

## INTRODUCTION

YOU ARE about to meet Mrs. Elizabeth Bethune Campbell, a woman of formidable intellect, wit, and sarcasm, with the determination of steel. Her book, *Where Angels Fear to Tread*, written in 1935 and self-published in 1940 from her home in the rectory of St. John's Episcopal Church in Jamaica Plain, Boston, raised considerable controversy when it first appeared.<sup>1</sup> Mrs. Campbell's fascinating entanglement with the law spanned fourteen years. It began in 1922, when she first came across an unsigned copy of her mother's will while sorting through musty family trunks. The saga peaked in 1930, when Mrs. Campbell appeared on her own behalf to argue her case in front of the Judicial Committee of the Privy Council in London. The legal battle finally ended in 1935, when the Ontario Court of Appeal issued its last decision on the matter of costs relating to the complex web of litigation spawned by Mrs. Campbell's inheritance.

The story that Mrs. Campbell tells is extraordinary, and not only because she appears to have been the first woman to argue in front of the Law Lords at the Privy Council. Mrs. Campbell's description of the barriers she surmounted before emerging victorious in England unveils the intricate, multilayered world of overlapping intrigue and influence that constituted the early-twentieth-century Ontario legal system. From her unique vantage point as both an insider and an outsider, she comments on the actions of lawyers and judges with acuity and perspicacity. Others might have thought as she did. None, so far as we have been able to find, spoke nearly so frankly. Mrs. Campbell's book charges some of the most powerful figures in Canadian legal history with unconscionably disreputable behaviour. *Where Angels Fear to Tread* must have been viewed as a ticking bomb when it first emerged in 1940. In many ways, it still is. A highly controversial character then and now, Mrs. Campbell and the story she tells evoke many different responses among readers. We hope not to influence readers before they have the opportunity to hear Mrs. Campbell's version in her own words. Consequently, this introduction will provide only the briefest contextual background and factual framework. Our analysis follows after the reproduction of Mrs. Campbell's book, in the Epilogue.

The author of *Where Angels Fear to Tread*, who was christened Elizabeth Louisa Bethune, was born at Stormont Lodge, her family

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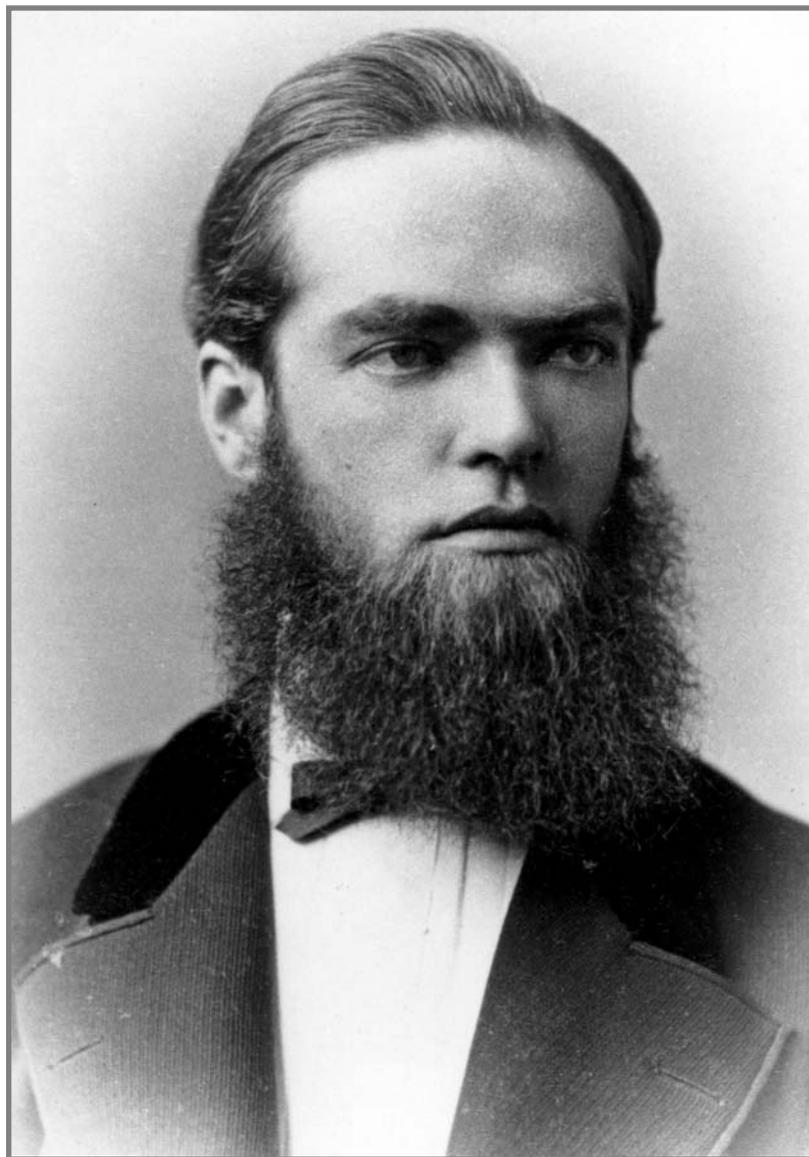
residence at 238 Adelaide Street West in Toronto, on 23 September 1880.<sup>2</sup> Her father, James Bethune, Q.C., was a former politician, a Law Society bencher, and a prominent barrister. Widely acknowledged as a pillar of the social elite in Canada, Bethune was reputed to be “an outstanding counsel and leader of the Ontario Bar.”<sup>3</sup>

Mrs. Campbell’s mother was Elizabeth Mary Rattray Bethune, a “vivacious and intellectual” society woman, who was described as the “popular and hospitable hostess of Stormont Lodge, for many years a landmark of old Toronto at John and Adelaide Streets.”<sup>4</sup> Mrs. Campbell was the youngest by far of a family of five siblings, two of whom had died by the time she began writing her book.<sup>5</sup> Cora Ann, sixteen years older than Mrs. Campbell, and Annie, thirteen years older, figure prominently in it.<sup>6</sup> In 1884, when Mrs. Campbell was only four years old, her father was stricken with typhoid, dying at the height of his career, at age forty-four.<sup>7</sup> James Bethune’s will bestowed guardianship of the children, and bequeathed his entire estate, estimated at between \$40,000 and \$60,000, to his widow.<sup>8</sup> Mrs. Campbell’s mother relied on her brother-in-law, Ottawa lawyer William Drummond Hogg, to manage the estate, and she and her children, although tragically bereft of husband and father, lived very comfortably.<sup>9</sup> As befit Mrs. Campbell’s social status within an upper-class professional family, her childhood included a stint in convent school in Paris, along with extensive European travel, but no university education.<sup>10</sup>

In 1895, when Mrs. Campbell was fifteen, her mother remarried, to Sir William Pearce Howland, Ontario’s former lieutenant governor.<sup>11</sup> Upon the marriage, Mrs. Campbell’s mother automatically received the title “Lady Howland,” along with the pomp and circumstance associated with the illustrious match. Sir William Howland was eighty-four years old and twice widowed by the time of this, his third marriage, and his new wife was some thirty years his junior. The relationship was not to be a permanent one, and the couple separated some years before Sir William’s death in 1907.<sup>12</sup> Lady Howland and her youngest daughter remained financially secure, despite the unfavourable legal regime during this era that generally dispossessed married women from full control of their property, since she had had the foresight to protect her property by way of marriage settlement prior to her wedding to Sir William Howland.<sup>13</sup>

Elizabeth Louisa Bethune was “introduced” to society as a debutante in her late teens, with all the social whirl such an event entailed.

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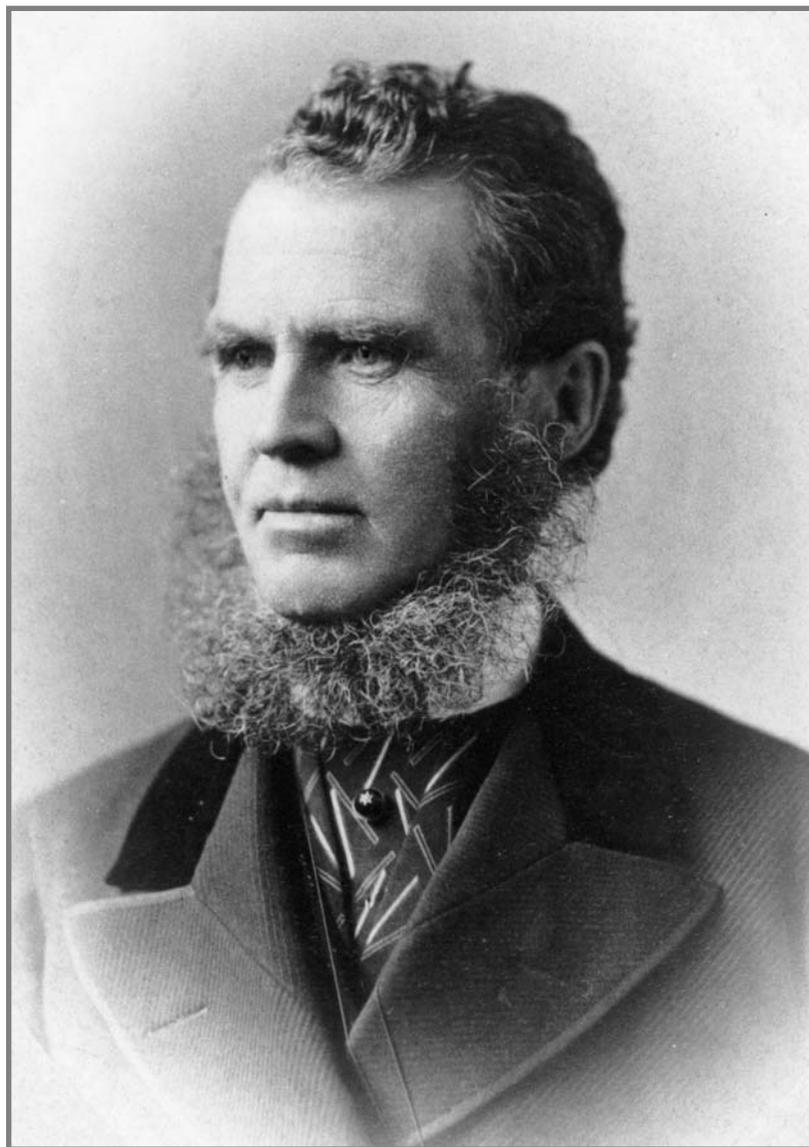
James Bethune

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Lady Howland

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Sir William Howland

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Apparently one of her suitors was William Lyon Mackenzie King. The future prime minister of Canada had a penchant for “women who were handsome, vital, and intelligent,” particularly if they were from “wealthy,” “important” “society families.” According to family lore, the two were almost engaged, but the match never came to fruition.<sup>14</sup> Prime Minister King went on to lifelong bachelorhood, while, at the relatively mature age of twenty-seven, Elizabeth Louise Bethune became engaged to an American Episcopalian cleric, whom she married in Toronto in 1907. Reverend Thomas Clyman Campbell was not particularly well-to-do, but he was well educated, having graduated from Princeton University, taught as a master at the upper-class Groton School in Massachusetts, and obtained a Bachelor of Divinity from the Episcopal Theological School in Cambridge, Massachusetts. Described as a serious man of “quiet demeanour,” he stood over six feet tall and was reputed to have been a “great Princeton baseball catcher.”<sup>15</sup> The wedding at St. Paul’s Church on Bloor Street East, on 14 November, was one of the social events of the season. The elite guests included three Ontario chief justices, the Ontario premier, and many well-known judges and lawyers. The Mulocks, Falconbridges, Mosses, Mowats, Blaikies, Whitneys, and Lashes were out in full force.<sup>16</sup>

After their marriage, Reverend Campbell moved his bride to Boston, having been appointed the new rector of St. John’s Episcopal Church in Jamaica Plain. The neighbourhood had been settled in the eighteenth and nineteenth centuries by the elite from Boston’s Back Bay and Beacon Hill, who built grand country estates and summer homes beside Jamaica Pond. St. John’s Episcopal Church, a commanding stone structure emanating majestic elegance, was built on the corner of Revere Street and Roanoke Avenue in 1882. By the time the Campbells moved to Jamaica Plain, it had become predominantly mercantile. The residents still lived in grandly rambling homes inspired by Greek revival and Italianate architecture, but their incomes issued from haberdashery, shoe manufacturing, crockery importing, banking, and publishing. A growing middle class commuted to the city on the new streetcars. The First World War brought further change. Swedish and German immigrants began to settle into the neighbourhood, transforming the single-family houses into multi-family dwellings and selling off portions of the front yards to construct new three-storey dwellings cheek by jowl with the original structures.<sup>17</sup>

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Mrs. Campbell as a debutante

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Mrs. Campbell's wedding photograph

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Shortly after the Campbells moved to Jamaica Plain, the congregation built a rectory down the road from the church, at 24 Alveston Street. The rectory was by no means the grandest residence in the neighbourhood, but it was a substantial three-storey, four-bedroom house with bay windows, gables, and a wide front porch. It would be the Campbell family home for the next thirty years.<sup>18</sup> There the couple raised two children: James Bethune Campbell, born on 27 July 1909, and Elizabeth Thomasine (known as Thomasine), born on 6 May 1913.<sup>19</sup>

When the children were just nine and five years old, Reverend Campbell left for military duties in England, where he served with the American Red Cross as chaplain for American troops in English hospitals from 1918 to 1919.<sup>20</sup> This seems to have been the last stint during which Mrs. Campbell carried sole responsibility for daily child care. Both children were subsequently sent to exclusive boarding schools in Massachusetts: James to the Episcopal prep-college of St. Mark's in Southborough, and Thomasine to Winsor, an elite girls' school in Boston. In 1927 James enrolled at Harvard, where he boarded until he obtained his B.A. in 1931. He obtained a Harvard medical degree in 1935. Thomasine studied at Columbia University (Barnard) and in Vienna. The expense associated with such prestigious education was well beyond the financial means of Reverend Campbell, although it is possible that the educational institutions reduced the tuition for the children of an Episcopal minister. A wealthy parishioner, Susan Revere Chapin, apparently contributed generously toward the cost.<sup>21</sup>

Those from the parish who remembered Mrs. Campbell during these years described her as a striking figure. She stood five feet ten inches tall, trim and absolutely erect. She was "very dignified," "beautiful," "well-spoken," and "always very beautifully dressed."<sup>22</sup> Some particularly recalled her majestic arrival at church on Sundays, when she would make a "grand entrance" with her children, take her place at the front pew, and sit "ram-rod straight" throughout Reverend Campbell's long sermons, something that other parishioners maintained was "really hard to do in those pews."<sup>23</sup> They also recalled that she was not actively involved in the affairs of the parish, or in any of the local women's literary or drama clubs, and that she was absent for long stretches of time, pursuing her "case" in Toronto and London, England.<sup>24</sup>

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St. John's Episcopal Church



The Rectory, Jamaica Plain

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The Reverend Thomas Campbell in military uniform

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The case was spawned by a series of disputes over Mrs. Campbell's mother's estate. Some years after her daughter moved to Jamaica Plain, Lady Howland retired to St. Catharines, Ontario. There she took up permanent residence in a large suite of rooms at the elite Welland Hotel, renowned for its access to mineral springs, and its solarium and spa facilities.<sup>25</sup>

By 1915, when she was seventy-five, Lady Howland's mind was beginning to fail.<sup>26</sup> Private nurses were retained to attend to her needs. On 6 October 1922, at the age of eighty-two, Lady Howland's faculties had deteriorated to the point that her daughter, Cora Ann Lindsey, obtained a court order declaring her mother incapable of managing her own affairs. Over the objections of Mrs. Campbell, the Toronto General Trusts Corporation was appointed "committee" of Lady Howland's estate, and the two elder daughters were appointed "committee" of her person.<sup>27</sup> Lady Howland died on 14 August 1924, at the age of eighty-four, without having recovered her mental capability.<sup>28</sup> Her estate was valued at \$17,450, an amount that seemed to Mrs. Campbell to be substantially lower than it should have been.<sup>29</sup>

The disposition of Lady Howland's estate serves as the focal point for *Where Angels Fear to Tread*. In it, Mrs. Campbell puts forth her own perspective on the long and difficult struggle to obtain answers to questions about what had happened to her mother's money. She also writes frankly about her opinion of various counsel. During the tenacious legal journey, Mrs. Campbell was represented by a number of distinguished lawyers. Two stand out as central to the case. Arthur Graeme Slaght is singled out by Mrs. Campbell for his diligent initial efforts on her behalf. Born in Simcoe, Ontario, in 1877, Slaght developed a successful mining law practice in Haileybury before moving to Toronto. Noted as a flamboyant bon vivant and a specialist in mining law, Slaght became a prominent barrister who conducted a wide range of civil and criminal trials with great distinction. A man with political aspirations, Slaght was unsuccessful as a Liberal candidate for Temiskaming in the 1919 by-election. He would subsequently become the head of the Toronto and York Regional Liberal Association in 1932, and organize the successful election campaign of Premier Mitchell Hepburn in 1934. Slaght was elected federally in 1935, when he was sent to the House of Commons to represent Parry Sound, a seat he held until 1945.<sup>30</sup>

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Elizabeth Thomasine Campbell and James Bethune Campbell

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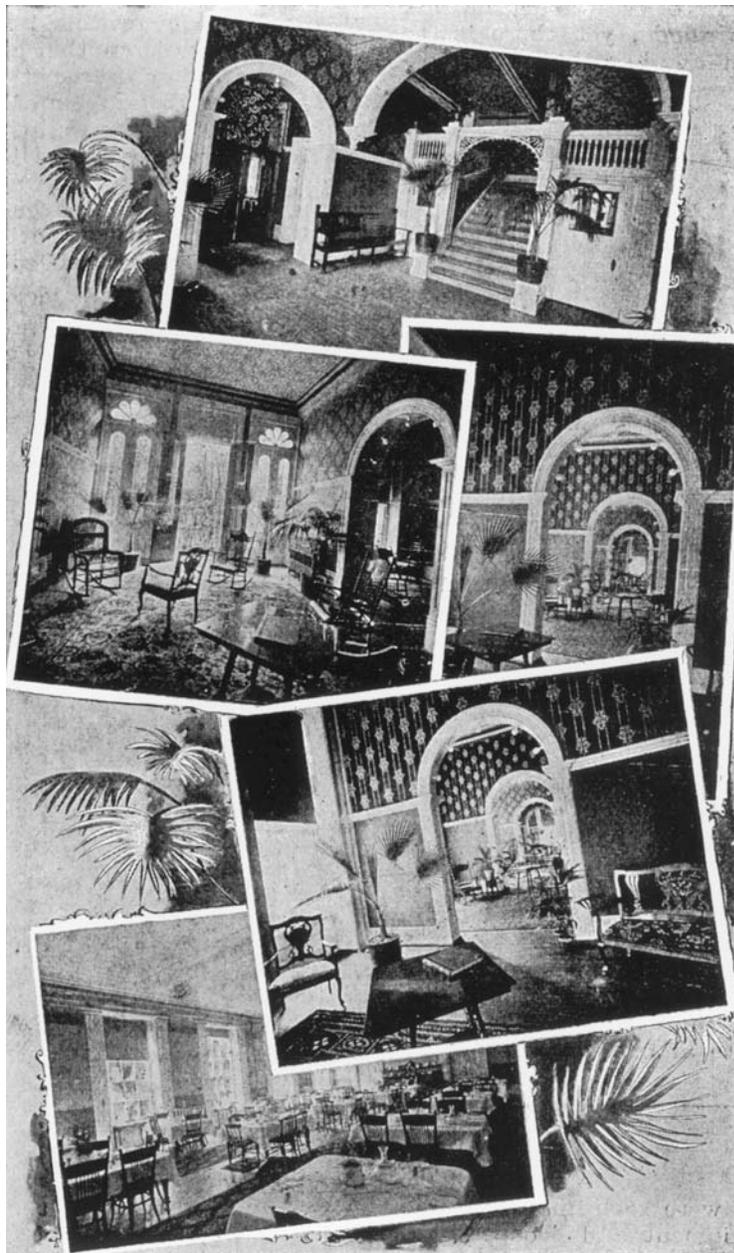
D'Alton Lally McCarthy is the second lawyer whose representation of Mrs. Campbell plays a major role in *Where Angels Fear to Tread*. Born in Barrie, Ontario, in 1870, McCarthy was the son of the famous lawyer D'Alton McCarthy and his wife, Emily Lally. After his call to the bar in 1895, Lally McCarthy began practice with his father's Toronto firm of McCarthy, Osler, Hoskin and Creelman. In 1916 he and his cousins founded McCarthy and McCarthy, with Lally McCarthy, Leighton McCarthy, and Frank McCarthy at the helm. In 1929 Lally McCarthy left the firm to practise as a solo litigation barrister. Widely regarded as one of the leading courtroom lawyers of the era, McCarthy sailed regularly on the Atlantic liners to plead Privy Council cases in London. He was renowned for his stature and gregariousness.<sup>31</sup>

One of Mrs. Campbell's chief opponents during her lengthy battle was William Drummond Hogg, the uncle who managed Lady Howland's estate from 1884, when her first husband died, until 1922, when the trust company he chaired took over the administration of the estate. Born in Perth, Ontario, in 1848 and called to the Ontario



Welland Hotel, St. Catharines, c. 1900

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Welland Hotel interior, St. Catharines, 1907

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bar in 1874, Hogg initially set up practice in Ottawa.<sup>32</sup> He was one of the leaders of the St. Andrew's Society of Ottawa, a Scottish benevolent and social organization.<sup>33</sup> Hogg married into Lady Howland's family when he wed her younger sister, Agnes Louisa Rattray, in a ceremony held in the Bethune family home. Agnes and Lady Howland were particularly close sisters, visiting each other often. The bonds between the two families were apparent at Mrs. Campbell's wedding, when William and Agnes came down from Ottawa to attend the nuptials, and Mrs. Hogg presided with Lady Howland over the bridal reception at the Queen's Hotel. Apart from the children, William and Agnes were the only two beneficiaries named in Lady Howland's will.<sup>34</sup>

Hogg established a successful Ottawa law practice, with specialties in Crown litigation before the Exchequer and Supreme Courts of Canada, and in banking and insurance law. In 1890 he was appointed Queen's Counsel (Q.C.). By the time Mrs. Campbell commenced litigation against him, Hogg was practising in partnership with his son Frederick Drummond Hogg.<sup>35</sup> William Hogg was first elected by his peers to help govern the legal profession as a bencher in 1896, and again in 1901 and 1906. He lost the 1911 election but was re-elected in 1916 and became an honorary life bencher from 1916 to 1940.<sup>36</sup> By the time Mrs. Campbell's case reached the Ontario Court of Appeal in 1928, Hogg was eighty years old, a well-known, highly respected legal figure. Judges from the Ontario Court of Appeal extolled him to be a "prominent" member of the legal profession.<sup>37</sup>

Mrs. Campbell's other nemesis was the Toronto General Trusts Corporation, launched as Canada's first trust company when it opened for business in 1882. The founders were a star-studded throng. The Hon. Edward Blake, former Ontario premier, was the first president. William Mulock (subsequently the chief justice of Ontario), Sir Aemilius Irving (long-time treasurer of the Law Society of Upper Canada), and Senator James Kirkpatrick Kerr all sat on the original board of directors. Blake was succeeded in the presidency by such powerful lawyers as Featherston Osler and Newton Wesley Rowell. Colonel Reuben Wells Leonard, the philanthropist who founded the Leonard Foundation scholarship trust, also served as a director. Assets rose from \$9 million in 1892 to \$124 million by 1921, and \$248 million by 1942.<sup>38</sup> Trust companies were emerging as competitors for the traditionally legal work of estate management, provoking substantial

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President, Bank of Montreal

Toronto General Trusts Corporation advertisement, Toronto Globe, 23 April 1930

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Toronto General Trusts Corporation building

resentment among lawyers, as well as declarations from the Law Society of Upper Canada that it was incapable of stemming the tide.<sup>39</sup> In its prodigious advertising, the Toronto General Trusts Corporation touted itself as “Canada’s oldest trust company,” an “absolutely genuine trust company” that possessed the “confidence of the community throughout the country.”<sup>40</sup> Mrs. Campbell’s litigation against the com-

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pany, which would ultimately inspire one reporter to brand it as “contemptible” and “chiselling,” must have rankled more than its corporate officers cared to admit.<sup>41</sup>

Mrs. Campbell’s protracted legal battle took place primarily in Toronto, a city that had expanded its population and industrial base so substantially in the 1910s that it began to rival Montreal as the premier city in Canada. A pronounced Anglo-Celtic cultural heritage and the infamous blue laws contributed to its self-satisfied reputation as “Toronto the Good,” a phrase first coined in tribute to the moral purity campaign waged by Sir William Howland’s son during the latter’s term as Toronto’s mayor.<sup>42</sup> Some referred to the city as “more British” than the monarch.<sup>43</sup> The lives of the elite had changed somewhat from the late nineteenth century, when Mrs. Campbell would have become accustomed to socializing with the upper crust at dinner-party dances, theatre and the opera, cricket and croquet matches, and balls at Government House.<sup>44</sup> Although upper-class women were still largely restricted to supervising stately homes, engaging in charitable works, and assuring worthy marriages, the female suffrage movement flowered into full strength after the turn of the nineteenth century, heralding an expansion of educational, business, and professional opportunities for women.<sup>45</sup> The opening decades of the twentieth century witnessed a series of other momentous changes. The First World War involved military mobilization and government expansion, financed by the new personal income tax, on a scale unprecedented in Canadian history. The Roaring Twenties ushered in years of prosperity and spectacular extravagance. Financial and industrial interests achieved greater and greater concentration in central Canada, until the stock market crash in October 1929 and the ensuing Great Depression unmasked the economic vulnerability of the country.<sup>46</sup>

The Ontario legal profession was known throughout the 1920s and 1930s for its aversion to reform, its conservatism, and its claims to “patrician” status. Building upon nineteenth-century traditions, when almost a third of Ontario lawyers were sons of professional men, most lawyers continued to emerge from professional, managerial, and business families. Few law firms hired solely on merit, and considerable barriers faced working-class aspirants, racialized and ethnic minorities, and all the women who sought admission.<sup>47</sup> The thirty benchers, who were elected every five years by the practising members of the bar to govern the legal monopoly, were primarily drawn from the “most

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prominent, wealthy ... establishment law firms,” “barons of the regional bar, and litigation stars.” This was an era in which elite lawyers, benchers, and judges moved in very small circles, intermingled their families by marriage, and prided themselves on their unchallenged invulnerability.<sup>48</sup> The ghosts of the fabled Family Compact, described in Lord Durham’s report of 1839 on the British North American colonies as an entrenched, propertied, familial clique that despised “republicanism and mob rule” and governed politics, the bench, and a great part of the legal profession of Upper Canada, had been dislodged only minimally.<sup>49</sup>

Knowledgeable observers of Mrs. Campbell’s case would have been struck by the intricate web of professional and familial connections that contributed to Mrs. Campbell’s reputation and stature in legal and judicial circles. Her father’s legal career overflowed with linkages to powerful and important men. The principal for whom James Bethune articulated was Edward Blake, the son of Chancery Judge William Hume Blake. Edward Blake became the premier of Ontario, the federal minister of justice, a bencher, and, finally, treasurer of the Law Society of Upper Canada. When James Bethune joined the Blake firm, his partners were Samuel Hume Blake (Edward’s brother, who became a bencher and then a judge in Chancery Court) and James Kirkpatrick Kerr (a bencher, corporate director, senator, and brother-in-law to Edward and Samuel). The firm expanded to bring in Zebulon Aiton Lash, the famous corporation lawyer who became vice-president of Canadian National Railways. Bethune’s partners would later include other illustrious lawyers. Newman Wright Hoyles was the son of the chief justice of Newfoundland and would become the principal of Osgoode Hall Law School from 1894 to 1923. Sir Featherston Osler was a bencher as well as a judge of the Court of Common Pleas and the Court of Appeal who declined appointment to the Supreme Court of Canada. Sir Charles Moss would become chief justice of Ontario. His brother-in-law, Sir William Glenholme Falconbridge, who was married to the stepdaughter of Sir Francis Hincks (the English leader of the Reform party in Canada West in the mid-nineteenth century), would serve in turn as chief justice of Ontario. Sir Allen Bristol Aylesworth, who was married to the granddaughter of Chief Justice Sir G.W. Burton, would become a bencher, postmaster-general, and minister of justice.<sup>50</sup> Mrs. Campbell’s father’s

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professional connections meant that she could scarcely go anywhere without being recognized and reminded of her father's professional and social stature.

The riddles arising from Mrs. Campbell's litigation pose a host of difficult questions, some of which may be answerable, others open only to informed speculation. What underlay the dispute between the three surviving daughters of Lady Howland over the will and the distribution of the estate? Did William Hogg misappropriate funds from Lady Howland's estate? Was the treatment of Mrs. Campbell by her many lawyers unusual for the time? Was Mrs. Campbell an unreasonable, even querulous client, dangerously obsessed by the case? Did the senior lawyers and judges in Ontario conspire to protect Hogg from an embarrassing disclosure? Did Mrs. Campbell's status as a woman from a white, upper-middle-class, prominent legal family affect her treatment? What does it tell us about the efficacy of legal education, offered exclusively to the few admitted to the monopolistic, self-governing legal profession, that a woman without formal education and completely untrained in law could master the intricacies of legal procedure and substantive legal argument, to emerge victorious at the Privy Council? Was the Privy Council decision, in fact, a victory? In the end, who actually won when the protracted litigation finally came to a close? These are some of the complicated and fascinating questions that hover over Mrs. Campbell's case, and her remarkable opus, *Where Angels Fear to Tread*.