leaving Nova Scotia, Fish worked in one jurisdiction—Ontario—where she could have applied for admission to the bar⁶¹ but did not, then in another—Quebec—where as a woman she would not have been eligible for admission even if she had applied. Though she could not practise law, it seems probable that Fish managed Cahan's law office and practice after 1930 when he was a federal cabinet minister and frequently absent from Montreal on parliamentary and government business.

The sudden death of C.E. Fish in July 1933 opened a window of professional opportunity for Frances. Having come to Newcastle when he fell ill, she decided to remain after his death; she then applied to succeed her father as the town's police and stipendiary magistrate, an appointment customarily not held by a lawyer and never by a woman. The post went instead to Lord Beaverbrook's eldest brother, Ronald Traven Donaldson Aitken, a well-connected Conservative lawyer with superior legal and gender credentials, who like her had left the province, returning in 1925 after nearly twenty years spent in Nevada, Calgary, and Montreal. Local lawyers wanted a lawyer in the post—but not a woman lawyer, and definitely not one who was not a member of the New Brunswick bar. It must have rankled Fish when R.T.D. Aitken's subsequent illness necessitated the appointment of a "sitting" (acting) magistrate; the post went to the court stenographer, a woman who had formerly been Aitken's legal secretary.⁶²

In order to make a living in Newcastle, Fish decided to resume practising law; but in order to practise law she had to become a member of the New Brunswick bar. She was called in February 1934—a full twenty years after becoming a student-at-law—and fifteen years after she had last practised law in the only other jurisdiction in which she had been called. She was the ninth woman at the New Brunswick bar. Later that year Fish lobbied, again unsuccessfully, for a patronage appointment.⁶³ The post of judge of probate for the county, vacant through death, went instead to another Newcastle Conservative lawyer, John Adams Creaghan, LLB (Dalhousie), who was younger than she was but many years her senior at the bar.⁶⁴ More tellingly, Creaghan was not a recently returned native like Fish; he had lived and practised in Northumberland County ever since being called in 1915. Patronage appointments were apparently closed to Fish not just because she was a recently returned native but also because she was a woman. Yet she bravely assumed that as a loyal Conservative (when the Conservatives were in power in Fredericton), and as a lawyer, she was both qualified and eligible.

In 1934, for the first time since leaving Halifax, Fish was trying to make a living practising law. She had a hard row to hoe. Newcastle and its larger downriver rival, Chatham, were oversupplied with male lawyers of both political persuasions, all her seniors at the bar. The local bar was also in a trough; the early 1930s saw one of their own disciplined "after a well-publicized episode of dishonesty."⁶⁵ Fish, for her part, was ill-prepared. Not only had she not practised for fifteen years, she had not practised in New Brunswick at all. Her sole experience had been in a neighbouring jurisdiction, Nova Scotia, where she had practised only briefly as a solicitor, never appearing in court as a barrister. Additionally, there was the culture shock. The notion of a woman who was a practising lawyer was a novelty on the Miramichi in the 1930s. It was one thing to have the police magistrate's stenographer as sitting magistrate during the occasional indisposition of the incumbent, yet another to have a woman lawyer as a member of the town's practising bar. Fish nevertheless established her credibility early on by successfully defending an accused jail-breaker in the Supreme Court.⁶⁶ In February 1935 she succeeded in the county court on a habeas corpus application in favour of an accused deer-slayer imprisoned by a lay magistrate.⁶⁷ In June 1935 she became the first woman lawyer to argue a case before the appeal division of the

Supreme Court of New Brunswick, when the high court upheld the county court judge's overturning of a magistrate's conviction of a local bootlegger appealed by the Crown. Fish was associate counsel for the prisoner.⁶⁸ She also did legal work for First Nations persons from the Red Bank and Burnt Church reserves. In October 1942 she convinced a Supreme Court jury to convict an Aboriginal man from Burnt Church on the lesser charge of indecent assault. She was defending him on the far more serious charge of rape.⁶⁹

Though Fish also scored early successes as a defence counsel specializing in adultery (then still a crime in New Brunswick) and other sexual offences, she was not always successful in advocating the cause of women clients. In 1943, as an associate Crown counsel in a private prosecution, she failed to convince the magistrate to compel a deadbeat dad to pay child support to the wife he had deserted.⁷⁰ Being a woman lawyer did not mean that Fish was necessarily or exclusively a lawyer *for* women. A passionate believer in social justice she undoubtedly was; a feminist who saw women as her sole clientele she was not. Women clients appealed to her to the degree that they were oppressed or abused, not because they were women. Her clients, such as we know them (no records of her law practice survive), are revealing. In divorce proceedings she represented the petitioner, who was usually a woman.⁷¹ In adultery, statutory rape, and bigamy prosecutions, she represented the accused regardless of gender.

Gradually abandoning criminal defence work during and after the Second World War, Fish turned increasingly to divorce, which she relished—it would appear—as woman's revenge. Her divorce practice made her reputation. A then teenaged female neighbour of Fish recalls, "Frances specialized in DIVORCE and oftentimes would boast how easily she could get a divorce for the ladies if they wanted one; i.e., she said to my mother-in-law, 'You just come see me deary and I'll help you get a divorce.'" ⁷² It seems probable that Fish turned to divorce because it was riding the crest of a wave: demand had been continually increasing since the First World War.⁷³ Family law offered plenty of scope and material and was less complicated, demanding, and unpredictable than criminal law. In 1934 the New Brunswick law was amended to vest in the divorce court the disposition of children, and to enable the petitioner to sue the co-respondent for damages when adultery was the grounds alleged.⁷⁴ Fish's divorce practice evolved naturally enough out of her cases on adultery, which by 1941 accounted for nine out of ten divorces granted in New Brunswick⁷⁵ and was one of only two grounds on which divorce could be granted, the other being bigamy.⁷⁶

Fish was as successful at practising law as she was unsuccessful in politics. While in Montreal she had been for three years secretary of the Women's Conservative Association. Politics was in her blood; no sooner had her father died than Frances took up the torch. C.E. Fish had been an MLA, three times mayor of Newcastle, and, briefly, Conservative MP for Northumberland County. As a lawyer at a time when most lawyers were also politicians or aspired to be, Fish was empowered in a way her father had never been—but gender undid the advantage. New Brunswick waited fifteen years after giving women the right to vote (in April 1919) before enacting a law enabling them to stand for election to the legislature.⁷⁷ In the provincial election of June 1935 Fish became the first woman to run for the New Brunswick Legislature, receiving more votes than any other Conservative candidate in Northumberland County. All four Conservatives went down to defeat, however—as did the Conservative government of Premier L.P.D. Tilley, which had made Fish's candidature a plank in their platform.⁷⁸

Though not the first woman in Atlantic Canada to stand for election to Parliament, Fish was the first to do so as a credible, party-affiliated candidate.⁷⁹ In the federal election of October 1935, disenchanted with Prime Minister R.B. Bennett's right-wing Conservative government, Fish ran for H.H. Stevens's Red Tory dissident Reconstruction Party. One of the party's five female candidates, she put up a good fight for a lost cause, taking 20 percent of the vote and finishing less than six hundred votes behind the Conservative. Her candidacy, however, further splintered and undermined the Conservative vote in Northumberland, already split by a bitter struggle in which the incumbent Conservative MP, Newcastle lawyer George Manning McDade, had been "deselected" by his own party's nominating convention. In the provincial election of 1939 Fish again offered for selection as a Conservative candidate for Northumberland, but the party had not forgiven or forgotten her opposition federally in 1935. She finished seventh in a field of eight potential candidates. After that Fish made no more forays into electoral politics. She was in later years reconciled with the Conservative party, becoming shortly before her death honorary president of the county association.⁸⁰

In August 1945 Northumberland County Council adopted the County Magistrates Act (1942), which eliminated town and parish stipendiaries/police magistrates and provided that all magistrates be lawyers of at least three years' standing. In

July 1947 Fish was appointed deputy county magistrate for Northumberland. It was a remarkable, first-time achievement for a woman lawyer in Atlantic Canada, when such appointments went exclusively to men lawyers and political patronage. In this instance, she was not only a woman but also a prominent and partisan Conservative—appointed by a Liberal government.⁸¹ Both of Newcastle's newspapers greeted her appointment with deafening silence. The appointment was also strongly disapproved of by the local bar. Paul B. Lordon, a fellow deputy county magistrate and Newcastle town solicitor, resigned in protest, going so far as to write Premier McNair, who was also attorney general, complaining in detail about Fish's performance as a magistrate and threatening to expose it in one of the local newspapers. He wrote: "She has succeeded in making a joke of the Administration of Justice within the County, and has been a mere puppet in the hands of the Police and others to whom she was attracted by whim or fancy."⁸² Fish survived, despite allegations against her of incompetence and partiality. The transition from bar to bench was difficult, Fish having largely given up criminal defence, the very practice of which now routinely confronted her and taxed her knowledge of both law and procedure. She was a born advocate, not a jurist, and tended to view the cases before her through the eyes of a prosecuting or defending counsel, taking sides for or against the accused, and adjudicating accordingly.

As a deputy county magistrate Fish dealt with all the cases that would now come before a provincial court judge. She substituted for the county magistrate, John P. Morrissy, when he was ill or on vacation. She also continued her own busy law practice, which magistrates were permitted to do provided they did not appear before another magistrate. Fish remained a deputy county magistrate for sixteen years, until reaching the mandatory retirement age of seventy-five in December 1963. Earlier that year she had become a deputy judge of the juvenile court. Created Queen's Counsel in 1972, she continued to practise until months before her death in October 1975. Her practice died with her and was not sold to another lawyer.⁸³

Frances Fish's odyssey was a true "Portia's progress,"⁸⁴ which took her to several different destinations over four decades. Only in 1933 did she come full circle, returning to and remaining for the duration of her long life in Newcastle, where she had grown up and from where she had set out for Fredericton and university in 1906. She spent varying amounts of time in Chicago, Winnipeg, Campbellton, Halifax, Ottawa, and Montreal until her wanderings ceased where they had begun. Fifteen years of eking out a living as a nonpractising lawyer working on the fringes of the profession were followed by forty years' conventional law practice in her home province.

It was not until age forty-five, nearly fifteen years after her call to the bar of Nova Scotia, that Frances Fish began the practice of law in earnest. There was no woman lawyer north of Fredericton, and few if any of New Brunswick's resident women lawyers were in active practice. The bar was a male preserve and would remain one until the 1980s; from 1906 to 1969 only thirty-eight women were called—and in 1970 not a single one.⁸⁵ Though a late starter, Fish persevered and devoted the rest of her life to mainstream lawyering. By 1949, when Mary Louise Lynch, a fellow lawyer and registrar of the UNB Law School, referred to her as a "prominent lawyer in Newcastle,"⁸⁶ Fish was among the very few women lawyers in New Brunswick who were actually practising law. The others had left the province, retreated into matrimony, or—like Muriel McQueen Fergusson, called (without a law degree) in 1925 and nonpractising until 1936—were working outside the law.⁸⁷

Frances Fish was the first woman lawyer in New Brunswick to pursue a conventional law practice.⁸⁸ She did not see being a woman as an impediment to being accepted as a practising lawyer, though at the time it clearly was. In becoming a lawyer she encountered nothing like the implacable opposition that Mabel French encountered in both New Brunswick and British Columbia, yet Fish courageously faced and overcame the obstacles confronting her as a female practitioner in New Brunswick. Paradoxically, while she is a stranger to public memory in New Brunswick, in Nova Scotia, where her career as a lawyer began so promisingly and ended so peremptorily, Fish is recognized and celebrated.⁸⁹ In October 1997 the Nova Scotia Association of Women and the Law established the Frances Lilian Fish Women Lawyers Achievement Awards. It is not an honour that Fish would likely have approved. She was not a "woman lawyer" but a lawyer who incidentally was a woman and none the worse a lawyer for it. Nor was she a feminist in any meaningful sense of the word; in her view, that would have damaged her credibility as a lawyer and jeopardized her career prospects.⁹⁰ "Miss Fish, the lawyer," has a walk-on in David Adams Richards's *River of the Broken-Hearted* and it is tempting to draw comparisons between her and the independent woman character who is the heroine of that 2004 novel. Though not a feminist, Fish was a pioneer within the age of feminism—in spite of herself.

She may not have recognized or admitted it, but Frances Fish clearly benefited directly from the achievements of the women's rights movement in New Brunswick: bar admission (1906), suffrage (1919), and legislative candidature (1934).⁹¹ She built well on the foundations others had laid. As a woman lawyer she was a pioneer in two provinces: the first in Nova Scotia to be called to the bar, and the first in New Brunswick in the more substantive contextual sense of being first among the nine women called between 1906 and 1934 to achieve a meaningfully mainstream conventional law practice. In terms of years and achievement, the most significant part of her long and meandering career lay not in Nova Scotia but New Brunswick. It was not until she returned to her native province after an absence of nearly two decades that her career assumed the focus and directedness that would sustain her through the remaining forty years of her long life. Fish's success, and her historical importance, lies in her having established and maintained, over the long term and against the odds, a conventional law practice. Though not a feminist, much less a feminist lawyer, she was an emancipated professional woman who opened up for women lawyers the realistic prospect of making a living practising mainstream law. The tectonic shift in the culture of New Brunswick's legal profession, which originated with Fish, did not occur in full until after her death.⁹² The province would have to wait nearly forty years after Fish's appointment as deputy county magistrate for another woman judge.⁹³

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Endnotes

1. Tracy-Gould, Judge A.P. Interview. N.d. Provincial Archives of New Brunswick, MC 1828, 3 June 1990. 5.
2. The others were Ontario (1897) – Clara Brett Martin; New Brunswick (1906) – Mabel French; British Columbia (1912) – Mabel French; Alberta (1915) – Ruby Clements; Manitoba (1915) – Melrose Sissons and Winnifred Wilton; Saskatchewan (1917) – Mary Cathcart; Prince Edward Island (1926) – Roma Stewart Blackburn; Newfoundland (1933) – Louisa Saunders; and Québec (1942) – Elizabeth C. Monk and Suzanne Raymond-Filion.
3. Richards, David Adams. *Lord Beaverbrook*. Toronto: Penguin, 2008. 9.
4. On this subject generally see Grossberg, Michael. “Institutionalizing Masculinity: The Law as a Masculine Profession.” *Meanings for Manhood: Constructions of Masculinity in Victorian America*. Ed. Mark C. Carnes and Clyde Griffen. Chicago: U of Chicago P, 1990. 133-51. On male-lawyer opposition to the admission of women as an effect and consequence of institutionalized masculinity, see especially pages 195-6.
5. On this subject generally see Cahill, Barry. “Legislated Privilege or Common-Law Right? – Provincial State Intervention and the First Women Lawyers in Nova Scotia.” *Making Up the State: Women in 20th Century Atlantic Canada*. Ed. Janet Guildford and Suzanne Morton. Fredericton: Acadiensis P, 2010. 79-92.
6. This is comprehensively and authoritatively covered by Mossman, Mary Jane (see *infra*) and does not require recapitulation here.
7. See for example, Yorke, Lois K. “Mabel Penery French (1881-1955): A life Re-Created.” *University of New Brunswick Law Journal* 42 (1993): 3-49; Backhouse, Constance. “Clara Brett Martin: Canadian Heroine or Not.” *Canadian Journal of Women and the Law* 5.2 (1992): 263-79; and Brockman, Joan. “Exclusionary Tactics: The History of Women and Minorities in the Legal Profession in British Columbia.” *Essays in the History of Canadian Law, Volume VI, British Columbia and the Yukon*. Ed. Hamar Foster and John P.S. McLaren. Toronto: Osgoode Society, 1995. 508-61. A full bibliography may be found in Mossman, *First Women Lawyers*, 291-317.
8. See, for example, Chunn, Dorothy E., and Joan Brockman. “Into the Rough of Things’: Women Lawyers in British Columbia, 1912-1930.” *The Promise and Perils of Law: Lawyers in Canadian History*. Ed. Constance Backhouse and W. Wesely Pue. Toronto: Irwin Law, 2009. 245-63.
9. See Fisher, Kathy. “Sounding Down the Years: Roma Stewart Goodwin Blackburn’s Journey in Law.” (Unpublished paper.) 1994. Stewart (1902-1985), daughter of the Island’s Conservative premier and attorney general, J.D. Stewart, was called to the bar of PEI in 1926.
10. A near exception is Deirdre Kessler’s biography of Prince Edward Island’s first law student (though not lawyer): *A Century on Spring Street: Wanda Lefurgey Wyatt of Summerside...* Charlottetown: Indigo, 1999.
11. Sorabji, Richard. *Opening Doors: The Untold Story of Cornelia Sorabji, Reformer, Lawyer and Champion of Women’s Rights in India*. London & New York: Tauris, 2010; see also Gooptu, Suparna. *Cornelia Sorabji: India’s Pioneering Woman*. New York: Oxford UP, 2006. Sourabji of course had already been called to the English bar.
12. See Campbell, Gail G. “‘Are we going to do the most important things?’ : Senator Muriel McQueen Fergusson, Feminist Identities and the Royal Commission on the Status of Women.” *Making Up the State*. Ed. Guilford and Morton. 179-96. A longer version of the same article appears in *Acadiensis: Journal of the History of the Atlantic Region* 38.2 (Summer/Autumn 2009). In her popular history – *Leading Ladies – Canada*. Belleville ON: Mika, 1997 – Jean Bannerman discussed Senator Fergusson. See the chapter “Pinnacle of Power – Politics”: 239-41.

13. Oxford and Portland, OR: Hart Publishing, 2006. Mossman's 45-page chapter on the first Canadian women lawyers is entitled, "Women Lawyers in Canada: Becoming Lawyers 'On the Same Terms as Men'." For an overview see Kay, Fiona M. and Joan Brockman. "Barriers to Gender Equality in the Canadian Legal Establishment." *Women in the World's Legal Professions*. Ed. Ulrike Schultz and Gisela Shaw. Oxford and Portland, OR: Hart Publishing, 2003. 49-76.
14. Baines, Beverly. "Law, Gender, Equality." *Changing Patterns: Women in Canada*. 2nd ed. Toronto: M&S, 1993. 246-53.
15. Toronto: U of Toronto P, 1999.
16. pps. 5-6.
17. Bell, D.G. *Legal Education in New Brunswick: A History*. Fredericton: U of New Brunswick, 1992. 88, 97-101. Hanington, who came of a distinguished legal family, entered but did not graduate from law school; instead she abandoned the study of law and married a lawyer.
18. "Admission of Women to the Bar." *Morning Chronicle* 20 Mar. 1897.
19. On this subject generally see Godin, Rita. "La femme et la profession juridique au Nouveau-Brunswick: Quelques statistiques." *Egalité: Revue acadienne d'analyse politique* 10 (automne 1983): 123-34.
20. Unless otherwise indicated, these claims and observations are based on the Newcastle newspapers, *Union Advocate* and *North Shore Leader*, and the oral tradition, which in Fish's case is amazingly rich. A uniquely important source is the transcript of the oral history interview conducted in June 1990 between Anne Fawett and Judge A.P. Tracy-Gould (1917-2003), who knew Fish well throughout his life. This document is among the records of the Women's Directorate held by the PANB (MC 1828), which also holds extensive Fish family papers. Fish's own papers have not survived. A noteworthy connection between the two is that Fish briefly articulated with Tracy-Gould's maternal grandfather, E.P. Williston.
21. Lodon, Paul B. to Department of Attorney General, 5 Sept. 1947; RS 414 I 2a McNair, J.B. Papers, PANB.
22. See, for example her letter to the Attorney General Harrison soliciting the post of Newcastle town magistrate in which she makes both of these claims: Fish to Harrison, W.H., 14 July 1933, PANB Executive Council records, RS 9, file 14.
23. Desserud, Don. "Women in New Brunswick Politics: Waiting for the Third Wave." *In the Presence of Women: Representation in Canadian Governments*. Ed. Jane Arscott and Linda Trimble. Toronto: Harcourt Brace Canada, 1997. 260. Similarly wide of the mark is Forbes, E.R. "The 1930s: Depression and Retrenchment." *The Atlantic Provinces in Confederation*. Ed. E.R. Forbes and D.A. Muise. Toronto: U of Toronto P/Fredericton: Acadiensis, 1993. 297.
24. Mossman, *First Women Lawyers*, 73. The act to which Mossman refers on page 87 ("In 1917 Nova Scotia enacted amending legislation which enabled Frances Fish, a native of New Brunswick, to become the first woman lawyer in Nova Scotia, in 1918") was neither amending nor enabling; it was declaratory.
25. Willis, John. *A History of Dalhousie Law School*. Toronto: U of Toronto P, 1979. 76-8. It is fair to point out that Willis misrepresents Fish's subsequent career: "It was not however until several years after she had graduated and had been admitted to the Nova Scotia bar that she was able to realize her ambition to practice law in either Montreal or Newcastle; neither in Quebec nor in New Brunswick were women then 'persons' so as to be admissible to the bar. After that obstacle had been removed in New Brunswick she went for the rest of her working life into practice there on her own..." While it is true that women could not become lawyers in Quebec until years after Fish had left Montreal, the obstacle to women becoming lawyers in New Brunswick had been removed in 1906.
26. "Ahead of Her Time – Frances Fish, Pioneer Woman Lawyer." *Telegraph-Journal* 16 Feb. 1963.

27. "Ahead of Her Time – Frances Fish, Pioneer Woman Lawyer." *Telegraph-Journal* 16 Feb. 1963.
28. English, Earl J. *Nelson and Its Neighbours: 300 Years on the Miramichi*. Chatham: Walco Print & Litho, N.d. 35.
29. On this subject see "Fish, Charles Elijah." *Dictionary of Miramichi Biography*. comp. W.D. Hamilton. Saint John: Privately published, 1997. 119, Note ii.
30. Colin, Emily, Lynn P. Roundtree. *The Changing Face of Justice: A Look at the First 100 Women Attorneys in North Carolina*. Cary (NC): North Carolina Bar Association, 2004. 55.
31. Throughout her life Fish falsely claimed – even on the Barristers' Oath Roll – that she held a PhD. It was not until 1997 that Hamilton, Willis finally put paid to the myth; see "Fish, Frances Lilian." *Dictionary of Miramichi Biography*. comp. W.D. Hamilton. Saint John: The Author, 1997. 120.
32. Bell. *Legal Education in New Brunswick*. 94.
33. Blanchard, Jim. *Winnipeg 1912*. Winnipeg: U of Manitoba P, 2005.
34. "Admitted as Student." *Campbellton Gazette* 23 Oct. 1913. See generally *Rules, Regulations, Etc. Of the Barristers' Society of New Brunswick*, Published June 1910, §29.
35. Fish's father was litigious and perhaps he, or his precocious daughter, thought it would be useful to have a lawyer in the family. At the same time Fish was becoming a law student, her father was suing Dominion Pulp over trespass on the French Fort Cove sandstone quarry property near Newcastle which he owned and had formerly worked. Maybe the prospect of being able to assist her father with legal advice or representation proved attractive to Frances.
36. Though Newfoundland legislated in 1910, no woman was called to the bar there until 1933. For the purpose of this study Newfoundland is treated as part of Canada.
37. Before 1918, nevertheless, Ontario had only eight women lawyers; Mossman, Mary Jane. "Women lawyers in twentieth century Canada: rethinking the image of 'Portia'." *Dissenting Opinions: Feminist Explorations in Law and Society*. Ed. Regina Graycar. Sydney: Allen & Unwin, 1990. 81.
38. Mossman. *First Women Lawyers*. 87.
39. Trueman was also a prominent and active Methodist layman. None of the mainstream Canadian Protestant churches took a more enlightened view of the role of women in society than did the Methodist.
40. In 1867 New Brunswick became the first jurisdiction in Canada to recognize the LLB; see [Bell, D.G.]. *The Law Society of New Brunswick: An Historical Sketch*. Fredericton: Law Society of New Brunswick, 1999. 5.
41. See generally *Rules, Regulations, Etc. of the Barristers Society of New Brunswick*. Fredericton: The Society, 1910. x et seq.
42. I am grateful for this insight to Professor D.G. Bell of the Faculty of Law, University of New Brunswick.
43. They included a future Liberal premier of New Brunswick, Albert Allison Dysart, and the only New Brunswick lawyer to become a justice of the Supreme Court of Nova Scotia – John Stanley Smiley.

44. Petition of New Brunswick law student undergraduates at Dalhousie Law School, Halifax, 23 Jan. 1911; Provincial Archives of New Brunswick, MC 288, Barristers Society of New Brunswick, series MS4 A, file 3722. On Dalhousie Law School in relation to New Brunswick lawyers see Bell. *Legal Education in New Brunswick*. 34-190 passim. See also Bell, D.G. "Slamming the Door on Brains: Two Early Twentieth-Century Law Schools and the Narrowing of Educational Opportunity." *The Promise and Perils of Law: Lawyers in Canadian History*. Ed. Constance Backhouse & W. Wesley Pue. Toronto: Irwin Law, 2009. 31-48.
45. See Waite, P.B. *The Lives of Dalhousie University, Volume One, 1818-1925: Lord Dalhousie's College*. Montreal & Kingston: McGill-Queen's UP, 1994. 181.
46. Among her classmates was New Brunswicker Clovis-Thomas Richard (1892-1976), afterwards a Liberal MLA, provincial cabinet minister, and MP. Though Fish falls just outside the scope of the study, Mélanie Pascale Brunet's dissertation is instructive: "Becoming Lawyers: Gender, Legal Education and Professional Identity Formation in Canada, 1920-1980." unpubl. PhD thesis. U of Toronto, 2005. See especially Chapter 2: "Who Went to Law School? A Collective Portrait of Law Students in Ontario, Nova Scotia and Quebec, 1920-1980."
47. "Law School Freshman Class Especially Large in View of Raised Standard." *Daily Echo* 29 Sept. 1915. The rationale would have included that Latin was, until 1949, required for both law graduation and call to the bar. See Willis. *Dalhousie Law School*. 87.
48. MacDonald and McRae had been undergraduate contemporaries at Dalhousie in the 1890s.
49. All three of them might have been pre-empted by a young Prince Edward Islander, Helen Gertrude Douglas Steeves, who graduated with a BA from Dalhousie in 1913 but went to Alberta to graduate from law school and be called to the bar. On this subject generally see Cahill. "Legislated Privilege or Common-Law Right."
50. Information from John Hogg (maternal great-nephew), who knew Fish well from the days when he spent his summers with her while a student at King's Collegiate School in Windsor, NS. His mother, Peggy Winslow Hogg, was close to and the sole beneficiary of her spinster aunts, Frances and older sister Anne Mildred Fish, who shared a house in Newcastle until their deaths within days of each other in 1975.
51. The Council was authorized to act in the matter by special resolution; see *Barristers and Solicitors Act, Revised Statutes*. 1900. c. 164, s. 14.
52. Yeoman took in a partner in 1919 ("Yeoman & Rutledge") and in 1925 offered a place in his firm to another early woman lawyer, Marjorie Grace Wambolt, who became the first woman substantially to practice law in Nova Scotia, eventually taking over Yeoman's firm.
53. "The First Woman To Be Admitted To The Bar Of Nova Scotia." *Evening Mail* 12 Sept. 1918.
54. On this subject generally see Theobald, Andrew. *The Bitter Harvest of War: New Brunswick and the Conscription Crisis of 1917*. Fredericton: Goose Lane, 2008.
55. The law societies of New Brunswick and Nova Scotia privileged their barristers with reciprocal admission, which was not the case in Ontario, to which bar membership from outside the jurisdiction was not transferable.
56. *Fish v. Fish*, (1917) 44 N.B.R. 617 (NBCA).
57. Their paths crossed again, in 1923, when MacLean was appointed president of the Exchequer Court of Canada and spent the rest of his life in Ottawa.

58. "Social and Personal News." *Ottawa Journal* 31 Aug. 1927.
59. "Ottawa Graduates University of N.B. Hold Dinner Dance." *Ottawa Citizen* 20 Apr. 1925.
60. See generally "The Woman of the Future: An Interview given Mary Viola Cameron." *Canadian Home Journal* Sept. 1930. 6.
61. When Fish arrived in Ottawa there was at least one woman lawyer in practice: Mary McNulty, called to the bar in 1918.
62. Anne McDonald Morell (Mrs. Arthur Copp), 1904-2000.
63. F.L. Fish to Premier L.P.D. Tilley, 14 May 1934; Fish to Attorney General Harrison, 15 May 1934; PANB Executive Council records, RS 9 file 14 ("Most of our Conservative lawyers here have held various positions which have been given to them by the Conservative Government at different times, and I would feel very grateful to you if you could grant this position to me now").
64. After the Conservatives returned to power provincially in 1952 Fish was appointed deputy judge of probate for Northumberland County.
65. [Bell, D.G.] *The Law Society of New Brunswick: An Historical Sketch / Le Barreau du Nouveau-Brunswick: Un Aperçu Historique*. Fredericton: Law Society of New Brunswick, 1999. 15.
66. *R. v. O'Brien*; "May Session of Circuit Court." *Union Advocate* 25 May 1934. Abraham [Arthur] O'Brien, alias Dwyer, alias Doiron, alias Cooper, was a notorious recidivist and career criminal whom Fish afterwards defended on a charge of theft. Before returning to New Brunswick he served a three-year sentence in Manitoba's Stoney Mountain Penitentiary for a series of burglaries and thefts committed in Ontario. See "Newcastle Man Serving Sentence" *North Shore Leader* 29 Nov. 1929.
67. *R. v. Amos, ex parte Reed*; "Prisoner Released." *North Shore Leader* 22 Feb. 1935.
68. *R. v. LeBlanc*; "A Signal Honor." *Union Advocate* 5 June 1935.
69. *R. v. Metallic*; "Burnt Church Indian Goes To Prison." *Union Advocate* 21 Oct. 1942.
70. *R. v. Morris*; "Point Unproven; Magistrate Dismisses Non-Support Case." *Union Advocate* 3 Mar. 1943.
71. This conclusion is based on a close analysis of Divorce Court files in PANB RS 58.
72. Chase, Margaret. Message to the author. 24 Apr. 2009. E-mail.
73. On this subject generally see Snell, James G. *In the Shadow of the Law: Divorce in Canada 1900-1939*. Toronto: U of Toronto P, 1991.
74. Statutes of NB, 1934 c. 33, Divorce Court Act Amendment.
75. Justice Fairweather of the Supreme Court, as quoted in *Union Advocate* 22 Oct. 1941.
76. A attempt to make marital cruelty grounds for divorce failed in 1910 when the Judicial Committee of the Privy

Council dismissed the petition for special leave to appeal: "Privy Council Will Not Hear Appeal in the Curry Case." *Union Advocate* 22 Nov. 1910.

77. The Elections Act was amended in March 1934: S.N.B., 1934, c. 22.

78. "Recognized Women's Rights – Legislation passed giving women the right to sit in the Legislature." *Speaker's Handbook*. Fredericton: n.p. 1935. 18.

79. The first, Minnie Bell Sharp Adney, stood for Parliament in 1925 as an Independent and received 84 votes.

80. "PCs honor Miss Fish." *North Shore Leader* 22 Jan. 1975.

81. Fish and Premier John B. McNair were UNB contemporaries.

82. Relevant correspondence is in the McNair, John B. papers at PANB: RS 414 file I 2a.

83. We would know much more about Fish's law practice if she had seen fit to respond to Professor Cameron Harvey's wide-ranging survey (1970) of women lawyers, which bore fruit in the first scholarly study of the subject: "Women in Law in Canada." *Manitoba Law Journal* 4 1970-1. 9. Most of Fish's surviving contemporaries did.

84. I owe this locution to Mary Jane Mossman.

85. Godin. "La femme et la profession juridique." 126-7.

86. Lynch, Mary Louise. "Women in the Law." *University of New Brunswick Law School Journal*. 3:1 (January 1950).

14. Fish and Lynch were called to the bar the same day – 23 February 1934 – and Lynch afterwards practiced briefly with a firm in Saint John.

87. Muriel McQueen (Mrs. Aubrey Fergusson), called with her husband in 1925, gave up the bar and was only reinstated in 1936.

88. Fish's obituary in the University of New Brunswick's *Alumni News* described her, without exaggeration, as "the first woman to practice law in New Brunswick" (Spring 1976): 8.

89. She returned to Nova Scotia only once, in Oct. 1958, to attend the 75th-anniversary celebration of Dalhousie Law School, from which she had graduated forty years earlier.

90. The issue of Fish's feminism (or "womanism" or gender neutrality) would be impossible to separate from her politics, social activism, and attitude toward legal professionalism, and is not addressed in this article. Apart from the extensive work in this area of Mossman, M.J., Baines, Beverly, and Backhouse, Constance important recent studies include Sheila McIntyre and Elizabeth Sheehy, eds. *Calling for Change: Women, Law and the Legal Profession*. Ottawa: U of Ottawa P, 2006. See also Cameron, Jamie. *Reflections on the Legacy of Justice Bertha Wilson*. Markham, ON: LexisNexus, 2008, and Kim Brooks and Carissima Mathen, eds. *Women, Law and Equality: A Discussion Guide*. Toronto: Irwin Law, 2010.

91. On this subject generally see Tulloch, Elspeth. *We, the undersigned: A Historical Overview of New Brunswick Women's Political and Legal Status, 1784-1984*. Moncton: New Brunswick Advisory Council on the Status of Women, 1985. Fish comes in seventh among Legal pioneers (124-5), after the first woman executioner, the first and second women law students, the first woman barrister, and the first woman "judge." Tulloch mistakenly believes that in 1935, when Muriel Fergusson, then a non-practicing lawyer, was appointed judge of probate for Victoria County, such a position was an actual judgeship.

92. As much is clear from the statistics deployed in Godin, “La femme et la profession juridique.”

93. Her Honour Patricia L. Cumming, called to the bar in 1973 and appointed to the bench in 1985, is now a supernumerary judge of the Provincial Court.