



Mabel Penery French

MABEL PENERY FRENCH (1881-1955): A LIFE RE-CREATED

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I think all lawyers must agree,
On keeping our profession free,
From females whose admission would
Result in any thing but good.

Because it yet has to be shown,
That men are fit to hold their own.
In such a contest, I've no doubt,
We'd some of us be crowded out.

In other spheres of business life
Much discontent among men is rife,
For women quick, alert and deft
Supplant their rivals right and left

Praise to the benchers who have stood
Against the innovating flood,
To save us and our ample fees
From tribulations such as these.¹

On the evening of 17 January 1955, Mary Louise Lynch, Registrar of the University of New Brunswick Law School at Saint John, addressed the regular monthly meeting of the local Lions Club. Lynch, a 1933 graduate of the Law School, chose as her topic "Women in the Law," focusing particularly on those New Brunswick women who had established themselves in the profession. Noting that women lawyers in general had "a very exacting role and must have great interest in their work if they are to succeed," Lynch identified Miss Mabel P. French as the first woman admitted to the provincial bar in 1907. Lynch, who was a recognized authority on the activities of New Brunswick lawyers, past and present, could recount of French only that she "later moved to western Canada

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¹J. L'Esperance, *The Widening Sphere: Women in Canada, 1870-1940*, (Ottawa, 1982), pp. 8-9, quoting R. Cook and W. Mitchinson, eds., *The Proper Sphere: Woman's Place in Canadian Society*, (Toronto, 1976), pp. 167-169. The original, by "Ananias Limberjaw, Q.C." *Grip*, XXXIX (September 1892), p. 202.

and married.”²

Obviously and ironically, the Registrar did not know that “Miss French,” by then known as Mrs. Hugh Travis Clay, was to be buried the following afternoon, some five thousand miles to the east, on the Channel Island of Jersey.³ Indeed, no one in Saint John seemed at all aware of her demise, and it is unlikely that anyone was ever informed. Mabel would have liked it that way. She had shaken the dust of Saint John from her skirts in the spring of 1910, leaving behind forever what she dismissed as that “sleepy old town in New Brunswick,” opting instead for the “increased opportunities” of the Canadian West.⁴ Afterwards, she effectively cut all links with both her birthplace and her briefly adopted home province of British Columbia.

Today, French is little more than a statistic in Canadian legal history: the fourth woman called to the bar nationally (1907), but the first to be admitted outside Ontario.⁵ She was also the first woman graduate of the King’s College School of Law at Saint John (1905) and holds the double distinction of being the first woman called in New Brunswick (1907) and in British Columbia (1912). Her request for admission, in both instances, was carried to the provincial law society, then to the provincial Supreme Court and, in British Columbia, to the Court of Appeal. Government intervention in the form of enabling legislation was twice required before she could be admitted.

French has attracted sporadic attention from the time of her 1905 graduation. During the period of her bar admission difficulties she was, for a fleeting moment, the darling of the print media and the feminist movement in the two provinces concerned. The interest she attracted then was a canny reflection of prevailing attitudes toward women’s rights and their incipient role in the learned professions. Her notoriety faded quickly after 1912 and it was not until the 1970s that legal historians began to retrieve her from oblivion. There are now various articles available concerning her, as well as brief discussions within wider studies.⁶

²*The Evening Times-Globe*, Saint John, 18 January 1955, p. 18.

³*The Evening Post*, Jersey, 14 January 1955.

⁴J. S. Cowper, “Confidences of a Woman Lawyer” *The Canadian Magazine*, XXXIX (May 1912), pp. 142, 143.

⁵She was preceded by Clara Brett Martin, called in 1897; Eva Maude Powley, 1902; and Geraldine Bertram Robinson, Trinity Term 1907: see C. Harvey, “Women in Law in Canada” (1970) 4, 1 *Man. L.J.* at 17-18, and W. R. Riddell, “Women as Practitioners of Law” (1918) 18, 2 *Journal of Comparative Legislation and International Law, New Series*, p. 203.

⁶In chronological order, these have been: J. S. Cowper, “Confidences of a Woman Lawyer” *The Canadian Magazine*, XXXIX (May 1912), pp. 140-146; H.O. McInerney, K.C., “Notes on the Law School History” (March 1948) 1, 2 *U.N.B.L.J.* 14; M. T. Warner and B. Sharp, “Women Not Legal Persons” (March 1948) 1, 2 *U.N.B.L.J.* 37; M. L. Lynch, “Women in the Law” (January 1950) 3, 1

However, only fragmentary aspects of her career have been examined, and no systematic biographical inquiry has been attempted. Furthermore, those who have scrutinized French's activities have failed to note the curious anomalies of her career, and to uncover the unexpected circumstances of her later life. Most importantly, her activities have not been interpreted against the backdrop of contemporary feminism and the social history of her time.

In her career trajectory, Mabel French is an enigma: clever, ambitious, attractive, even unorthodox, a woman who re-created herself, not once, but perhaps several times. Establishing herself by relying upon male mentors and by developing ambiguous alliances with local feminists, French certainly attracted attention but ultimately failed to sustain her credibility, either as a lawyer or as an advocate of women's rights. Unlike most other pioneer women lawyers, she was not a wholly dedicated professional, nor was she concerned with promoting women's issues.⁷ Instead, she was motivated largely by self-interest, and viewed her legal career primarily as a means to social advancement. In this respect, her charm, ability and carefully calculated air of impudence carried her far – so far, indeed, that as her career options narrowed with middle age and she tired of professional challenge, French was dealt the final hand of marriage into the genteel life of the minor industrial gentry. Such a dénouement renders her ideologically unsuitable as an archetype among early women lawyers, and generally unattractive to feminist historians, but detracts not in the least from her significant and substantial contribution to the history of women in the legal profession in Canada.

U.N.B.L.J. 12; A. Watts, *History of the Law Society of British Columbia 1869-1973*, (Vancouver, 1973), pp. 89-91; R. J. Pazdro, "Of British Columbia Suffragists and Barristers" *Law and Politics*, II, 4 (1980), pp. 16-17; E. Tulloch, *We, the undersigned: A History of New Brunswick Women 1784-1984*, (Moncton, 1985), pp. 115-117; Public Legal Information Services, Inc., *Manners, Morals and Mayhem: A Look at the First 200 Years of Law and Society in New Brunswick*, (Fredericton, 1985), pp. 96-97; C. Mullins, "Mabel Penery French" *The Advocate*, XL, 3 (September 1986), pp. 676-679, and "Taking the Law into Her Hands" *Horizon Canada*, IX, 106 (May 1987), pp. 2540-2544; F. O. Leger, *One Hundred Years in the Practice of Law 1888-1988*, (Saint John, 1988), pp. 51-54; B. Baines, "Women and the Law" S. Burt, L. Code, L. Dorney, eds., *Changing Patterns: Women in Canada*, (Toronto, 1988), pp. 157-182; C. Mullins and A. E. Harvey, *Russell & DuMoulin: The First Century 1889-1989*, (Vancouver, 1989), pp. 34-37. I am indebted to Christopher Harvey, Q.C., of Russell & DuMoulin, Vancouver, and to Franklin O. Leger of Palmer, O'Connell, Saint John, for their prompt and generous response to my inquiries.

⁷Little comparative research and analysis has yet been conducted on the professional activities and feminist involvements of early women lawyers in Canada. The best study to date is C. Backhouse, "To Open the Way for Others of My Sex"; Clara Brett Martin's Career as Canada's First Woman Lawyer" *La femme et l'égalité/Women & Equality*, I, 1 (1985). See also, C. Backhouse, "Lawyering: Clara Brett Martin, Canada's First Woman Lawyer" *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada*, (Toronto, 1991), pp. 293-326, which forms an extended and revised version of Backhouse's previous work on Martin. One of the few additional studies is L. K. Kernaghan, "The Madonna of the Legal Profession" *Hearsay*, XVI, 1 (Fall 1991), pp. 26-27.

The beginnings were not particularly auspicious. Mabel Priscilla Penery French was born on 4 June 1881⁸ in Portland, at that time a separate town but now merely a district within the city of Saint John, New Brunswick. Her father, Henry Steeves French, was a former tug-boat master who became the city marshal or constable, and who at his death was acknowledged to be “one of Saint John’s best known citizens.”⁹ Henry was, in turn, a son of the Rev. Robert French, a farmer and Baptist clergyman in the Parish of Kars, Kings County. The family went back at least one more generation in New Brunswick, to Joseph French, an American Loyalist who had arrived in the colony in 1783.¹⁰ Mabel French’s mother, Ruth Penery, was also of good Loyalist stock. She was the fourth daughter of William Penery, Esq., Gagetown, who was in turn descended from the immigrant Thomas Penery, a veteran of the New Jersey Volunteers, a Loyalist provincial regiment.¹¹ Ruth Penery and Henry French were married on 14 February 1865 at the American House, Saint John, by the Rev. C. Cady, pastor of the Portland Baptist Church.¹²

Throughout their married life, Henry and Ruth French were neither affluent nor socially prominent; indeed, they do not seem to have participated in even the usual middle-class activities associated with lodge or church. Sometime between 1881 and 1891, they converted from their inherited Baptist affiliation to the Unitarian Church, a denomination which in its denial of the doctrine of the Trinity, emphasized both an intellectual and a detached approach to personal faith.¹³ On the whole, however, religion seems never to have loomed large in the French household, which was otherwise defined by the contemporary middle-class values of solidity, respectability and perpetuating the myth of Loyalist tradition.

Although French later depicted herself as “an only child ... [with] few

⁸Petition for Admission as a Student-at-Law, 17 October 1902, in Barristers’ Society of New Brunswick fonds: MC288/MS4-1902, Provincial Archives of New Brunswick (hereinafter PANB). No civil birth registration could be located, and since the family was Baptist at the time, no baptismal record is available.

⁹*Daily Telegraph*, Saint John, 21 October 1873, p. 39.

¹⁰*Religious Intelligencer*, 17 February 1865, p. 133, and J. M. Walker and M. G. Duplisea, *1851 Census for Kings County, New Brunswick, Canada*, I (Fredericton, 1982), p. 16.

¹¹*Religious Intelligencer*, 17 February 1865, p. 133; E. C. Wright, *The Loyalists of New Brunswick*, (Yarmouth, N.S., 1985), p. 318. The surname is spelled variously, “Penery,” “Pennery” and “Penry.”

¹²Saint John County Marriage Records, Book G, p. 165, Saint John Free Public Library; *Religious Intelligencer*, 17 February 1865, p. 133.

¹³Dominion Census, 1881: Portland, Ward 1, p. 34; Dominion Census, 1891: Lorne Ward, Saint John-Portland, p. 117. I am indebted to Professor D. G. Bell for his perceptive suggestion that this religious conversion may have significantly influenced Mabel French’s formative years.

playmates"¹⁴ she was, in reality, the youngest of at least three children. There were two known brothers, Frederick and Harry, both born in the early 1870s.¹⁵ Harry died in April 1890,¹⁶ and by 1891 Frederick was probably dead as well; in the census of that year, Mabel was the only child in the household. Until the age of nine, therefore, she was one of three offspring, possibly the hoped-for daughter and family favourite, especially since she had been born long after her brothers.

Nothing is known of these early years, except what French herself later related: "I was brought up to be serious. ... When most little girls are playing with dolls and little companions, I was reading serious books and having serious conversations on serious subjects with my elders."¹⁷ The household may not have been a happy one during French's childhood, particularly given the loss of her two brothers; and in addition, while it is tempting to regard these later observations as retrospective embroidery, French's reminiscences are nevertheless consistent with the fabric of traditional Unitarian practice. The one reliable vignette we have from this period, however, does not inspire confidence in her claim to an early preference for ascetic contemplation. French graduated in June 1899 from Victoria High School, Saint John; in a class of 49, there were 18 honours students (those with an average of 75% or better) and 31 pass graduates. French was sixth on the pass list, and therefore 24th in the class; she received no awards or honours, and attracted no attention.¹⁸

French does not appear again until 1901/02, when the *Saint John City Directory* lists her as a stenographer. In 1903, she is specifically identified with the firm of Bustin & Porter.¹⁹ Stephen B. Bustin and J. Joseph Porter were partners in a well-established Saint John law firm whose shingle hung at 109 Prince William Street, otherwise known as Chubbs's Corner. Exact contemporaries, the two men appear to have maintained a joint practice from the time of their call to the bar in 1889. Bustin, politically a Conservative, was a Saint John native, born in 1862. He had read law with some of the most distinguished members of the New

¹⁴*Supra*, note 4, p. 142.

¹⁵1881 Census: Portland, Ward 1, p. 34, lists Frederick, aged 9, and Harry, aged 8.

¹⁶Harry P. French, aged 16, bur. 11 April 1890 by the Rev. Steward, Baptist: see L. W. Bagnall, *The Burial Records of the Church of England Cemetery (1837-1923), Saint John, N.B.*, (Saint John, 1987), p. 52. This could not be confirmed by civil records or newspapers.

¹⁷*Supra*, note 4, p. 142.

¹⁸*Daily Sun*, Saint John, 1 July 1899.

¹⁹*McAlpine's Saint John City Directory*, 1901/02, p. 216; and 1902/03, p. 227.

Brunswick bar, and was himself both able and influential.²⁰

As Franklin O. Leger has recounted in his centenary history of the Saint John law firm, Palmer O'Connell, "The components of a law practice in those days were few: a lawyer, an office, a stenographer and a typewriter."²¹ The stage was thus set for Mabel's entrance. She later described, with a certain insouciance, her arrival: "I managed to get a footing in a law office by learning shorthand. I became quite proficient and reported trials, as well as learning a good deal of office work. Then when I had satisfied myself that I would like the profession for a life-work I became articted in earnest."²² This reminiscence implies that French followed a calculated career trajectory, but it seems most likely that following graduation she attended a local business school, and then fell into a vacancy at Bustin & Porter. Secretarial work was, after all, by then regarded as respectable employment for young, single women of the lower middle class who needed or wanted a salaried position.

French's work in the firm was largely routine, and did not possess the glamour with which one recent article has invested it, by identifying her as a court reporter.²³ She undoubtedly attended in chambers, but only to provide working transcripts for her employers, rather than the official record. It is obvious, however, that French was an ambitious and progressive young woman who was ready, willing and able to break with tradition. In particular, she did not like the circumscribed existence within which most middle and upper-class women in Saint John – or elsewhere, for that matter – were confined:

[G]irls ... were expected to get married ... and to get homes of their own. [This] was the only career that seemed ... open ..., and it used to be drummed into us ... that the chief end of a woman was to get married as soon as she could. ... The idea of that kind of ambition made me feel rebellious... I wanted to make my own way in my own way.²⁴

French subsequently claimed that:

My first intention was to become a doctor, but that a cousin then studying medicine regaled me with such tales of the horrors of "post-mortem" work that he quite frightened me away from my resolve. He told me the men students

²⁰Statement concerning joint practice based on analysis of entries in annual law lists, *McAlpine's New Brunswick Almanac*, 1903-1908, as well as personal listings, *McAlpine's Saint John City Directory*, 1899-1908/09; substantiated by entry for Bustin in C.W. Parker, ed., *Who's Who and Why*, VI and VII (Toronto, 1914), p. 799.

²¹Leger, *supra*, note 6, p. 125.

²²*Supra*, note 4, p. 143.

²³Mullins, "Taking the Law" *supra*, note 6, p. 2540.

²⁴*Supra*, note 4, p. 142.

overcame their feelings by ... smoking during the [autopsies], so after thinking the matter over, I decided that I would study law instead. I thought it would be easier ... to [do this] than to learn to smoke.²⁵

Amusing as this recollection is, French's alleged interest in medicine is best interpreted as among the romantic career aspirations of adolescence. Her comment was pointedly non-feminist, revealing instead a strong identification with contemporary perceptions of, and bias against, women in medicine.²⁶ In any case, there had been women doctors in New Brunswick since 1883; there was consequently little challenge left in contemplating cadavers.²⁷ Her later reminiscence, therefore, was perhaps little more than a dainty conceit designed to emphasize her femininity and charm.

French did have both an aptitude for and an interest in the law, particularly after she went to work with Bustin & Porter where she was, without any doubt, encouraged in her aspirations by Stephen Bustin. It was perhaps this attention which first suggested to her that youthful ambition, physical allure and a quicksilver mind were qualities which might, with careful cultivation, carry her far. She promptly recognized that her assault upon a profession not yet penetrated by women would be a challenge attracting considerable attention: "No such thing had ever been heard of as a woman lawyer in New Brunswick at that time, so I suppose it did sound rather startling to my friends." Her parents were horrified: "They could not imagine what had put such a piece of foolishness into my head."²⁸

Indeed, by the early 1900s there were only two women lawyers in all of Canada, both in Ontario: Clara Brett Martin, called in 1897 after special enabling legislation had been passed by the provincial legislature, and Eva Maude Powley, in 1902. In the United States, early agitation for the admission of women had resulted in federal legislation in 1874 permitting them to be licensed, and another act in 1879 admitting them to practise before the Supreme Court. As a result, by

²⁵*Ibid.*, p. 143.

²⁶The print media, in particular, was pruriently fascinated by the prospect of female medical students working with male cadavers: see, e.g., L. K. Kernaghan, " 'Someone wants the Doctor': Maria L. Angwin, M.D. (1849-1898)" *Collections of the Royal Nova Scotia Historical Society*, 43 (1991), p. 38.

²⁷Dr. Elizabeth C. (Smith) Secord was admitted to practice in June 1883: see *Saint John Globe*, 6 July 1916.

²⁸*Supra*, note 4, pp. 142, 143. French's motivations were neither feminist-inspired, nor did they reflect even a mild interest in the altruistic advancement of women's rights. By contrast, Frances Lilian Fish, a New Brunswick native and the first woman called to the bar in Nova Scotia (1918), once observed that "From the time I was very young, I always wanted to be a lawyer." She later established a successful practice in her hometown of Newcastle, specializing in divorce litigation and assistance to "the poor and oppressed": see Kernaghan, *supra*, note 7, pp. 26, 27.

1880 there were an estimated 75 American women lawyers.²⁹ By contrast, no woman would be admitted to the English bar until 1921.³⁰ Indeed, it was the appeal to English common law which everywhere precluded women from entering the legal profession until enabling acts were passed. At common law, so it was argued and held, women were not entitled to hold public office, and existing statutes were construed in such a way that only male persons could be admitted to the bar; the case law was unanimous in supporting such exclusion.³¹ The challenge facing prospective women lawyers in overcoming such endemic gender discrimination was thus formidable; Mabel French had not adopted an easy course.

On 17 October 1902, she petitioned the Barristers' Society of New Brunswick for admission as a student-at-law within the office of Messrs. Bustin & Porter, both of whom signed her petition as guarantors of her good character and proper qualifications.³² In order to be accepted, and in lieu of an undergraduate degree, she was required to sit a series of ten matriculation-level examinations, which she passed with an average of 75.2%, including a 92% in Latin. She was third in a field of six.³³ The Barristers' Society was willing to admit her as a student, having done so for at least two other women, no doubt in the expectation — subsequently

²⁹Riddell, *supra*, note 5, pp. 206-208, provides the best contemporaneous overview of the American situation, which was confused, contradictory and largely dependant on the state and jurisdiction concerned. The first woman admitted to a state bar was Mrs. A.A. Mansfield, Iowa, 1869; Charlotte E. Ray was the first admitted before a federal court, *ca.* 1873; and Mrs. Belva A. Lockwood was the first admitted before the U.S. Supreme Court, 1879. In 1874, federal legislation was enacted "in relation to attorneys and counsellors, whereby 'No person shall be refused a licence ... on account of sex.'" Riddell notes at p. 206, that there were currently (1918) some 1200 women practitioners in the U.S. (versus "perhaps a dozen" in Canada). E. S. Mussey, "The Woman Attorney and Counsellor" *Report of the International Congress of Women Held in Toronto, Canada ... 1909*, (Toronto, 1910), II, pp. 332-334, is also enlightening; she cites 36 women admitted to practise before the U.S. Supreme Court, as of 1910. Riddell acknowledged at page 209, n. 1, her assistance in providing relevant data for his article. Vera Brittain, *Women's Work in Modern England*, (London, 1928), p. 75, provides the figure of 75 women lawyers in the U.S. by 1880.

³⁰Brittain, "Changes and Chances in Women's Work, 1900-1928" *Women's Work*, *ibid.* pp. 1-17, provides the best overview of prevailing social attitudes; pp. 75-76 particularly address "The Legal Profession." Riddell, "Women as Practitioners of Law" *supra*, note 5, is generally dismissive of any influence exerted by women within the legal profession in North America. His article was written expressly to reassure members of the English bar as they contemplated the inevitability of admitting women after the War: "The women who practise law are not 'wild women'; they are earnest [and] well-educated ..." (pp. 204-205); and, "The number of woman lawyers is increasing slowly if at all, and there seems to be no more fear of man losing his lead in law than in the sister profession of medicine ..." (p. 209).

³¹See, e.g., *In Re Myra Bradwell* (1869), 55 Ill. 535, and *In Re Mrs. Belva A. Lockwood*, 154 U.S. 116, both of which drew heavily on English precedents.

³²Petition for Admission as a Student-at-Law, 1902: MC288/MS4-1902, PANB.

³³Result of Examination for Admission as Student-at-Law, 1902: MC288/MS8B, PANB. I am indebted to Professor Bell for drawing my attention to this item.

confirmed – that neither earlier candidate would stay the course.³⁴ French was admitted a student-at-law on 20 October and within two weeks she had also embarked upon the three-year Bachelor of Civil Law degree offered by the King's College School of Law at Saint John.³⁵

The latter institution had been established in 1892 as a faculty of the University of King's College, then located at Windsor, Nova Scotia. A decade later, the School was statutorily recognized as providing the requisite training for those seeking entry into the legal profession in New Brunswick; the only other such facility in eastern Canada was Dalhousie University in Halifax, where the Law School had opened in 1883. Unlike today, admission did not necessarily require an undergraduate degree, but could also be gained through proof of status as a student-at-law, under which terms French now qualified.³⁶

She encountered no opposition in gaining admission, but her ease of entry was again facilitated by the fact that she was not the first woman to do so. In 1893, Edith Leavitt Hanington had entered the first-year programme, chiefly to please her father, Augustus H. Hanington, a prominent Saint John lawyer. She is said to have been the first woman law student in the Maritime Provinces, and only the second in Canada. She left after the initial year, however, and did not return.³⁷ In 1896 she was followed by Isabel Mowatt, who also attended for only one year.³⁸ French was the first woman with sufficient stamina and determination to

³⁴Edith L. Hanington was admitted as a Student-at-Law, 11 October 1893, and Isabel Mowatt, 3 November 1896; Minutes of Council of the Barristers' Society of New Brunswick: MC288/MS1C1, PANB. I am indebted to Twila Buttimer, Archivist at the PANB, for providing extensive photocopies of relevant material. In admitting Hanington it was noted, 3 October 1893, that "The Council ... do not intend to express any opinion as to the right of women to [be] admitted Attorneys [*sic*] of this Court."

³⁵*Calendar of the School of Law, St. John, New Brunswick, 1905-1906*, p. 77. The academic year commenced with Michaelmas Term, second Tuesday in November.

³⁶*Ibid.*, 1902-1903, pp. 134-135. J. Leefe, "King's Law School" *The Atlantic Advocate*, LXIX, 7 (March 1976), pp. 59-60, provides a rudimentary introduction to the subject.

³⁷Through the kind assistance of Professor Bell, I interviewed Miss Edith W. Taylor of Toronto, daughter of the late Edith L. Hanington, 26 March 1992. Miss Taylor recounted several of her mother's stories concerning the antipathy which she encountered during her year in law school, including that of the condescending treatment accorded her during faculty lectures by her uncle, Justice Daniel L. Hanington (he insisted on greeting her with an ostentatious and patronizing kiss, before the assembled class at the beginning of each lecture). Edith never much liked law, according to her daughter, but entered the school to please her father and would likely have continued, had she not become engaged instead to the Rev. Mr. Taylor.

³⁸The academic year 1896-97: see *Calendar of the University of King's College: Calendar of the School of Law, 1897-98*, p. 148. She may perhaps be identified with Bella Mowat, aged 19 in 1891, bookkeeper in a stationery business and residing in the household of Johnston Mowat: see Dominion Census, 1891, Saint John, Queens Ward, Div. 2, p. 29. Isabel Mowatt later worked for many years as Court Stenographer for the city: see M. E. Clarke, "The Saint John Women's

complete the course. Little is known of her three years at the Law School, although one may infer that she encountered less outright discrimination than that experienced in Ontario by Clara Brett Martin,³⁹ simply because there were fewer students to harass her. The Law School graduating Class of 1905 had three members, and Bustin & Porter employed no other students-at-law. In any case, French had a certain resilience which would have made her impervious to such harassment.

Her graduation was held on 22 June 1905 at King's College in Windsor, Nova Scotia. The law class – French, Henry O. McInerney and Marvin L. Hayward – journeyed there by steamer across the Bay of Fundy. At the commencement exercises, French was the centre of attention. As in virtually all media coverage given to women of achievement during this period, special emphasis was placed on her femininity, physical appearance and comportment, as if to neutralize any threat implied by her intellectual attainments: “Her graduating gown was of white silk, beautifully gathered and daintily trimmed. Miss French looked exceedingly pretty, and was greatly admired.”⁴⁰ A King's tradition of long standing was to “bounce” or toss into the air individually, at some point during the commencement programme, each of the year's graduates. In this instance, “All the students were bounced ... with the usual honours and boisterousness, with the exception of Miss French, ... who no doubt modestly declined that aerified honour. But the students greeted her with the song, ‘For She's a Jolly Good Fellow’.”⁴¹

Several days previous to this, her impending graduation was noted by the local press. Stephen Bustin gave a revealing interview to the *Saint John Globe*, in which he described French as, “one of the brightest students he had ever met. She has a wonderful memory, a great capacity for work and is as well grounded in law as any student who has gone up for examination in recent years.” The outcome was that “during the last three years [she] easily led her classes in every branch and at the closing examinations made a brilliant record.”⁴² The *Saint John Daily Sun* carried a similar report, embellished with the information that, “She made a record in the final examinations ... which has seldom been equalled by a N.B. student, her average being something over 85 per cent, sixty being required to pass.” It was a striking change from her high school years. The reporter, however, sounded a final cautionary note: “[I]t is not improbable, although Miss

Enfranchisement Association, 1894-1919” unpub. M.A. Thesis, University of New Brunswick, 1980, p. 47. Mowatt married in Boston, June 1909, Mr. Bertram Smith: see *The Daily Telegraph*, 19 June 1909, p. 12.

³⁹Backhouse, “Martin” *supra*, note 7, pp. 22-26.

⁴⁰*The Daily Telegraph*, 24 June 1905, p. 8; *The Hants Journal*, Windsor, N.S., 28 June 1905, p. 3.

⁴¹*The Hants Journal*, *ibid.*

⁴²*Saint John Globe*, 21 June 1905.

French has done so well ..., some objection may be made to her admission, as it is stated that under English law women may not practice."⁴³

Following graduation, French returned to Bustin & Porter to complete her period of studentship. The degree of B.C.L. exempted King's law graduates from any further examination for admission to the New Brunswick bar; being called was virtually a formality. It was a two-step procedure: the graduate was first admitted, upon petition, as an attorney of the Supreme Court, and then, after a one-year period, again upon petition, as a barrister. Accordingly, French petitioned the Barristers' Society on 16 October 1905 for admission as an attorney-at-law.⁴⁴ Whereas they had raised no objection to admitting her as a student, they were now faced for the first time with a fully-qualified woman law graduate. Confusion was the order of the day. The Society initially made no distinction between her petition and those of the other two graduates who were applying for entry at the same time. In the Council meeting of 16 October, all three were duly recommended for admission during Michaelmas Term, 1905. However, during the interval between regular monthly meetings, the school of sober second thought prevailed: the Society was unsure of its legal position in admitting French an attorney. During the Council meeting of 7 November, the resolution recommending her admission was rescinded on the motion of Dr. Allen O. Earle, formerly Dean of the Law Faculty. In its place a new motion was introduced and passed unanimously, whereby the Society agreed to recommend French's entry, but only "subject to the opinion of the Court as to her sex being under existing laws a bar to her admission." Furthermore, the Council decided that the matter of her admission to the Society should be thrown open to discussion by the general membership.⁴⁵

A special meeting was convened the following evening, 8 November, specifically to address "the question of the admission of Miss French." Twenty-one members were in attendance. The proceedings were initiated by the Attorney-General of New Brunswick, the Hon. William Pugsley, an *ex officio* benchler who advocated that "the Society should take any steps in their power to enable Miss French to be admitted." It is not now possible to recreate the politics underlying French's progress to the bar of New Brunswick, but it is nevertheless obvious that from the very onset of her difficulties, she attracted the attention and support of at least one highly influential member of the provincial Liberal Party. The Attorney-General was followed in the discussion by four other barristers, all of

⁴³*Daily Sun*, Saint John, 21 June 1905.

⁴⁴Council Minutes, 16 October 1905: MC288/MS1/C1, PANB.

⁴⁵*Ibid.*, 7 November 1905. The members had no Canadian case law to guide them, as the Ontario experience with Clara Brett Martin was not an adjudication; no closely comparable English precedent; and conflicting decisions in American cases.

whom were generally in favour of her admission. A resolution was then put that the Council be instructed to recommend French "without any qualification." Upon division, the result was a tie – ten for and ten against; the deciding vote was cast by the president, A.B. Connell, who declared himself opposed to the resolution. The meeting then descended into confusion; in the end, it was resolved that the Society should refer the entire matter to the Supreme Court for an opinion, but a motion that the President not be required to appear on the Society's behalf was defeated. It was also moved, but again defeated, that counsel be retained for French at the Society's expense.⁴⁶

The *Saint John Globe*, reminiscing in 1911, would claim that, "There was not at any time a disposition to refuse her admission. ... The question ... was simply ... whether she could be enroled legally under the then existing law and practice. ... There was nobody opposed seriously to her [entry]."⁴⁷ If we examine only the actions of the Barristers' Society, the validity of this statement is superficially defensible: the minutes of the meeting of 8 November indicate, as one member stated, "No objection to the admission[;] the question is as to the right to have her admitted."⁴⁸ Of the ten barristers who voted against French's unqualified recommendation, it is arguable that at least some of them based their decision on this technicality. However, once the issue was referred to the Supreme Court *in banco*, the complexion of the matter changed abruptly. A close examination of the reference clearly establishes that gender discrimination set the tone of the proceedings, particularly in the subjective opinions rendered by two of the six judges.

In Re Mabel P. French was heard before the New Brunswick Supreme Court on 10 November 1905.⁴⁹ A.B. Connell, president of the Barristers' Society, acted as *amicus curiae* in the interest of the petitioner. Since this was the first such request ever brought before the provincial superior court, the justices asked to have submitted "such authorities and precedents as are to be found in the proceedings of other courts, and which might be of assistance ... in determining the question." Connell accordingly tabled various English, American and Canadian precedents, including the enabling act passed to allow the admission of Clara Brett Martin in Ontario.

⁴⁶*Ibid.*, 8 November 1905. Leger, *supra*, note 6, p. 52, provides an excellent synopsis of this meeting, the original minutes of which are in a scrawled and often indecipherable hand, denoting general haste and confusion.

⁴⁷*Saint John Globe*, 18 December 1911.

⁴⁸Minutes, *supra*, note 46.

⁴⁹*In Re Mabel P. French* (1906), 37 NBR 359. Unless otherwise noted, the quotations and abstracts which follow have been taken from these pages.

Stephen Bustin and Charles N. Skinner, Recorder of the City of Saint John, followed in support of French's application. Their first argument was that although the common law excluded women from appointment to public office, they were nevertheless entitled by the same common law to hold non-public positions; and that the attorney-at-law was just such a non-public office. Their second argument was that the use of the masculine pronoun in the act governing the Barristers' Society (*Consolidated Statutes* 1903, cap. 68) was not sufficient to exclude women; and that by extension, the use of the word "person" within the rules and regulations of that body was sufficient to encompass the admission of women. It was the strength of this second argument which subsequently defined *In Re Mabel P. French* as an early "persons" case,⁵⁰ addressing the recognition of women as equal to men and therefore entitled to the same rights and responsibilities. The rhetorical question, "Is a woman a person?" developed from the fact that existing statutes were narrowly construed so that only males were legally recognized as "persons." The simplification was useful, however, both to explain the issue to a lay audience and to attract attention. French herself would soon prove capable of using the same method within her own legal arguments.

The court's decision was rendered on 24 November. Chief Justice William H. Tuck's personal animosity had been apparent at an early stage in the proceedings when he interrupted Skinner's presentation to observe that, "If this young lady is entitled to be admitted an attorney she will in a year be entitled to be called to the bar, and, in a few years, will be eligible to be appointed to the bench."⁵¹ Skinner shot back immediately: "if that be the inevitable consequence, worse things might happen." Tuck's ruling on 24 November thus came as no surprise. He observed somewhat dismissively that Bustin and Skinner had based their arguments "chiefly on the advanced thought of the age and the right of women to share with men in all paying public activities." His conclusion was that "it was never in the contemplation of the legislature that a woman should be admitted an attorney of this court, and that the word "person" in the section applies only to males, the only persons qualified at common law." Again allowing explicit gender bias to colour his perspective, Tuck declared: "If I dare to express my own views I would say that I have no sympathy with the opinion that women should in all branches of life come in competition with men. Better let them attend to their own

⁵⁰Baines, *supra*, note 6, pp. 157-166, discusses both the New Brunswick and British Columbia hearings in this context.

⁵¹This was the same individual who had jarred the opening ceremonies of the School of Law in October 1892 with his caustic comment, "if a Law School was thought necessary, [why] was it not established in connection with the University of New Brunswick?" See: *King's College Record*, XV, 132 (November, 1892), p. 14.

legitimate business.”⁵²

Justice Frederic E. Barker concurred, citing the opinion delivered by Justice Bradley in *Bradwell v. State of Illinois* [1873] 16 Wall 130:

[T]he civil law ... has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex ... unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood ...

Barker concluded his lengthy treatise in social anthropology by stating,

It is very evident ... that neither this court ... nor the Barristers' Society ... nor the legislature ... had any thought or intention of making the radical change now suggested, and that by every rule of construction applicable to such a case this court is bound to hold that no such change has been made.

Of the other justices who sat on the hearing, Justice Ezekiel McLeod and Justice George F. Gregory concurred with Justice Barker, but stated no opinion. Justice Pierre A. Landry, New Brunswick's first Acadian lawyer, “took no part.” The one remaining opinion, that of Justice Daniel L. Hanington, elaborated upon a point raised, but not extensively developed, by the other judges. Justice Hanington observed that the majority of the British and American precedents cited during the hearing had

clearly determined that females are not, unless by statutory enactment enabling it, qualified to be admitted and enrolled as attorneys of our courts. ... The remedy in this case is with the legislature and not with this court. Whatever our individual opinions may be as to the advisability of extending the right to women, we are bound by the law of this country as we now find it.

French's application had thus been unanimously refused; Justice Hanington had also touched inferentially upon two presumptions central to the dynamic of law and social change of the time: first, the bench is more conservative than the bar, and the bar is more conservative than the legislature; and second, the bench is responsible for enforcing laws as they stand, not for anticipating what they might, should or ought to be. These were inferences which would influence more than once the course of French's career.

⁵²Baines, *supra*, note 6, p. 161, calls this statement “the most forthright admission of male bias offered by any judge, not only in this case, but in all of the cases to follow [in her survey of the various Canadian ‘Persons’ Cases].” Baines, p. 158, grounds the flagrant gender bias of the judiciary firmly within the tradition of the Aristotelian theory of equality: “The male is by nature superior, and the female inferior; and the one rules, and the other is ruled; this principle, of necessity, extends to all mankind.”

On 8 February 1906, the New Brunswick Legislature was convened in regular session. Following delivery of the throne speech, Attorney-General Pugsley introduced Bill No. 1: *An Act to remove the disability of women, so far as relates to the Study and Practice of the Law*. The bill proceeded to second reading on 12 February, and into committee the following day. Although introduced as a government measure, members were encouraged to vote on the bill according to their private view of the matter. Pugsley's understated but nevertheless whole-hearted endorsement within committee was indicative of the generally progressive attitude among legislators, and of his own continuing interest in French's case. In what was clearly a direct refutation of Justice Barker's reflection, Pugsley observed:

Others may hold that women's sphere is the domestic circle. That might carry force were all provided with happy comfortable homes, but when we find them driven out by force of circumstances to earn their livelihood... and find them doing so with honour and credit to themselves, why should a man stand up and say they shall not engage in the practice of law?⁵³

The bill proceeded without debate and passed on 14 February. Royal assent was given on 22 March, and Mabel French was duly recommended and admitted an attorney-at-law on 21 April 1906. The ceremony was held in Fredericton before the full Supreme Court; ironically, Dr. Allen O. Earle, who had earlier introduced to the Barristers' Society the motion rescinding her prospective admission, was now the president of that body, and to him fell the duty of moving that she be admitted an attorney.⁵⁴

With the amending legislation in place, the second and final step was a formality. On 8 October 1907, French petitioned the Supreme Court for

⁵³*Synoptic Report of the Proceedings of the Legislative Assembly of the Province of New Brunswick for the Session of 1906*, (Saint John, 1906), p. 25. As early as 1886, Pugsley had shown his support for women's rights by introducing another bill (quickly defeated) which would permit unmarried women and widows to vote at school meetings and to hold office as school trustees: see Tulloch, *supra*, note 6, p. 15. Clarke, *supra*, note 38, p. 83, notes that Pugsley also successfully supported, in 1906, an amendment to the *Married Women's Property Act* which provided that a deserted wife could claim domicile in the province of her own residence rather than in the province of her errant husband's residence. Clarke nevertheless identifies Pugsley as an anti-suffragist, which seems questionable. Pugsley may have first directly encountered French in his capacity as an examiner for the School of Law: see *Calendar*, 1905-06, *supra*, note 35, p. 64.

⁵⁴Progress of Bill No. 1 given in *Journals of the House of Assembly*, 1906, pp. 14, 19, 23 and 24. The account of her admission appeared in the *Saint John Globe*, 23 April 1906, p. 2: "Miss French was sworn in at Fredericton before the full court. There was a large attendance of spectators, including many ladies" Clara Brett Martin had relied heavily upon support from groups such as the National Council of Women (Backhouse, *Petticoats and Prejudice*, *supra*, note 7, p. 314). French, in contrast, seems to have depended solely upon her male mentors throughout her admission difficulties. There is no sense of a dependence upon, or even interaction with, the established feminist lobby groups in Saint John or Fredericton during this period, and those women present at the Fredericton ceremonies were "onlookers" only.

admission as a barrister, and on 22 November again went up to Fredericton, where she was formally sworn in.⁵⁵ She was a full year late, but the delay had been worthwhile: she had learned a great deal about the legal process, and had experienced first-hand the decisive importance of influential friends in high places.

A significant development within the firm of Bustin & Porter accompanied her admission to the bar: the long-time partnership was dissolved, Joseph Porter left, and French replaced him. In the absence of direct evidence the parting of the ways may be variously construed, but certain facts are unavoidable. The break coincided exactly with French's bar admission; Porter had never been a visible supporter of her legal aspirations; and when he left, it was to establish a one-man practice elsewhere in Saint John. He never again joined with another partner.⁵⁶

The firm of Bustin & French no doubt created a minor sensation within Saint John legal circles. By the end of 1907 there were still only three other women lawyers in Canada – all in Ontario – of whom only two appear to have been actively practising.⁵⁷ For some years to come, the usual path for women barristers would be an independent practice with specialization in probate, marital

⁵⁵Petition for Admission as Barrister, 8 October 1907: MC288/MS4-1907, PANB. Except for the period 14 February to 24 May 1907, French had both resided and practised in Saint John; the three-month hiatus was not explained. Stephen Bustin certified her work record and exemplary character. See also Minutes of Council, 5 November 1907: MC288/MS1/C1, PANB and *The Sun*, Saint John, 22 November 1907, p. 3. There would not be another woman called to the New Brunswick bar until Mary Muriel Corkery, 1921: see Warner and Sharp, *supra*, note 6, p. 38.

⁵⁶*McAlpine's Saint John City Directory*, 1907/08, pp. 224 (s.v. Bustin) and 332 (s.v. French), cites the firm as Bustin & French, 109 Prince William St.; Joseph J. Porter is listed separately at 39 Princess St., where according to subsequent *Directories*, he remained indefinitely. The 1907/08 annual would have been compiled sometime prior to mid-1907. *McAlpine's New Brunswick Almanac*, 1907, p. 93 reproduces the legal card of Bustin & French, thus confirming a date of late 1906/early 1907 for the dissolution of Bustin & Porter; i.e., immediately following French's admission as an attorney-at-law.

Curiously, the N.B. law lists published in *Belcher's Farmers' Almanac for the Maritime Provinces*, 1907, 1908 and 1909 cite Bustin as practising in Yarmouth, N.S. This is contradicted by *McAlpine's New Brunswick Almanac* and *McAlpine's Saint John City Directory* for the same years, both of which consistently place him in Saint John. The Yarmouth entry may indicate a temporary absence relating to a specific court appearance; law lists from this period are frequently erroneous and inconsistent, changes of locale or status sometimes going unreported for years. See below for further elaboration of this point.

⁵⁷Backhouse, *Petticoats and Prejudice*, *supra*, note 6, p. 321, notes that shortly after her 1897 bar admission, Martin was employed by the Toronto firm of Sheldon and Walbridge, which became Sheldon, Walbridge and Martin in 1901; by 1906 Martin had established an independent practice. Eva M. Powley, called in 1902, practised independently in Port Arthur, Ont., until ca. 1912, when she joined Kefer, Kefer & Towers, of the same city: see *The Canadian Almanac* (Toronto, 1903 *et seq.*). Geraldine B. Robinson, called in Trinity Term 1907 (four months in advance of French), appears not to have practised actively; she is not listed in *The Canadian Law List [Hardy's]*, and Riddell, *supra*, note 5, p. 203, notes only that she was then [1918] married to E.W. Wright, Toronto, and paid the bar fee.

or property law; employment within a large legal firm as a general factotum; or employment within the legal department of a corporation.⁵⁸ Mabel French was a definite anomaly.

Trading on charm, ability and a certain air of nonchalance, she had gained a great deal of attention since 1902.⁵⁹ Her growing self-awareness was reflected in subtle changes to her persona: French had begun the process of re-creating and re-defining herself. As early as 1902, she had shown a general dissatisfaction with her given name; the signature on her student-at-law petition identifies her as "Mabelle P. French." She continued thus through law school and graduation, but during her admission difficulties she acquired the more circumspect "Mabel Penery French." Once admitted to partnership she assumed the ever-so-slightly exotic "Miss M. Penery French, B.C.L." – an identity she had tried on briefly during law school, and which was sometimes abbreviated to the even more mysterious, "Miss Penery French." Relaxing somewhat as she became established in the profession, by 1911 she was experimenting with the *demi-mondaine* variant, "Miss Belle French." It would be several years before she was secure enough to settle for the plain appellation, "Mabel P. French."⁶⁰

Surviving photographs from this period reveal a similar maturation and re-working of her professional persona. At the time of her graduation from King's College, the *Saint John Globe* ran a news article entitled, "A Lady Lawyer." It was accompanied by a studio portrait, likely taken during her stenographic days,

⁵⁸In Nova Scotia, e.g., the first woman barrister, Frances Fish (1918), later practised independently in New Brunswick, specializing in divorce; the second, Emelyn MacKenzie (1919), became a successful corporate solicitor in New York City; and the third, Caroline McInnes (1919), spent some twenty years as a practitioner in her father's Halifax law firm; see Kernaghan, *supra*, note 7, p. 27. Riddell, *supra*, note 5, p. 209, reminded wary English barristers that, "While there are exceptions, the rule is that women [in Canada] do not take trial briefs; as in Ontario, they mainly confine themselves to chamber practice." For further general discussion of the subject, see also Harvey, *supra*, note 6, pp. 15-35, *passim*.

⁵⁹There is a peculiar anecdote related in Cowper, *supra*, note 4, p. 143, which one infers must have taken place in New Brunswick at the time of French's bar admission difficulties, and to have brought her a certain notoriety:

It will be remembered that she purposely abstained from paying a number of bills. When the inevitable lawsuits came, Miss French met them with the novel defence that as she was not a person she could not be sued for debt. Of course the defence failed, but ... it was a scheme worthy of Barnum or George M. Cohan.

The story is repeated by Mullins, "Mabel Penery French" *supra*, note 6, p. 677, and "Taking the Law" *supra*, note 6, p. 2541, but has not been substantiated from contemporary New Brunswick sources.

⁶⁰Petition for Admission as a Student-at-Law, 1902: MC288/MS4-1902, PANB; Petition for Admission as Barrister, 1907: MC288/MS4-1907, PANB and *The Sun*, Saint John, 22 November 1907, p. 3; *McAlpine's Saint John City Directory*, 1904/05, 1905/06, 1907/08 and *The Sun*, Saint John, 29 June 1909, p. 1; *Canadian Law Times*, 31, 12 (December 1911), p. 974; *The Canadian Almanac and Miscellaneous Directory for the Year 1913* (Toronto, 1913).

showing her as a demure and slightly tentative young woman of exquisite grace, with finely chiselled features, penetrating eyes, and a hint of determination in the contour of her chin. Dressed much like a Gibson Girl, with a high-collared, pin-tucked shirtwaist and upswept coiffure, French was the embodiment of the legal secretary; the overall effect is that of a stunningly attractive young woman.⁶¹

The next photo portrait, likely dating from the 1910-12 period, is eloquent testimony to French's metamorphosis. An authoritative and attractive adult, she strikes a courtroom pose, attired in the barrister's formal gown. She wears a large signet ring, as if to emphasize her professional status, and her hairstyle is dramatically altered – bobbed and curled with a flair suggesting the female equivalent of the barrister's wig – and parodying the earlier controversy surrounding what women practitioners should wear on their heads when appearing in court.⁶² No longer is there any sense of tentativeness; this is a woman with a look of complete self-confidence, one who challenges the camera to deny her anything.

Very little is yet known of Mabel's activities within the firm of Bustin & French. An oversimplified and confusing vignette of her reputed first court appearance, however, has survived from the period immediately following her admission difficulties:

Miss French [was] in court ... to defend Kate Smith, who was arrested for being drunk. Miss French startled the court by arguing [that the] statute against being drunk [contained the general wording] any "person." The strict interpretation of the English law showed a woman was not a "person," hence she could not violate the law. The woman escaped conviction, but that law was [subsequently] changed.⁶³

⁶¹*Saint John Globe*, 21 June 1905; the photograph was repeated in *ibid.*, 23 April 1906, p. 2, in reporting her admission as an attorney. This sedate photo portrait was nevertheless a powerful statement of independence and strength of character, since the shirtwaist and Gibson Girl look were regarded as "radical chic" – provocative, yet casual – when introduced in the 1890s; see Backhouse, "Lawyering," pp. 310-311.

⁶²Cowper, *supra*, note 4, full-page photo portrait facing p. 141; this illustration has been reproduced in several recent articles concerning French (Watts, Mullins, Tulloch), and probably dates from the 1912 period, rather than the 1906. The hairstyle is advanced for the time, and must have purposely attracted widespread attention while nevertheless conforming in theory to the dictates of formal (i.e., male) courtroom attire: see Backhouse, *Petticoats and Prejudice*, *supra*, note 7, p. 319, for the Ontario benchers' reaction to women barristers' wearing hats. Another photo portrait has recently been located in the *Victoria Daily Times*, 8 April 1912, p. 5. This full-length study shows an authoritative and defiant French, again in legal attire and document in hand, posing beside a lectern with an unidentified law library as backdrop.

⁶³*The Sun*, Saint John, 29 June 1909, p. 1, in a retrospective article; cf. the anecdote related at *supra*, note 59. A cursory examination of Saint John newspapers for a brief period following her call to the bar, November 1907, has not uncovered any mention of a first appearance in court. Conducting a case-file search among extant court records will be difficult until the relevant

Although her advocatory work remains obscure, it is known that French next became briefly involved in the Saint John feminist community. The city had a long-standing nucleus of influential women dedicated to the economic, educational and political betterment of the second sex; female suffrage was an issue of special concern. The Woman's Christian Temperance Union had been active since the 1880s, and in 1894, both the Local Council of Women and the Women's Enfranchisement Association (W.E.A.) were founded.⁶⁴

All three were affiliated with their respective national organizations, and the latter two, in particular, cultivated a broad perspective and a useful network of contacts. Given the legal difficulties through which French had just passed, and the potentially useful function and profile which she now offered as a fully-fledged woman barrister, it is easy to see how and why mutual contact was made. Her reputed membership in the Saint John Local Council of Women has yet to be substantiated,⁶⁵ but a clear record remains of her involvement with the Women's Enfranchisement Association during 1908 and 1909.

After a four-year lapse, the W.E.A. was revived in November 1907, in order to "discuss the sending of a second [enfranchisement] petition to the Legislature."⁶⁶ The Association's previous lobbying in 1899 had resulted in the introduction of a bill offering full suffrage to women in provincial elections; not surprisingly, it was soundly defeated. The general political tenor was best captured by John Douglas Hazen, leader of the Conservative opposition, who laconically observed that, "Behind all legislation is physical force, and in the end the man must rule."⁶⁷ The W.E.A. was now planning a second assault, and met to

holdings at PANB have been fully arranged and described. Cf. this incident with the 1917 case of Lizzie Cyr, a prostitute, noted in Baines, "Women and the Law" pp. 164-165: "She argued that only men could be convicted of vagrancy because the provision that made vagrancy a crime used only masculine pronouns."

⁶⁴Tulloch, "Stepping Stones: Women & Political Rights" *supra*, note 6, pp. 1-76, provides excellent background, especially pp. 14-15 and 39-49. See also Clarke, *supra*, note 6.

⁶⁵Tulloch, *supra*, note 6, p. 117, contends that French "was an active member of the Saint John Council of Women."

⁶⁶W.E.A., Minute Book (1894-1912), 9 November 1907: p. 173, Shelf 41-1, New Brunswick Museum, Saint John. Clarke, *supra*, note 38, provides an excellent analysis of this organization. The Association's commitment to progressive socialism made it unpopular with other local women's groups (it was estranged, e.g., from the L.C.W. from 1902-10). Clarke concludes that although the W.E.A. never developed any clearly articulated program, its affinities were closer to the English militant suffragettes than to the "maternal feminists" of North America.

⁶⁷Tulloch, *supra*, note 6, p. 44. Hazen's statement echoes again the Aristotelian theory of equality as discussed by Baines, *supra*, note 6, p. 158; see also Lorraine Code, "Feminist Theory" Burt ed. *et al.*, *Changing Patterns*, pp. 21-24.

“consider some names of suitable women ... to be mentioned [in the petition].”⁶⁸ It is probable that French’s name was among those discussed.

On 24 February 1908, the minutes of the W.E.A. record that “Miss French read a most interesting and instructive paper on the condition of affairs [i.e. women’s enfranchisement] in Australia and New Zealand.” A few weeks later, on 19 March, she “gave a summary of the laws of N.B. concerning the guardianship and custody of children, the conclusion to be deduced by the ordinary lay mind being that the fate of the child, in case of desertion or ill-treatment by the father, is largely in the hands of the court.”⁶⁹ A month later, on 25 April, she “read and explained the N.B. laws relating to the standing of women as regards suffrage. ... She also read the law now governing male suffrage.” The W.E.A. petition was underway, accompanied by a draft bill, and French was responsible for getting both “in proper legal shape.”⁷⁰ A party of four W.E.A. members, not including French, went up to Fredericton in early May to meet with their old nemesis Mr. Hazen, now the Premier. Their reception has been described as chilling, although they later reported, with faint optimism, that, “It was whispered that even the Premier himself had said ... there were two sides to the question of Woman Suffrage.”⁷¹

On 13 May, the petition was presented in the Legislature by W. Franklin Hatheway, the newly-elected Conservative M.L.A. for Saint John City and an honorary member of the W.E.A. According to the *Journals* of the House, the petition was presented, but no report was tendered, and the petition was accordingly withdrawn.⁷² The Association met on 16 May in Saint John to discuss

⁶⁸W.E.A. Minute Book, p. 173, 9 November 1907, New Brunswick Museum. Clarke, *supra*, note 38, p. 46, identifies French as an “upwardly mobile career woman [and] lawyer” for whom she could locate no family information, other than that a paternal uncle was a teamster; and on this basis, has designated her as “blue-collar” in origin (p. 160). Henry French’s siblings were traditionally involved in the tug-boat trade, so the family belongs more properly in Clarke’s “low-white-collar” category. Furthermore, Clarke missed entirely the circumstances surrounding French’s bar admission, suspecting only (p. 83) that she was the probable reason behind Pugsley’s 1906 bill.

⁶⁹*Ibid.*, pp. 174, 175.

⁷⁰*Ibid.*, pp. 177-179, *passim*.

⁷¹Tulloch, *supra*, note 6, p. 45; and W.E.A. Minute Book, 16 May 1908: p. 179, New Brunswick Museum.

⁷²*Journals of the House of Assembly of New Brunswick*, 1908, Part 1, p. 61 and Part 2, p. xvii ff., Petition No. 28. A search for the original document within the appropriate records series at the PANB was unsuccessful. Ella Hatheway and her husband were the “spiritual” mentors of the W.E.A.:

His openmindedness to the problems of women ... attracted the mutual sympathy of suffragists to his schemes for the socialist revival of society Hatheway shared her husband’s beliefs in Fabian tenets, in the need to transform the capitalist system into a

their latest defeat. French was not present, but her "admirable work" was noted and duly "appreciated."⁷³ Although she continued to attend meetings fairly regularly, French's active involvement in the W.E.A. was minimal after the spring of 1908; her last recorded attendance was on 15 October 1909. This declining interest can be correlated with a general shift in her career perspective, brought about by two major events in 1909: her participation in the International Congress of Women in Toronto in late June, and the death of her father in November.

The International Congress of Women met every five years, in conjunction with the International Council of Women. The latter had been founded in 1888 "to unite women in a non-sectarian and non-partisan organization that would work for social reform."⁷⁴ In 1909 the Council and Congress convened in Toronto, bringing together over 500 women from around the world for two weeks of intensive meetings and presentations of papers. Topics addressed included, among others, education, industry, health and physical training, legislation concerning women and children, and professions and careers open to women.⁷⁵ The I.C.W. represented an aggregate of the various National Councils of Women world-wide, which in turn were built upon the local councils, but the press did not identify French as a member of the St. John L.C.W. contingent – which travelled as a group, and did not include her.⁷⁶ French probably participated quasi-independently: the prospect of mixing with her peers in an international forum,

"humane ... socialism" (Clarke, *supra*, note 38, p. 76).

⁷³W.E.A. Minute Book, 16 May 1908: p. 179, New Brunswick Museum. Tulloch, *supra*, note 6, p. 45, twice refers to "Mabel French's [suffrage] bill;" the minutes, however, clearly delineate that French's involvement extended only to providing technical advice as to drafting and statutory language. French's input was considerably less significant than Tulloch supposed. In April 1909, Hatheway again tabled a suffrage bill which was defeated by a vote of 24 to 14; French's involvement, if any, is unknown: see W.E.A. Minute Book, 8 May 1909: p. 182, New Brunswick Museum.

⁷⁴J. Dean and D. Fraser, *Women's Archives Guide: Manuscript Sources for the History of Women* (Ottawa: National Archives of Canada, 1991), pp. 50-51.

⁷⁵*The Globe*, Toronto, 16 June 1909, pp. 6, 8. Extensive press coverage (social occasions, biographical articles, council proceedings, excerpts from selected papers, etc.) was accorded in succeeding days to what was evidently a "media event." European and Scandinavian representation was strong (the previous Congress had met in Berlin, 1904.) Lady Aberdeen, then residing in Ireland, returned to preside as current president of the I.C.W.; Lady Edgar was the president of the Canadian National Council. Clara Brett Martin did not present a paper and seems not to have actively participated although it is difficult to imagine that she did not attend, particularly given the support tendered her by the National Council during her long campaign for bar admission; see Backhouse, *Petticoats and Prejudice*, *supra*, note 7, p. 314. The American women's legal profession was represented by Dean Ellen Spencer Mussey; Dr. Augusta Stow-Gullen was a vocal Canadian participant. The Congress has been generally overlooked by feminist historians, but is worthy of a detailed analytical study.

⁷⁶*The Daily Telegraph*, 12 June 1909, p. 12, specified Mrs. Robert Thomson, Mrs. David McLellan and Miss Mabel Peters; they were further mentioned in subsequent issues.

including other women lawyers, would have been tempting.

Whatever her status, on 28 June, French presented a paper entitled, "The Legal Parental Rights of Women in New Brunswick" within that section of the Congress devoted to legislation concerning women and children. Newspaper coverage provided by the Saint John press noted that "she confined herself almost entirely to the N.B. situation,"⁷⁷ as if to imply that she could have developed a wider perspective for her international audience. The published proceedings of that session, however, record that French's "carefully prepared paper was attentively listened to and warmly applauded."⁷⁸

The presentation has survived in published form, and even a casual reading from the perspective of the late 20th century dispels completely any lingering impression that French was a dilettante in her approach to the law.⁷⁹ Her presentation was lengthy – sixteen densely printed pages – and probably required at least three-quarters of an hour to deliver. It outlined the pre-eminence of paternal rights in custody and guardianship matters, and, in the absence of the father, the residual authority of the courts. In providing this overview, French discussed issues such as the status of illegitimate children with respect to religion, education and guardianship; provided appropriate examples from New Brunswick case law and English precedents; and even proceeded to explain the difference between the jurisdiction of the defunct Court of Chancery and that of a "regular" court of law. Throughout her presentation, she displayed professional restraint, yet successfully demonstrated how the law denied to mothers of legitimate children the authority to determine their welfare.

French's paper reveals a professional familiarity and ease with the topic, a broad and general knowledge of precedent, and a deftness in interpreting law for the layperson. The subject material, understated presentation style and overall appeal to rational justice reflect the most advanced facets of Canadian feminist thinking prior to World War I. The more reform-minded feminist circles had progressed from their earlier and unsuccessful suffrage campaigns on to a strategy

⁷⁷*Ibid.*, 29 June 1909, p. 1, and *The Sun*, Saint John, 29 June 1909, p. 1, which provided the better coverage; the Toronto press noted her presentation, but gave no details.

⁷⁸*Report of the International Congress of Women ... 1909*, II, p. 169. I am indebted to Bernice Chong, Archivist, Law Society of British Columbia, Vancouver, for confirming my suspicion that published proceedings existed for the 1909 Congress. French's presentation was the first of the morning; she was followed by Mrs. Henry Dobson, Tasmania, and by Miss Crystal MacMillan, a young Scottish feminist much courted by the Toronto press.

⁷⁹*Ibid.*, pp. 203-218. See the reproduction of this speech at (1993) 42 U.N.B.L.J. 49 in which she cites some pertinent case law from outside New Brunswick, for example *R. v. Redner* (1901), 6 BCR 73 at 206. Her presentation was flawed by an abrupt ending: a truncated discussion of Roman law, lacking a proper summation. Either French was stopped before completing delivery, or the stenographer was interrupted during transcription.

of gaining political recognition through their advocacy of socio-legal issues affecting women. Feminists were beginning to realize how profoundly the legal system discriminated against women, and to anticipate how that system might be changed to improve the status of both women and children. Of particular concern were issues such as the rights of women relative to marriage and divorce, their entitlement to property, and agitation for family and juvenile courts; in other words, an objective interest in the concept and practical applications of what we now know as family law, but which did not exist as a recognized body or field of law in 1909.⁸⁰

Active participation in these endeavours presupposed a fairly advanced formal education and was therefore limited to a small but determined constituency, both lay and professional. This in turn reflected the increasingly diverse and sophisticated opportunities open to ambitious women in Canada, and signalled the attainment of a cosmopolitan intellectual maturity which made these Canadian feminists the equals of like-minded women from other countries. The International Congress in 1909 symbolized a coming-of-age for the women's movement in Canada. French's participation has a two-fold significance: it ranked her among the elite in contemporary Canadian feminist thinking, and it placed her before an assembly of the most progressive and articulate women in the western world. It was a remarkable achievement for someone who had begun her career as a stenographer in a small provincial metropolis.

The Saint John newspapers provided fairly extensive coverage of the Congress, but in a manner which reflected their general disinclination during this period to offer substantive comment on women's issues. Their attitude was best summed up in a retrospective editorial published in the *Saint John Globe* on 3 July:

The talk – it can hardly be called a discussion – which took place gives one the idea that some of these ladies hold to the view that there is but one way to reform the world, and that is to summarily put to death the weak, the erring, and the incompetent. ... One great trouble with many of the reformers is that they are impatient to immediately secure practical results, and this impatience leads them to extremes.

It is unlikely that French returned to Saint John infected with the "urge to kill," but her visit to Toronto and her mixing with an international community of progressive-minded women probably fuelled a growing impatience with what she was coming to regard as a provincial backwater.

⁸⁰See, e.g., *Points in the Laws of B.C. Regarding the Legal Status of Women* (Vancouver, 1911 [?]), a publication sponsored by the British Columbia Political Equality League. For an examination of feminist activism in Halifax, N.S., during this period – with some reference to Saint John – see E. R. Forbes, "Battles in Another War: Edith Archibald and the Halifax Feminist Movement" *Challenging the Regional Stereotype: Essays on the 20th Century Maritimes* (Fredericton, 1989), pp. 67-89.

French was no doubt viewed with scepticism – and perhaps even suspicion – in Saint John, both by the legal fraternity and the feminist community. Not reticent, and alert to the value of feminine charm, she had attracted the interest and support of influential men during her rise from the stenographic pool to the bar of the Supreme Court. Once admitted to the bar, she then had to prove her ability without either alienating her admirers or further antagonizing her detractors. It was a delicate balancing act, but one which she relished. Her ambiguous position is most clearly apparent in the Bustin/Porter/French ménage: was she a capable lawyer, a token lawyer, or – worst of all – a “toy” lawyer? Could she have succeeded in an independent practice, or was she merely coasting along on the established reputation of a constant and faithful mentor, whose active support of her career had probably cost some credibility to his own? French’s participation in the International Congress suggests that she was much more than a merely adequate lawyer; even if she were brilliant, however, it is questionable how far she could have progressed within the confines of a small, tightly-knit legal fraternity operating in a gritty industrial city not noted for its tolerance of either progressive ideas or progressive women. As she herself observed, Saint John was a place “where families lived and died in the same old house, and where everyone seemed to be succeeded in home and business by his children and his children’s children.”⁸¹

Her *misalliance* with the feminist community was also at best a marriage of convenience. She was not militant, and her involvement may have derived partially from a minor sense of duty: as the province’s first woman lawyer – an important feminist symbol – she was obliged to take at least a passing interest in women’s issues. However, her involvement was also a means of establishing credibility with the upper-middle-class conservative constituency most inclined to distrust her youthful attractiveness and ambition. It was yet another challenge, appealing particularly to her desire for enhanced social status.

In these latter endeavours French was severely hampered by her lack of proper social credentials; her family had no place in society. The Saint John feminist community drew its membership from the old-guard commercial, social and political élite, although wealth was not necessarily a criterion. These were the women who, in French’s words, “married as soon as they could, and [got] homes of their own,”⁸² and then committed themselves to volunteer work and an interest in social activism. They were articulate, progressive and single-minded, but their attitudes could still be damnably parochial. French’s youth and charm would cut no ice with them, and indeed, since she came from the wrong side of the tracks

⁸¹ Cowper, *supra*, note 4, p. 142. There is no indication that French was a member of the Saint John Law Society, which further suggests that she was only tolerated – not accepted – by the local legal establishment.

⁸² *Ibid.*

– both literally and figuratively – her entry into their close circle was no doubt on sufferance only.

On 22 November 1909, French's father died at the age of 73 from heart disease. He was "known and respected by a large circle of friends," but left no will, no substantial estate, and only a wife and daughter; by 1 June 1910 they, too, were gone.⁸³ Saint John was too small a city for a broad-minded and ambitious career woman like Mabel. Her ultimate destination was British Columbia – chosen, she said, "just as any other barrister might, for the sake of the increased opportunities that practice affords [t]here."⁸⁴ In her westward migration, French was following a well-worn path: from the late 19th century onwards, a steady stream of migrants had flowed outward from the Maritime Provinces to the American Mid-West, the Prairies, and the Pacific Northwest – attracted there by the booming economy and potential for progress which were so elusive in Eastern Canada after Confederation. Discernible among this flow was a pool of legal and commercial talent which coalesced in British Columbia at the turn of the century – a virtual "Maritime Mafia," wielding power and influence at the highest levels, and across a broad spectrum of professional, political and entrepreneurial interests. It was this network to which French was now introduced.

Although she probably arrived in Vancouver during the summer of 1910, her long-range career goals appear to have been tentative. There had likely been a stopover in Toronto, and sometime during the latter part of the year she contemplated moving to Saskatchewan, where the Law Society had advertised for lawyers.⁸⁵ Upon arrival in Vancouver, French was immediately employed by the

⁸³*The Standard*, 24 November 1909, p. 3; he was buried in the Old Church of England Burying Ground, Thorne Avenue, where his tombstone has survived a massive relocation project. Date for her departure is from Application for Enrolment as an Applicant for Call and Admission, Law Society of British Columbia, 7 March 1912, Law Society of British Columbia fonds: Add. MSS. 948, Vol. 58, file 173, British Columbia Archives and Records Service. I am indebted to Susan Hart, Reference Archivist, Reference Services Unit, for her patient and helpful assistance in providing photocopies of all relevant documentation from these records.

⁸⁴Cowper, *supra*, note 4, p. 143. Nothing was left behind. The family home at 22 Wall Street, Portland (house no longer standing, but then on the southwestern side, near the intersection with Paradise Row and almost opposite St. Paul's Church), had been purchased by Ruth French in 1902 for \$1800; it was leased upon the departure of mother and daughter. In October 1911, Mrs. French mortgaged the property to the Lancaster Loan Ltd. for \$2000, and assigned the lease to the Sterling Realty Ltd.; Stephen Bustin was a director of both companies. On 22 March 1913, with Mabel as a witness, Ruth French conveyed the house to Ethel May Walker, for the token sum of \$1, the latter agreeing to assume the mortgage. See Saint John County Registry of Deeds: Book 80, p. 393; Book 116, pp. 577, 579; and Book 125, pp. 424–25.

⁸⁵*McAlpine's New Brunswick Almanac*, 1912, 1913 and 1914 lists her as residing in Toronto; *Belcher's Farmers' Almanac for the Maritime Provinces*, 1910 and 1911 also places her in that city. As noted above, such lists are often erroneous. *Might's City of Toronto and Suburban Directory*, 1909–1912, does not include French. The Law Society of Upper Canada has no record of her

law firm of Russell, Russell & Hannington, whose partners formed a triumvirate of ex-New Brunswickers in practice together since 1908. Joseph A. Russell, the senior member, was a Newcastle native and Dalhousie Law School graduate; he had been in Vancouver since 1888 and by 1913 was regarded as “the [N]estor of the bar.” Widely known as a flamboyant but respected criminal and civil liberties lawyer, Russell was also “a lover of clean and manly sport.” He was a larger-than-life figure and man-about-town, a founder of both the Vancouver Hunt Club and the Vancouver Horse Show, and he later owned one of the city’s finest racehorse stables. His home, built the year before French’s arrival, and for the then incredible sum of \$25,000, was one of Vancouver’s largest and most opulent — complete with its own bowling alley.⁸⁶

Russell was in partnership with his younger brother Finley, a somewhat more restrained corporate lawyer who served as a foil to Joseph’s flamboyance. Other partners came and went during the early years of the century, and although the practice was not Vancouver’s largest, it was among the most influential; a particular hallmark was the strong Liberal political orientation of all its members.⁸⁷ In 1908, the firm became Russell, Russell & Hannington with the arrival of Robert Wetmore Hannington, a native of Dorchester, New Brunswick and a one-time student at the Dalhousie Law School. He had been in British Columbia since 1897, practising latterly in Nelson with William A. Galliher. Hannington was somewhat exceptional for the Russell firm since he was not actively involved in politics and was a nominal Conservative; his father, who had served briefly as the premier of New Brunswick, was none other than the Hon.

applying for admission; similar records for Osgoode Hall are not available until after 1911: letter from Susan Binnie, Research Coordinator: 28 February 1992, Law Society of Upper Canada Archives.

Canadian Law Times, XXX, 11 (November 1910), p. 945 notes that “Miss Mabel P. French ... Saint John, N.B., intends removing to Saskatchewan.” *The Legal Profession Act*, R.S.S. 1909, c. 104, s. 37, appropriating the masculine gender, offered admission to British subjects who had previously been called “in some province, state or country”; this section was amended in January 1913 to provide for the admission of women. It is possible that French contemplated seeking admission under the 1909 courtesy provision. H. S. Cartwright, “Then and Now” *The Advocate*, IV, 4 (August 1946), p. 122 [editor’s fn.], claimed that French was indeed “sponsored ... to be called” there. An enquiry to the Law Society of Saskatchewan in April 1992, elicited the information that the Society had just moved and its early records were still in storage. Harvey, *supra*, note 6, p. 17, cites the first woman called in Saskatchewan as Mary Cathcart, 1917, confirmed by the Law Society.

⁸⁶*British Columbia from the Earliest Times to the Present*, III, Biographical (Vancouver, 1914), pp. 46-49; H. J. Morgan, *The Canadian Men and Women of the Time*, 2nd ed. (Toronto, 1912), pp. 983-84; Mullins and Harvey, *supra*, note 6, pp. 10-27 (*passim*), p. 39. L. Lockyer, “Bench and Bar: An Interview ...,” *The Advocate*, I, 2 (May 1943), pp. 48-49 presents an interesting overview of Russell’s career.

⁸⁷French’s own political allegiance remains unknown, since she could not vote or participate actively.

Justice Daniel L. Hanington, who had heard *In Re Mabel P. French* back in 1905.⁸⁸

Mabel French was now, five years later, brought into this Vancouver firm as an associate, specifically to assist Hanington in the preparation of legal cases.⁸⁹ Since no woman had yet been admitted to the British Columbia bar, French could not plead in court, but as a B.C.L. and fully qualified barrister from another province, she could do all the necessary preparation of cases and could sit in chambers with the trial lawyers. In addition to research, she was also competent to draw up legal instruments, proceed with debt collection, and discharge the myriad office duties today handled by paralegals or articling students. At that time, however, such tasks were central to the function of woman lawyers employed by law firms. The *Legal Professions Act* of British Columbia⁹⁰ provided for the admission to the bar of that province of "any person being a British subject of full age, good conduct and repute, who has been duly called and admitted to practise as a Barrister-at-law in any ... [province] of Canada." This was subject only to six months' residency in British Columbia, and to passing a written examination covering provincial statute law and civil procedure. In contrast to her New Brunswick situation, where she had been a mere student-at-law possessed of the B.C.L., French was now a fully-fledged barrister and entitled to formal admission under the statute. All that remained was for her to make the application.

The Law Society of British Columbia, however, was not famous for its progressive attitude towards women in the profession; in this respect, it was considerably more reactionary than its East Coast counterpart. The Society's secretary, Oscar Bass, was an English *émigré* who can only be described as an arrogant and doctrinaire misogynist. In 1908, replying to one "E.M. Pawley [*sic*], Esq., B.A., Barrister," who had enquired from Ontario as to whether women had yet been admitted in British Columbia, Bass wrote condescendingly: the fair sex have not yet threatened to invade the legal profession in [this province] ... The Benchers not yet having to consider the legislation of a modern Blackstone in petticoats ... it is difficult to say what their feelings would be. ... [W]e have been ungallant enough to ignore the very existence of the beautiful sex except inferentially as being possibly classifiable among British subjects of full age. The admission of the age limit might lead to a mental evasion, equivocation or secret reservation ... but if the candidate had made up her mind to practise law for a

⁸⁸For Finley Russell, see Mullins and Harvey, *supra*, note 6, pp. 23, 27; *British Columbia*, III, pp. 181-82; and *The Canadian Who's Who*, II (1936-37), p. 954. For Hanington, see Mullins and Harvey, *supra*, note 6, pp. 32-33; *British Columbia*, III, pp. 311-12; and *Who's Who and Why 1919-20* (Toronto), p. 310. Leger, *supra*, note 6, p. 70, notes that Hanington adopted the variant surname spelling at least as early as his bar admission.

⁸⁹*Saint John Globe*, 13 December 1923, p. 12, reprinted from the *Vancouver Province*.

⁹⁰58 Vic., c. 29 (1895).

livelihood a little thing like that should cause no conscious qualms or scruples.⁹¹

It would be worth knowing whether Bass was aware that his correspondent was Eva Maude Powley, the second woman called to the bar in Canada (Ontario, 1902). In 1910 he dealt similarly and summarily with enquiries from Muriel Johnson and Hilda S. Cartwright, both of whom wished to be admitted as students-at-law; their applications were passed to the Credentials Committee of the Society, with Bass' question-begging observation that, "I do not know what the objection is that is raised to those persons being put on the rolls, except that neither the Statutes or the Rules of the Law Society allow it." The benchers agreed.⁹²

As contenders from opposing sides, Oscar Bass and Mabel French were about to embark upon a campaign quite different from anything either of them had previously experienced. Bass, reckoning with neither French's gritty determination nor the support which she would muster, seemingly without effort, would not have an easy time dealing with her. For her part, French would be both surprised and antagonized by the meanness of Bass's tactics, and by the flagrant gender discrimination exhibited by the Law Society as a whole, in their active contempt of her statutory rights. By contrast, the Barristers' Society of New Brunswick had been courtesy personified.

French began her campaign on 16 May 1911 with a letter to Bass announcing her wish to be enrolled as an applicant for call and admission, and her intention to sit the forthcoming June examinations.⁹³ Under separate cover, she enclosed a complete set of those documents required to prove her credentials. Her statutory declaration was made before Joseph Russell, and her certificate of character had been provided by William Pugsley, by then the Minister of Public Works in the Laurier cabinet, who declared on 13 April 1911 that he had "known

⁹¹Bass to Pawley [*sic*], 17 March 1908, typed transcript: Add. MSS 948, Box 40, file 14, British Columbia Archives and Records Service (hereinafter BCARS). A modern hand has added underneath, "Pride goeth before destruction and a haughty spirit before a fall."

⁹²Quoted in Watts, *supra*, note 6, p. 89. The correspondence with Cartwright is in: Add. MSS. 948, Box 40, file 17, BCARS. Bass upbraided her, 9 May 1910, for sending the Society an undated letter of enquiry. Cartwright later published a brief reminiscence, "Then and Now," *supra*, note 85, in which she recalled at p. 123, the "undated" incident: "A woman, according to the romantic ideas of this times [*sic*], was incapable of dating a letter or of understanding the purport of any document she might happen to sign." Hilda Cartwright was employed as a stenographer with Russell, Russell & Hannington from 1908; subsequently, she was Finley Russell's secretary and law clerk until 1917, when she was finally admitted to articles. She was called in 1921 and continued with the firm until the late 1940s. See Harvey and Mullins, *supra*, note 6, p. 37.

⁹³Unless otherwise noted, all documentation and quoted material through this section is from Add. MSS 948, Box 40, files 18 and 19, Correspondence inward & outward, 1900-1912, BCARS.

and been well acquainted with [the applicant] ... for the space of three years⁹⁴ French's letter and file of supporting documents were received by the Society on 18 May. Bass' reply, dated 19 May, stated that regardless of the provisions of the *Legal Professions Act*, French's application would have to be referred to the Credentials Committee of the Society before it could proceed any further; that committee would not meet again until 3 July. A flurry of letters ensued as French, angry over what she viewed as evasion and obstruction, demanded permission to write the June examinations anyway, "without prejudice, reserving all questions of right until after[wards]." Bass' reply was suitably laconic: "You have my ruling, which is not alterable."

The benchers finally met on 3 July, as promised, although the surviving minutes of the meeting do not distinguish any separate deliberations of the Credentials Committee *per se*. Rather than her written application being dealt with summarily as part of regular business, French's case was heard in person, indicating both the high level of support she was receiving from Russell, Russell & Hannington and the general interest of the legal community at large in the outcome of her application. Her case was argued by Robert W. Hannington and she was permitted to be present, but withdrew following his address. After deliberation, the benchers decided on motion that, "in their opinion there was no authority under the terms of the statute to enrol lady applicants for call or admission." Sir Charles Hibbert Tupper, K.C. and J.H. Senkler, K.C. both went on record as opposed to the motion.⁹⁵ Whereas the Barristers' Society of New Brunswick had been somewhat accommodating – at least in resolving to recommend her admission, subject to a judicial ruling – the Law Society of British Columbia revealed itself by this action to have been willing even to countenance illegal action, so invincible was their prejudice. Bass wrote to French on 4 July, formally conveying the benchers' decision and returning her credentials file; no doubt he thought this would be the end of the matter.

French and her supporters took the summer to regroup; on 9 September, a notice of motion and affidavit for a writ of mandamus, ordering the benchers of the Law Society to accept French as an applicant for call and admission, was served by Hannington on Lewis G. McPhillips, K.C., a senior bencher. McPhillips declined service, however, whereupon Hannington asked him to forward it instead to Bass, who also declined. The matter was finally heard as *In Re Mabel Penery French* on 20 September 1911 in Vancouver, before Justice Aulay Morrison of the

⁹⁴Statutory Declaration, 7 March 1912, and Certificate of Character, 13 April 1911, in *ibid.*, Vol. 58, file 173, "French, Mabel Penery." The required documentation was initially tendered in May 1911; subsequently returned to French; then resubmitted in March 1912, at which time certain of the documents were redrawn.

⁹⁵Minutes of Benchers' Meetings, 3 July 1911, typed transcript: Add MSS. 948, Box 80, file 3, BCARS.

Supreme Court.⁹⁶

Joseph Russell was now revealed as the *eminence grise* behind French,⁹⁷ his emergence no doubt necessitated by a major convulsion within the firm of Russell, Russell & Hannington. During the latter half of 1911 the Vancouver partnership was dissolved; contemporary sources politely noted that “Mr. Hannington’s health [has] compelled him to limit his practice to his former field at Nelson.”⁹⁸ His medical problems could hardly have been serious, since within three months he had returned to Vancouver to assist in the organization of Harris, Bull, Hannington & Mason, “one of the strongest law firms in the city.”⁹⁹ Meanwhile, the Russell brothers had taken in G.E. Hancox as a replacement partner,¹⁰⁰ although there is every indication that matters were not peaceful between the two brothers. Although Mabel French was not likely the crux of the differences within Russell, Russell & Hannington, she may have been a contributing factor; moreover, in a profession where flamboyance and progressive feminism were regarded sceptically, Joe Russell was a liability – and so was anyone associated with him.

During the hearing on the application before Justice Morrison, Russell acted as counsel for French, in support of whom he argued that, “the language of the *Legal Professions Act* and the *Interpretation Act* is sufficiently comprehensive to include both sexes, and to hold otherwise would be a strained construction.” The *Legal Professions Act*,¹⁰¹ by making special provision for the entry of barristers and solicitors from other provinces, “virtually invite[d] [them] to apply for admission to the profession in British Columbia.” The *Interpretation Act*¹⁰² specifically stated that “Words importing the singular number or the masculine gender only shall include ... females as well as males, and the converse”; and furthermore, that “The word “person” shall include any body corporate or politic, or party, ... or other legal representatives of such person, to whom the context can

⁹⁶The appeal from the ruling in the B.C. Supreme Court was widely reported: 17 BCR 1, 19 WLR 847, 1 WWR 488 and 1 DLR 80.

⁹⁷Mullins and Harvey, *supra*, note 6, p. 34, claim that Russell was an active supporter of French during her 1906 campaign for admission in New Brunswick; this is repeated in Mullins’ other articles, but is incorrect. Cartwright, *supra*, note 85, p. 122 [editor’s fn.], makes the same claim (“sponsored Miss French to be called [in] New Brunswick and Saskatchewan”) which may be where the error began.

⁹⁸*British Columbia*, III, 46 (within entry for Joseph A. Russell).

⁹⁹*Ibid.*, p. 311.

¹⁰⁰Mullins and Harvey, *supra*, note 6, p. 33; he had been articling with the firm since 1908, and was “a prominent young Liberal.”

¹⁰¹R.S.B.C. 1897, c. 24.

¹⁰²R.S.B.C. 1897, c. 1.

apply according to law.” Russell therefore inferred that “even if the right of women to be called to the bar does not exist at common law, it has been given them by express legislation in British Columbia.” He continued his argument by pointing out that since there was no distinction as to sex in New Brunswick, and since a New Brunswick barrister was eligible for call in British Columbia, the current applicant – by the axiom of equality – “has all the necessary qualifications.” His closing statement was that the enabling legislation passed in Ontario and New Brunswick “was merely declaratory of the existing law, and is not opposed to the present application.”¹⁰³

Bass would later describe this presentation as a “verbose composition written for Mr. Russell [and containing] a good deal of matter which is purely academic and largely very amateurish, showing clearly its origin.”¹⁰⁴ The secretary of the Law Society obviously thought that French had prepared her own argument, which was indeed possible. The implication that the Law Society was contravening provincial statute law, and that British Columbia was falling behind the example set by more progressive provinces, such as Ontario and New Brunswick, made little difference to the uncompromising attitude of male exclusiveness already evinced by Secretary Bass and the benchers of the Society.

McPhillips, appearing for the Law Society, presented a neatly constructed counter-argument by stating succinctly that the New Brunswick reference, *In Re Mabel P. French*, had already confirmed that, “At common law a woman could not be admitted to the practice of law; express legislation is necessary.” To strengthen this point, he observed that the English Inns of Court refused to admit women, and “there is no way in which the matter can be brought before the Courts, as a *mandamus* will not lie. ... It is submitted that a *mandamus* will not lie in this case [either].” As for the argument that French was entitled to admission by virtue of her status as a New Brunswick barrister, McPhillips replied that to admit such an argument would “extend to women of other Provinces a right and privilege denied to British Columbia women.” Finally, he reiterated that “this is a question for the Legislature and not for the benchers.”¹⁰⁵

Justice Morrison reserved his decision, pending an examination of Joe Russell’s written argument, which was supported by “a formidable stock of legal literature.”¹⁰⁶ When his decision finally came down on 24 October, he ruled against French by stating simply that “the Legislature had not in mind the contingency that women would invoke the provisions of the [Legal Professions]

¹⁰³17 B.C.R. 2.

¹⁰⁴Bass to McPhillips, 2 November 1911: Add. MSS 948, Box 40, file 18, BCARS.

¹⁰⁵17 B.C.R. 2 at 3.

¹⁰⁶*Vancouver Province*, 20 September 1911, p. 4.

Act, and I do not think it applies to them.” He likewise rejected the argument constructed around the *Interpretation Act*, and concluded by obliquely condoning the gender bias of the Law Society: “The rejection of the applicant by the benchers was not capricious or partizan. They took the ground that the enactment which she invokes does not expressly or by necessary implication empower them to entertain the application. If I am right, then her only remedy is by way of aid from the Legislature.”¹⁰⁷ Outside the court, Justices Morrison and McPhillips were quoted as saying that according to the wording of the *Legal Professions Act*, “the Benchers did not hold the power to admit Miss French to the bar and that were they to do so she could be disqualified by any member of the bar who wished to enter complaint.”¹⁰⁸ Not even legally sound, this new and somewhat peculiar exoneration was merely another evasion.

The opposition no doubt anticipated that the Mabel French lobby would now transfer its activity – and the concomitant glare of unwelcome publicity – away from the courts and to the Legislature, before a committee of which, as Justice Morrison sarcastically observed, “doubtless, Mr. Russell’s gallant argument may prevail.”¹⁰⁹ Neither Justice Morrison nor the Law Society, however, had reckoned on Joe Russell’s love of a good legal fight. Once he had digested the decision of 24 October he decided to appeal, no doubt relying heavily upon the perceived advantage of French’s position as a regularly called and admitted barrister from another province. Bass, writing to McPhillips in anticipation of the court hearing on 5 December, remained supremely confident: “It would be well if you would continue on to the appeal, which cannot be a very long affair, and is apparently taken more out of a spirit of advertising than with any hope of success.”¹¹⁰

The matter was heard in the Court of Appeal on 5 December before James A. MacDonald, Chief Justice of British Columbia, supported by Paulus A. Irving and William A. Galliher; the last-mentioned had once been Robert W. Hannington’s law partner in Nelson. Again, Joe Russell spoke for the appellant, McPhillips responded for the Law Society, and the arguments presented were the same as those of 20 September. The decision was reserved until 9 January 1912, when all three judges were unanimous in dismissing the appeal. MacDonald presented the most direct interpretation, stating that “If at common law women are not eligible to the legal profession, then I think it quite clear that the Legal Professions Act cannot be construed as extending to them.” He went on to observe realistically – echoing the remarks of Justice Daniel L. Hanington back

¹⁰⁷17 B.C.R. 3 at 4.

¹⁰⁸*Vancouver Province*, 24 October 1911, p. 3.

¹⁰⁹17 B.C.R. 4.

¹¹⁰Bass to McPhillips, 2 November 1911: Add. MSS 948, Box 40, file 18, BCARS.

in 1905 – that:

[T]here are cogent reasons for a change based upon changes in the legal status of women, and the enlarged activities of modern life, ... but if we were to give effect to these considerations, we should be usurping the functions of the Legislature rather than discharging the duty of the Court, which is to decide what the law is, not what it ought to be.¹¹¹

Justice Irving delivered an opinion redolent of gender discrimination and male supremacy. Constructing a lengthy list of precedents going back to the time of William the Conqueror – “*femes ne poient estre attorneys*” – he reasoned that the “fact that no woman has ever been admitted in England, is conclusive that the word “person” in our own Act was not intended to include a woman. The context of our Act refers to a profession for men, and men alone.” He declared himself in complete agreement with *In Re Mabel P. French*, and even in alluding to legislative intervention, chose to emphasize the ultimate supremacy of the benchers in deciding whom they would admit: “In the Province of Ontario, the benchers declared they had no power to call a woman ... and the ... Legislature recognized the correctness of their decision, empowering them to do so, *if they thought proper* [emphasis added].”¹¹²

Following the decision rendered on 9 January, the French supporters had to develop and implement yet another campaign plan. Their reluctance to pursue the obvious solution – recourse to the Legislature – had been predicated on the strength of their primary argument: French was a barrister regularly called and admitted in a common-law jurisdiction elsewhere in Canada. Regardless of her gender, she was entitled by statute to be admitted in British Columbia, and every judicial recourse had to be exhausted before the protagonists could resort to the Legislature. By contrast, in New Brunswick there had been no possibility of higher

¹¹¹17 B.C.R. 4 at 5.

¹¹²*Ibid.*, pp. 5-7. In reporting the decision, the *Victoria Daily Times*, 9 January, noted that French “had previously been refused admission ... in New Brunswick and Manitoba.” Although the latter point is probably erroneous, it nevertheless suggests that French had investigated as well the possibility of admission in that province. In 1911, the Law Society of Manitoba sought the opinion of Edward Anderson, K.C., concerning the admissibility of women. He replied, 26 October:

What I would suggest is this – if it is the policy of the Benchers to admit women, to get an amendment from the Legislature permitting them to do so. If however the Benchers do not desire this in all probability a friendly suit might be arranged so that the applicant ... could take some proceedings to have it declared that she was entitled to be admitted and the case could then be stated to the Court. That seems to be the way it was done in New Brunswick. Amending legislation was subsequently passed in April 1912. The identity of “the applicant” noted above remains unknown, but may have been one Gladys E. McHugh, whose name had been put forward in February 1910. Melrose Sissons and Winnifred M. Wilton, both admitted as students in 1912, were the first women called to the Manitoba Bar, 1915. I am indebted to Professor Cameron Harvey, Faculty of Law, University of Manitoba, for kindly providing this detailed information. He could find no trace of French in the extant Law Society records.

appeal, since at that time there was no separate and distinct court of appeal in the province. Furthermore, the fundamental issue at stake in New Brunswick had been different: there, French had been a neophyte seeking admission to the profession; if the court denied her, she had no recourse other than to create her own precedent through statute.

It has been implied that in British Columbia, French and her supporters were reluctant to approach government because the incumbent attorney-general, by whom the legislation would have to be facilitated, was openly opposed to the expansion of women's rights.¹¹³ Attorney-General William J. Bowser, K.C., was yet another New Brunswick native and Dalhousie Law School alumnus; however both his prominence as a leading Vancouver criminal lawyer and his spectacular rise within Conservative Party politics probably made unlikely any *modus vivendi* with Joe Russell – not even their shared love of horseback riding could bridge the latter's fundamental dislike of the former. As for his reputed antipathy towards women's rights, Bowser's wife was a director of the Children's Aid Society in Vancouver at this time, and it is therefore unlikely that his opposition to progressive feminist issues was pronounced.

French and her supporters launched a two-pronged offensive. Sometime prior to 22 January 1912, French either met with or wrote to Bowser, drawing attention to the loss of her appeal and suggesting that, in Bowser's words, "an amendment be introduced to the Legal Profession Act placing women on the same footing as men."¹¹⁴ The Attorney-General agreed only to query the Law Society concerning its position relative to such an amendment. The French lobby already knew what the benchers would say; Bowser's response offered nothing more than continued evasion and delay from what now appeared to be a consolidation of opposing interests. The second stratagem of the 1912 campaign was therefore brought into play. Fully anticipating that they would have to circumvent Bowser and the Law Society, the French lobby moved to enlist support from both the local press and the feminist movement. Although there is yet no evidence that French was involved in Vancouver women's circles,¹¹⁵ she probably had numerous contacts

¹¹³Watts, *supra*, note 6, p. 90; Pazdro, *supra*, note 6, p. 17.

¹¹⁴Bowser to Bass, 22 January 1912: Add. MSS 948, Box 40, file 19, BCARS.

¹¹⁵The Vancouver Council of Women was founded in 1894; records from 1910 are held by the Special Collections and University Archives Division, University of British Columbia, but a cursory examination located no reference to French: George Brandak, Curator of Manuscripts, to author, 5 May 1992. Records of the University Women's Club (including minute-book, 1912) are held by the City of Vancouver Archives, as is a contemporary scrapbook of the Canadian Women's Press Club; again, no mention of French could be found in either; Heather Chan, Archivist, to author, 15 April 1992. Political Equality League records are apparently not extant, except for *The Champion* (monthly, 1912-14), BCARS, wherein French is not mentioned: see Pazdro, *supra*, note 6, pp. 16-17. "Women's Work in 1911" *Victoria Times*, 7 January 1912, p. 22, provides a useful overview of the very active and progressive Vancouver feminist community.

within them because of her previous visibility in Saint John and at the International Women's Congress in Toronto. The Vancouver press had already been following her case with considerable interest.¹¹⁶ It remained only to bring together the French lobby and the organized women's groups for an assault on public opinion.

The anecdotal history of events at this juncture recounts that Robert Hannington was playing bridge one evening at the Vancouver home of John W. deB. Farris and his wife, Evlyn Fenwick Farris. Mr. Farris, later to become a Liberal senator, was a native of White's Cove, New Brunswick, one of Vancouver's most prominent lawyers, and actively involved in politics. His wife had channelled her interest in women's rights and education into founding the Vancouver University Women's Club in 1907.¹¹⁷ Now, over the bridge table in January 1912, Hannington reputedly suggested – either by accident or by design – that Mrs. Farris involve that organization in the campaign to gain bar admission for Mabel French. Within days, Farris is said to have established a special committee of the Club to deal with the issue, and gained editorial support from two Vancouver newspapers, *The Daily Province* and the *News-Advertiser*.¹¹⁸

The minutes of the University Women's Club for this period contain no reference to French, but it is clear that that organization was indeed her principal supporter, via a committee headed by Mrs. Farris.¹¹⁹ It is somewhat more difficult to gauge the impetus behind the media coverage generated on her behalf. While *The Daily Province* provided extensive coverage, it was Vancouver's leading

¹¹⁶*The Province*, 20 September 1911, p. 4; 24 October 1911, p. 3; 6 December 1911; *Victoria Daily Times*, 9 January 1912. Even the *Saint John Globe* had picked up and commented upon her dilemma, 18 December 1911.

¹¹⁷For Senator Farris, see *British Columbia*, III, pp. 45-46; *The Canadian Parliamentary Guide*, 1903, p. 333 (his father was the Hon. Laughlin P. Farris, Liberal MLA for Queens and one-time provincial Commissioner of Agriculture), and *ibid.*, 1970, p. 106; and *Who's Who in Canada*, 1953-54, pp. 367-68 (and p. 526, entry for his brother, Wendell Burpee Farris, Chief Justice of B.C.). For Mrs. Farris, see Pazdro, *supra*, note 6, p. 17; and especially Mullins, "Taking the Law Into Her Own Hands", *supra*, note 6, p. 2544. The Farris fonds, UBC Archives, includes a small series of Evlyn Fenwick Farris papers, but nothing relevant to French. *Victoria Daily Times*, 7 January 1912, p. 22, notes that the University Women's Club, founded by Farris in 1907 with eight members, had since grown to 95; Mrs. W.J. Baird was the incumbent president – not Farris, as claimed by Mullins, "Mabel Penery French" p. 678, and Mullins and Harvey, *supra*, note 6, p. 36.

¹¹⁸Watts, *supra*, note 6, p. 90; Pazdro, *supra*, note 6, p. 17; Mullins, "Mabel Penery French" *supra*, note 6, p. 678, and "Taking the Law" *supra*, note 6, p. 2543; and Mullins and Harvey, *supra*, note 6, p. 36. Mullins is the only French scholar to claim newspaper involvement. The origin of the bridge-table anecdote is nowhere cited; it may be oral tradition.

¹¹⁹*Daily Province*, 20 January 1912, and inferred in *Daily News-Advertiser*, 27 February 1912, p. 11. Watts, *supra*, note 6, p. 91, states that the committee was headed by Helen Gregory MacGill, a leading British Columbia feminist and social activist, and the province's first female judge (1917). The contemporary newspaper references, however, have greater evidentiary value.

independent newspaper and was therefore no doubt receptive to progressive causes which challenged the socio-political status quo. The *News-Advertiser* was Conservative, but its editor was one Snowden D. Scott, who had previously been the editor-in-chief of the Saint John *Daily Sun* (1885 to 1906) and subsequently the Saint John *Standard* (1909-1910). Scott would have been well acquainted with French and all her previous activities – and, in addition, his wife was a vice-president of the Vancouver Local Council of Women.¹²⁰ There were obviously more influences at work than just Evelyn Farris. Although she was no doubt a pivotal contact, both through her reputed influence with the media and as a leader of the Vancouver women's community, the image of the society-hostess-cum-feminist determining the course of events has been somewhat overdrawn. Closer analysis suggests a more subtle interaction of political considerations, influence and timing, all of which ultimately determined the outcome of the French campaign.

As early as 13 January, the *Victoria Daily Times* – Liberal, and the capital city's largest newspaper – carried a lengthy article entitled "Where Women are Practicing Law," in which the current British Columbia controversy was alluded to without mentioning French by name.¹²¹ On 14 January, the *News-Advertiser* ran a brief and non-committal editorial concerning, "Women and the Bar," which was followed however, on 19 January, by a substantial editorial in *The Daily Province*, endorsing the admission of women: "In view of modern developments with regard to the status of women, it appears altogether likely that the legal profession will ultimately be opened to them in this province. ... It is difficult to see any real objection" The editorial sounded a cautionary note typical of that time: lest anyone fear that the profession would subsequently be overrun by women, readers were reassured that:

Success in that as in every other profession or occupation ... depends upon personal merit and ability [D]espite the fact that the bars have been taken down in more than one of the learned professions, the women who seek entrance are few and far between and those who achieve distinction still fewer, [which] seems to indicate that the great masses of women are more concerned with having the door opened than with walking through the ... door.

¹²⁰For information about the Vancouver press, see *Canadian Almanac and Miscellaneous Directory*, 1912, p. 280. For Scott, see Morgan, *Canadian Men and Women of the Time*, (1912), p. 1005.

¹²¹Ellen Spencer Mussey and Clara Brett Martin were the two highlighted examples; the information concerning Mrs. Mussey was taken almost verbatim from her published I.C.W. presentation, 1909 (*supra*, note 29). By contrast, *The World*, Vancouver, 12 January 1912, p. 9, published an interview with the visiting Mile. Helen Miropolski, aged 24, the first woman called to the French bar, and both a committed feminist and pacifist – but failed to connect her visit in any way with concurrent events taking place in the city; Miropolski gave a lecture entitled "Women and the Bar."

This introductory salvo was followed the next day by a lengthy background article with accompanying photograph, aimed specifically at the Saturday women's readership and outlining French's qualifications and professional history. The usual comforting assurances were given with respect to French's potential intrusion into activities considered to be an exclusively male preserve: "She has no great desire for the work of trying [court cases] and did little of such work in the east, although the privilege of doing so in certain instances was most convenient. She is fitted eminently for study and research." Finally, readers were left with a profound impression of charm and disarming candour:

The opposition Miss French encountered in New Brunswick seemed to be solely on the ground of whether or not the young lady was a "person". ... It remains to be seen what form of creature she is to be considered in the British Columbia legal mind. In the meantime, however, Miss French laughingly admits that she doesn't know what she is.¹²²

Through media coverage such as this, public attention was successfully wedded to the political machinations now at work. Sometime prior to 22 January 1912, Robert Hannington and "several friends of Miss French" waited upon Attorney-General Bowser in Victoria, specifically to request that he introduce a remedial bill during the forthcoming session of the Legislature.¹²³ Russell could not deal personally with Bowser and therefore did not go, but sent in his place the neutral and Conservative Hannington, recently returned to Vancouver from Nelson. Mrs. Farris may have been there, and French may also have attended, given Bowser's subsequent comment that she had drawn his attention to the possibility of amending the Act.¹²⁴

Bowser was no doubt impressed by the groundswell of popular interest in French's case, but was not yet willing to concede anything to the opposition. He therefore gave the non-committal reply that since the forthcoming session was to be a short one, there would be insufficient time to introduce such legislation.¹²⁵ He further reminded them that he could not avoid the diplomatic necessity of consultation with the Law Society – a particularly neat stratagem, since the benchers met only quarterly, and would not convene again until April, which would effectively postpone Bowser's having to commit himself to take legislative action until after the session had ended. Hence his "make-haste-slowly" letter of 22 January to Oscar Bass, wishing to "know as soon as possible what position the

¹²²*The Daily Province*, 20 January 1912, p. 9.

¹²³Russell to Bass, 2 February 1912: Add. MSS 948, Box 40, file 19, BCARS.

¹²⁴Bowser to Bass, 22 January 1912, in *ibid.* It is unclear whether French approached Bowser in person, on paper – or both.

¹²⁵Watts, *supra*, note 6, p. 90. There is no conclusive evidence for this tactic, but it seems entirely reasonable.

Benchers take in this matter.”¹²⁶ The secretary, adroit as ever, replied as expected: “Until I have had an opportunity of placing your letter before the Benchers at their next meeting, of course I am unable to say what position they would take.”¹²⁷ It is obvious that Bass, like Bowser, planned to delay the matter as long as possible. On 2 February, Joe Russell was reduced to writing the secretary privately, reminding him of the prospective legislation and attempting to stir him into purposeful action:

The Session is likely to be a short one. It is important to Miss French ... that the subject should come up ... before it adjourns. ... We made enquiries today and were told that no meeting of the Benchers had been called. I hope that we have been misinformed and that you will bring the subject before [them] at the earliest possible moment.¹²⁸

Political considerations seem to have intervened at this juncture to rescue Mabel French. The British Columbia Legislature was about to be dissolved and an election called – hence both Bowser’s and Russell’s allusion to a “short session.” The French lobby clearly wished to make her bar admission a small issue in the pre-election campaigning; it remained to convince the Conservative attorney-general that this token gesture would be useful for enhancing his credibility among women generally, who, although they did not have the vote, nevertheless were a decided influence on men who did. In the meantime, French and her supporters were apprehensive that Bowser would continue to procrastinate indefinitely, exonerating himself by blaming the benchers for delaying their reply. It was a delicate manoeuvre which Joe Russell was directing, and one which might easily go awry at any point. The alternative – deferment until after the election – was also a dangerous tactic; if the Conservatives were returned to power, as seemed likely, the result might be an indefinite delay, or outright refusal, of French’s application.

It has been claimed that Evlyn Farris was once more instrumental in resolving the impasse, this time by confronting Bowser in his Vancouver constituency office and haranguing him with the ultimatum that, “the women of British Columbia would not put up with such nonsense.”¹²⁹ Bowser reportedly tried to evade the issue yet again by arguing that the House was about to be dissolved and that there was no time to introduce any new bills. Farris would not be deflected, however, and in the end the Attorney-General was forced to concede that he would introduce a remedial bill as a government measure if the benchers agreed, and as

¹²⁶Bowser to Bass, 22 January 1912, in Add MSS 948, Box 40, file 19, BCARS.

¹²⁷Bass to Bowser, 23 January 1912: *ibid.*, XXXVII.

¹²⁸Russell to Bass, 2 February 1912: *ibid.*, Box 40, file 19. Russell appears to have been trying to force an extraordinary benchers’ meeting.

¹²⁹Watts, *supra*, note 6, p. 90; Pazdro, *supra*, note 6, p. 17; and especially Mullins, “Mabel Penery French” *supra*, note 6, p. 678; again, the source of the anecdote is nowhere given.

a private member's bill if they did not.¹³⁰ Although not verifiable, this anecdote is fully within the realm of probability. It was a well-known fact, and frequently noted in the local press, that Bowser regularly came over from Victoria on weekends to attend to constituency business in Vancouver; Farris is reputed to have accosted him "one Saturday" under just such circumstances.¹³¹ Bowser had no doubt been swayed by the continuing popular interest in French's case, and was alert to the small but potentially significant political benefits to be obtained by facilitating her admission. Given the upcoming general election, he was understandably interested in pleasing even the non-enfranchised electorate.

The Attorney-General appears, nevertheless, to have withheld introduction of the bill until the last possible moment, no doubt hopeful of some communication from the Law Society, but none was forthcoming. Bill 45 was finally introduced on 24 February 1912 and the press immediately rewarded Bowser's efforts by noting that he had "proved himself at once above the prejudices of many lawyers and an advocate of the extension of woman's field of usefulness."¹³² The bill proceeded uneventfully and was passed on 27 February as *An Act to remove the Disability of Women so far as relates to the Study and Practice of the Law*.¹³³ The Legislature was dissolved the next day, and a provincial general election called for 28 March. Upon dissolution, the House stood at 39 Conservatives, one Liberal and two Socialists; the election was nearly a clean sweep for the Conservatives, the Liberals being shut out entirely and the opposition reduced to the two Socialists. Bowser was returned in Vancouver with a large majority; indeed, his seat had never been in question and his ultimate support of French's bar admission was no doubt merely a gambit designed to bolster the "progressive" image of the Conservative party.¹³⁴

On 7 March, French again forwarded all her credentials to the Law Society, and advised Bass that she intended to sit the forthcoming examinations at Victoria on the 25th. For once, the Secretary could do nothing but reply in the affirmative. She accordingly sat the required examination, which she reportedly only just passed with an average of 52 per cent. The benchers met on 1 April 1912 in

¹³⁰Mullins, "Mabel Penery French" *supra*, note 6, p. 678 is the only one to make this claim; the amending legislation was subsequently introduced as a government bill – and without any formal comment from the benchers.

¹³¹See, e.g., *Daily News-Advertiser*, 21 January 1912.

¹³²*Ibid.*, 24 February 1912, pp. 1 and 4.

¹³³The title and text of the statute were identical to the New Brunswick Act. *The Daily News-Advertiser* provided extensive Legislature coverage, including a synopsis of the more important debates, but no details were printed concerning the passage of Bill 45.

¹³⁴J. C. Hopkins, *The Canadian Annual Review of Public Affairs*, 1912, pp. 611-16; *The Canadian Parliamentary Guide*, 1914, p. 500.

Victoria and called some fifteen candidates who had fulfilled the necessary requirements for admission to the bar; Mabel Penery French was, at last, one of them.¹³⁵

Although French was now a fully-fledged member of the British Columbia bar,¹³⁶ her position within the legal profession remained ambiguous. In Saint John she had contended with the suspicions of the legal fraternity, but had used her youth and charm to neutralize much of the opposition. In Vancouver, although she had benefitted greatly from the interest of the “Maritime Mafia,” she could not count on their indefinite support. The fight to secure her admission had been a bitter one, and the members of the New Brunswick brotherhood would not likely risk further dissension or blood-letting. From now on, she would have to prove her own worth – and in a city nearly twice the size of Saint John, where she was not indigenous, but merely one of dozens of lawyers, among whom clannishness meant little except in the higher echelons. Women in the legal profession were still everywhere regarded with suspicion, and since they did not attract clients, they were generally unwelcome.¹³⁷

The ambiguity and ambivalence which early trail-blazers such as Mabel French encountered is nowhere more evident than in a curious, faintly absurd article about her, written by one J. Sedgwick Cowper and published in the May 1912 issue

¹³⁵French to Bass, 7 March 1912: Add. MSS 948, Vol. 58, file 173, BCARS; Pazdro, *supra*, note 6, p. 17; Benchers' Minutes, 1 April 1912: Add. MSS 948, Box 80, file 3, BCARS. The *Victoria Daily Times*, 1 April 1912, p. 13, noted: “This morning Miss French spoke feelingly of the perseverance of the members of the firm [‘Russell, Russell and Marman’(sic)] and of other friends in the province in helping her in gaining admission”; no elaboration of these comments could be located elsewhere in the Victoria/Vancouver press. Back in Saint John, the W.E.A. had moved, 8 March, to write French, “congratulating her upon her success in forcing her way into the Bar of British Columbia, this being the second time she has broken down the bar of prejudice”: W.E.A. Minute Book, 8 March 1912, p. 215, New Brunswick Museum.

¹³⁶The Law Society, however, had not quite finished with her. There was the small matter of appeal costs (\$165.00), which French and her backers refused to pay. The benchers decreed, 1 April 1912, that “each party side should pay its own costs”(Minutes: Add. MSS 948, Box 80, file 3, BCARS). It would be tempting to construe the phrase, “A communication was received ... *in re French v. Law Society*” (*ibid.*) to mean that she had sued over her appeal costs – but given the absence of supporting evidence, this would be a strained interpretation. The Law Society was also purporting to be contemplating an increase in admission fees (from \$50.00 to \$500.00) – a move which has been described as retaliatory to French’s encroachment upon a traditionally male preserve (Mullins, “Taking the Law into Her Hands” *supra*, note 6, p. 2543; Pazdro, *supra*, note 6, p. 17). There is no record, however, of this increase being implemented.

¹³⁷D. B. Bell, “Vancouver and New Westminster Women in the Profession of the Law,” *The Province*, 1 February 1925, p. 5, captures this in a contemporary article – breezy, condescending and wonderfully ambivalent. Mullins and Harvey, *supra*, note 6, p. 37, note that in an age when few firms accepted women law students, Joseph and Finley Russell were an exception; between 1910 and 1939, they employed six.

of *The Canadian Magazine*.¹³⁸ The article is no different from any other contemporary journalistic piece about women in the learned professions – the same questions and replies, the same male condescension, almost the same text – but with one striking variation: the protagonist here was not quite what the author expected. There was a spontaneity and effervescence in this woman which was lacking in most of her peers, who were regularly depicted by the print media as restrained and sombre pioneers, treading carefully and heavily along their respective career paths – dowdy and spinsterish, or matronly and non-threatening. In this interview, the author tried to fit his subject into the usual mould, but she would not cooperate. Although the article reflects the prejudices of its time it is nevertheless a tribute to those special women whom Cowper acknowledged as “the pioneers of a new order of things.”

The opening exchange of the interview is immediately discordant; in reply to the obvious leading question, French answered rhetorically:

‘How did I come to study law? Oh, I suppose because I’m of such a serious nature.’ Then the woman lawyer leaned back in her chair and laughed to think how serious she was. She was clad in a neat riding habit, having spent the earlier part of the morning on horseback, but the stacked up piles of documents on the desk ... told ... of serious industry. ... Woman-like, she laughed to think of her seriousness.

How many lawyers today, male or female, would go to work dressed in riding habit? Even given the progressive tastes of Vancouver in 1912, this was radically unconventional.¹³⁹ Cowper went on to question French concerning various aspects of her bar admission difficulties in the two provinces, east and west; obtained her views on marriage within the professional class; and even managed to engage her in a comparative analysis of H.G. Wells’ “little fluffy fool” and Nietzsche’s quest for the Superman – which French neatly interpolated to “Superwoman.” Ignoring the playful absurdity of much in the article, it is clear that French was an articulate and consummate professional who candidly admitted to personal ambition. She also understood both the isolation and the rewards for women who chose the profession of law:

I imagine that most women who will enter the profession in the years to come will do so like myself, with the desire of seeking a useful and independent career. If so, they will find in it a work that stimulates the mind and supplies continual

¹³⁸Based on an interview with French conducted earlier that year, before her bar admission, and updated slightly prior to publication; the article also appeared in the *Victoria Times*, 11 June 1912.

¹³⁹Cf. Clara Brett Martin’s penchant for bicycling, which mode of transportation for women has been described as “profoundly unsettling to those who preferred traditional gender roles”: Backhouse, *Petticoats and Prejudice*, *supra*, note 7, p. 310. Joe Russell had introduced French to English show riding; Russell himself was a leading proponent. The *Daily News-Advertiser*, 25 February 1912, p. 10, noted the recent musical ride held by the Vancouver Horse Show Association; about forty had taken part, including Russell and French.

interest. The average man finds his most constant satisfaction in his work, and the professional woman should find the same. Legal practice is hard work, ... and in consequence I meet few people apart from my business. But I am quite in love with my profession.

Interviews such as this, however, were damaging to French's immediate career prospects. During 1912, Russell, Russell & Hancox underwent yet another permutation and recombination, largely as a result of a local economic boom. The previous year, Wendell B. Farris, younger brother to J.W. deB. Farris, had been taken on as a junior associate. Now in January 1912, two new full partners joined the firm. John McD. Mowat, from Ontario, was a nephew of Sir Oliver Mowat and a dedicated Liberal. Malcolm A. Macdonald, another Ontario native, had been practising in Cranbrook and was president of the provincial Liberal party.¹⁴⁰ These men were all rising stars, against whom French offered little or nothing, other than her recent notoriety, which would hardly endear her to the associates in what was becoming an increasingly conservative firm. It was no doubt obvious that if she remained with Russell, Russell & Hancox she would be marginalized into general factotum or solicitorial work.

Accordingly, by 1913 – and probably sometime during 1912 – French left the firm and established her own independent legal practice in Vancouver.¹⁴¹ Nothing is known of this undertaking, other than that it did not last. In the spring of 1913, Mabel embarked on yet another adventure. Concomitant with the rising fortunes of the junior partners in Russell, Russell & Hancox was the decline of the founder, one of the senior partners, who was being either eclipsed within or eased out of the firm, and quite possibly both. There had been tension for years between the Russell brothers, based on their widely divergent personalities and perspectives. In 1913 the break became complete. On 1 January, two separate firms were established: Russell, MacDonald & Hancox; and Russell Mowat, Hancox & Farris; Finley Russell was the senior partner in each. It has been postulated that the creation of two firms was necessary to accommodate all the legal business accruing from the continuing economic boom. However, it is more likely that it derived instead from internal dissension, especially given the fact that Finley emerged as the senior partner. A face-saving device was concocted to cover Joe Russell's departure: he "retired from practice for at least a year's rest," decided "to go on a round-the-world voyage" and, in the laconic words of the firm's published history, "Mabel French accompanied him as a travelling

¹⁴⁰Mullins and Harvey, *supra*, note 6, pp. 37, 47.

¹⁴¹*Ibid.*, p. 37. Confirmed by Hardy, *The Canadian Law List*, 1913, p. 44, which lists French in independent practice, 521-25 Rogers Bldg., Vancouver. *Henderson's Vancouver City Directory*, 1914 (likely compiled mid-1913), lists her as having an office in the Winch Building.

companion.”¹⁴²

Previous examinations of French’s career have failed to note this small point, and have instead degenerated into speculation concerning her subsequent activities. She is said to have gone to Seattle, either to practise or to pursue a career in business and education; she is said to have been admitted to the bar in Saskatchewan; she is said to have gone to Montana.¹⁴³ It is unlikely that she did any of these, while it is altogether probable that she did indeed set off with Joe Russell in the spring of 1913. They ended up in England, a natural haven for horse-lovers, from whence Russell returned to Vancouver in July 1914.¹⁴⁴ French probably did not accompany him, regardless of the impending threat of European hostilities, but instead chose to remain in London, where her prospects may have seemed potentially limitless.

In England, no woman had ever been admitted to the Incorporated Law Society to practise as a solicitor, or been called to the bar at one of the Inns of Court to practise as a barrister. Coincident with French’s arrival overseas in 1913, however, was the case of *Gwyneth Marjorie Bebb v. The Law Society*, then being heard in the Chancery Division of the High Court. The case turned on the interpretation of section 48 of the *Solicitors Act*,¹⁴⁵ whereby it was stated that “every word importing the masculine gender only shall extend and be applied to a Female as well as a Male.” The decision was rendered as one would expect: “A woman is not a person within the meaning of the [said act]”; but Bebb went on to appeal in 1914. Again, the decision of the lower court was upheld.¹⁴⁶ The circumstances, progress and culmination of *Bebb v. The Law Society* were virtually identical to those of *In Re Mabel Penery French* (British Columbia, 1912), and the similarity would not have been lost on the woman barrister visiting from overseas.

¹⁴²Mullins and Harvey, *supra*, note 6, pp. 40, 46; and *British Columbia*, III, pp. 49, 181. The source for French’s travelling-companion status is not given. One wonders whether Mrs. French accompanied them – after 22 March she certainly had no home to return to in Saint John.

¹⁴³Mullins, “Mabel Penery French” *supra*, note 6, p. 679; Pazdro, *supra*, note 6, p. 17; inferred in Cartwright, *supra*, note 85, p. 122 [editor’s note]; oral tradition as cited to the author by various correspondents.

¹⁴⁴Lockyer, *supra*, note 86, p. 49: “In his heyday, Mr. Russell headed one of the largest legal firms in the province with gross annual earnings of \$148,000. He disposed of his interest to his partners in 1913 and retired to England, returning to Vancouver in July, 1914.” Russell married, 1892, Jessie Millar; there was one child, Flora McDonald Russell, who lived during the early 1950s in Kelowna, where Joe Russell died, 11 December 1949, aged 83: *The Advocate*, VIII, 1 (January-February 1950), p. 14; *British Columbia*, III, p. 49; and information from Bernice Chong, Archivist, Law Society of British Columbia, 14 April 1992.

¹⁴⁵(1843) 6 & 7 Vic. c. 73.

¹⁴⁶*Canadian Law Times*, XXXIV, 7 (July 1914), pp. 620-34.

The winds of change were blowing, but it would take the tremendous social upheaval wrought by World War I to modify traditional British resistance to women entering the learned professions. The *Sex Disqualification (Removal) Act* of 1919 finally gave a small female élite access to the legal profession. Among the first women admitted in 1920 to membership of an Inn was Ivy Williams, an Oxford graduate with B.A., M.A. and B.C.L. degrees. Her first class honours standing in the final bar examination, Michaelmas Term 1921, enabled her to vault over some forty other women endeavouring to complete their term as students. On 10 May 1922, Williams became the first woman called to the English bar.¹⁴⁷ The census of the previous year, however, had noted twenty women barristers and seventeen solicitors.¹⁴⁸ The only interpretation possible here is that, for the barristers at least, they had all been admitted elsewhere than in Great Britain, but were then resident in England. Among them almost certainly was Mabel French.

Her activities during this period remain unknown, although it has been determined that she did not apply for admission to any of the four Inns of Court.¹⁴⁹ Indeed, she does not reappear until 8 December 1923 when, subtracting substantially from her age and adding considerably to her antecedents, she married Mr. Hugh Travis Clay at the fashionable society chapel of St. James, Westminster. French was 42 years of age at the time, but successfully passed herself off as 31 on the marriage registration; moreover, she identified her father as "of Independent Means," perhaps to match the status entered for her new father-in-law, Arthur Travis Clay, also deceased. The groom was 47, a bachelor and a worsted manufacturer.¹⁵⁰ An announcement of the impending ceremony appeared in *The London Times* on 6 December and was speedily relayed to Vancouver, where it was carried in the *Province*; readers were reminded that "Miss French is well known in this city."¹⁵¹ The New Brunswick press was not notified, but on 13 December the item was picked up by the *Saint John Globe*, and

¹⁴⁷H. Fox, "Williams, Ivy" *Dictionary of National Biography*, 1961-1971 (Oxford, 1981), pp. 1081-1082; and R. Pearson and A. Sachs, "Barristers and Gentlemen: A Critical Look at Sexism in the Legal Profession" *The Modern Law Review*, XLIII (1980), pp. 400-14.

¹⁴⁸Brittain, *supra*, note 29, p. 75.

¹⁴⁹I am indebted to Mr. Leonard F. Gebbett, London, England, for his assistance in developing a career profile of French during this period.

¹⁵⁰Certified Copy of Entry of Marriage, General Register Office, London. This document identifies her for the first time as "Mabel Priscilla Penery French," the given name which she reportedly favoured in later life, but which also appears to have been of personal fabrication. One of the witnesses to the ceremony was Charles Travis Clay, subsequently Sir Charles, likely a cousin to the groom; he was appointed Librarian of the House of Lords in 1922, having been the Assistant since 1914 (*Who's Who*, 1965, p. 587). French was a resident of London at the time of her marriage; repeated efforts to document her activities between 1914 and 1923, however, have proved fruitless.

¹⁵¹Watts, *supra*, note 6, p. 91, had access to this information.

on the 15th it was repeated in *The Telegraph-Journal*. No mention was made of her local history. Stephen Bustin had died some three weeks previously on 13 November,¹⁵² there were perhaps few people left in Saint John who wished to be reminded of her.

Little is known of Mrs. Clay's subsequent activities, although it is certain that she was not active in any branch of the legal profession. Her husband was a native of Rastrick, a small industrial town in the borough of Brighouse, near Halifax in the West Riding of Yorkshire. The family was of the gentrified industrial middle class, being proprietors of the textile firm, J.T. Clay and Sons, Ltd., of which Travis Clay was managing director when it wound up in the early 1930s. Active in local Conservative politics and an alderman for twenty years on the Brighouse borough council, Clay was best known for his activities as a municipal politician. Beginning in the 1930's, he and Mabel spent time abroad – partly because of his asthma – and also lived at "Waxholme," a property located at Filey, on the east coast of Yorkshire. They did not entirely vacate their Rastrick home, "Holly Bank," until 1949 when they moved to Jersey, in the Channel Islands – a well-known tax haven also attractive for its temperate climate. There they occupied and later purchased a property known as "Les Ruisseaux" at St. Brelade, just west of the capital at St. Helier.¹⁵³

A family photograph from 1938 reveals much about Mrs. Clay's lifestyle after 1923. The former Miss French of the defiant curled hair and formal barrister's attire had thickened with middle age, required glasses, and had adopted both the dowdy wardrobe and the unimaginative hairstyle of the circumspect British matron. The photographer captured her in an unguarded moment and fixed her forever in time, as she vacantly peered upward from beneath the confines of a wide-brimmed but unbecoming hat, while walking a dutiful half-step behind her husband, a

¹⁵²*Saint John Globe*, 14 November 1923, p. 2.

¹⁵³*The Brighouse Echo*, 4 October 1959, p. 3; and letter from Miss C. Easterbrook, Senior Librarian/Reference and Local History, States of Jersey Library Service, The Jersey Library, St. Helier, 20 February 1992. In retrospect, Clay seems to have been a solid, conservative and somewhat unusual partner for a "free spirit" like French – but by 1923, she was no longer young, nor were her horizons limitless. At the time of his death in Jersey, 24 September 1957, Hugh Travis Clay's estate was valued at £17,378.3s.7p "in England": see Principal Registry of the Family Division, Somerset House, London England. This suggests that his Jersey property was valued separately; nevertheless, Clay was not wealthy, even by British standards. Various Clay family heirlooms were bequeathed in his will, by which he also devised his extensive collection of antique Jersey silver to the Société Jersiaise, St. Helier: see Last Will and Testament of Hugh Travis Clay, F 19 (1957), Royal Court of Jersey, Probate Division. It is curious to note that although Clay outlived his wife by two years, he did not alter the provisions made for her in his will, drawn up in 1954, although he subsequently added four codicils concerning other beneficiaries.

similarly pinched and dour-looking individual.¹⁵⁴

By 1954, Travis Clay was infirm enough to have moved to a nursing home at Grouville, just northeast of St. Helier. Mabel was domiciled elsewhere, but not at “Les Ruisseaux”; she was possibly commuting between Jersey and Yorkshire, where she received unspecified medical treatment at Bradford late in the year. Returning to Jersey before Christmas 1954, she moved in with friends, Mr. and Mrs. Frank Pickles, at their St. Helier residence, “Bagnoles.” There, on 13 January 1955, she was suddenly taken mortally ill around 4 p.m. and died a half-hour later. “Cardiac Failure [and a] Ruptured Aortic Aneurysm” were given as the cause of death on the official registration. Her age was entered as 66; in reality, she was 74. The funeral service was held on 18 January from St. Brelade’s Parish Church, at 3 p.m.¹⁵⁵ The newspaper announcement of her death referred only to the immediate details of her sudden passing. It was noted that she was a native of Saint John, New Brunswick, but nowhere was there any mention of her education, her career, her removal to Great Britain, or her distinguished professional status as a colonial barrister. Her death went unnoticed in New Brunswick, where the stirring events of 1905/06 and the even headier ones of 1911/12 were long forgotten, even among the legal fraternity. In British Columbia, her memory was perpetuated in an unusual fashion by the Law Society in 1966, when a trophy awarded within the women’s division of the organization’s annual golf tournament was named for her.¹⁵⁶ Mabel would have been amused.

It was a curious end for an ambitious and determined woman who had challenged the legal establishment in two provinces and had triumphed. Given her charm, physical attractiveness and proven intellectual ability, her career trajectory should have carried her much farther than it did. The luxury of time and distance, however, permit some tentative assessment of French’s enigmatic personality. Neither militant nor, in the final analysis – and in spite of what she claimed – any more deeply committed to the legal profession than she was to the women’s movement, French was a restless individual. She viewed her career chiefly as a means to social advancement, and was governed by a psychological need for

¹⁵⁴I am indebted to His Honour Judge John Lionel Clay, retired Circuit Judge, Newtimber Place, Hassocks, Sussex, for generously sharing with me this snapshot of Mr. and Mrs. Clay. Judge Clay has confirmed that the latter was not active in any branch of the English legal profession, and furthermore that “her marriage was (in Winston phrase) ‘an enigma wrapped in mystery’”: letter to the author, 11 September 1992.

¹⁵⁵*The Evening Post*, 14 January 1955; and extract from the Register of Deaths, Parish of Saint Helier, Island of Jersey, 1955, p. 54, # 533. There was no Last Will and Testament and no issue of the marriage.

¹⁵⁶Watts, *supra*, note 6, p. 91. Repeated efforts to locate personal papers or a family archive in the appropriate Jersey or Yorkshire repositories have been unsuccessful, although Hugh Travis Clay was a noted local historian and genealogist; various of his antiquarian studies are held by the Yorkshire Archaeological Society (West Yorkshire Archives Service).

continual challenge and diversion. The dénouement is, however, both perplexing and unsettling. Nevertheless, French would not be the first or the last professional woman to undergo a sea-change in middle life as her career options narrowed and she tired of endless professional frustration.¹⁵⁷ It is clear from an examination of the contemporary sources that her peers generally recognized Miss French for what she was – shrewd, ambitious, attractive, even unorthodox, but without the staying power which would have distinguished her as a true pioneer in the field of Canadian women in the law. Had they observed her subsequently in her role as Mrs. Clay, her Canadian contemporaries would no doubt have felt justified in their earlier appraisal – if not bemused by the vagaries of time and circumstance.

Ironically enough, it is the journalist Cowper who has the honour of the last word about Mabel Penery French. Surprisingly, his concluding remarks were both prescient and definitive:

Fair and graceful of figure, full of enthusiasm and joyous vivacity, possessed of a keen and finely balanced mind and a spirit steadied by a strength of quiet determination, this young Canadian girl who has won her way into recognition at the bar of two provinces, is a significant figure among the women of Canada. She is among the pioneers of a new order of things. The spirit that has brought her out of the obscurity of a New Brunswick town to a place in the most conservative of professions in her search for a useful and independent career is being felt among women in many parts of the dominion today. It has in it aspects of national significance.¹⁵⁸

¹⁵⁷It has been argued that first-generation women medical practitioners endured “baptism by fire” in overcoming gender bias; they generally left both intellectual curiosity and peer competition to the next generation, who could afford to relax somewhat after the initial campaign of acceptance had been waged and won: see Kernaghan, “‘Someone Wants the Doctor’” *supra*, note 26, p. 45. The same argument could easily be made for pioneer women lawyers such as Martin and French.

¹⁵⁸Cowper, *supra*, note 4, p. 146.