
One Man's Justice: My Life in the Courts

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The author offers a personal account of his life in Canada's courts, highlighting in particular the influence that Quebec jurists and legal events have had on his career. In recounting his experiences involving clients from many different walks of life, the author demonstrates how law, and the lawyer personally, can assist the cause of justice.

L'auteur offre un récit de son expérience personnelle devant les tribunaux canadiens, soulignant plus particulièrement l'influence sur sa carrière des juristes québécois et des événements juridiques s'étant produit dans la province. En retraçant ses expériences avec des clients de divers horizons, l'auteur démontre comment le droit, ainsi que l'avocat lui-même, peuvent servir les fins de la justice.

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I should begin by saying that really all I can offer you is one man's perspective on the law and my belief that law can make a difference—that in the practice of law you can assist the cause of justice.

I am going to try to show the influence that Quebec lawyers and institutions have had in my own career. There have been a few brief encounters that I have had with Quebec lawyers and institutions from my unilingual redoubt in Vancouver, where I have lived virtually all of my life. It's been forty-nine years since I graduated from the University of British Columbia School of Law. That's a long time; a lot has happened and I'm not going to try to recall it all tonight. But my recollection of those three years at UBC, which I enjoyed, was of a quiet time. And what astonished me when I left law school was to find out that while I was at law school, there was a titanic struggle taking place here in Quebec between the Duplessis regime and some very fine lawyers—Frank Scott and Pierre Trudeau among them—who were seeking to defend the rights of minorities. Those were the famous cases of the 1950s, when the Duplessis regime was persecuting (the term is not too strong) Jehovah's witnesses and communists. Communists were to be persecuted because we were in the middle of the Cold War. Jehovah's witnesses were to be persecuted because they were on the street-corners of Quebec City and Montreal distributing leaflets about the shortcomings of the Catholic Church. Duplessis and the Catholic Church were allies at the time and worked together in the suppression of these minorities.

At the forefront of the struggle to protect these minorities was F.R. Scott, a professor here at McGill for many years and then dean in the 1960s. Frank Scott argued the "Padlock Law" case.¹ Duplessis had the legislature pass a law that enabled the government to lock up any venue where the communists met.² The communists themselves couldn't be locked up because this would have had to fall under the *Criminal Code*,³ but any place where they had their meetings could be shut down—it didn't matter who owned it, didn't matter who rented it. The *Padlock Act* was something that was enforced from the 1930s until Frank Scott succeeded in 1957 in convincing the Supreme Court of Canada that it was unconstitutional. Frank also argued the case of *Lady Chatterley's Lover*,⁴ D.H. Lawrence's first attempt at describing acts of sexual intimacy in an explicit way. It was a different era, an innocent era. But Frank succeeded in persuading the Supreme Court that *Lady Chatterley's Lover*, an acknowledged landmark in English literature, was not obscene. And of course he argued the case of *Roncarelli v. Duplessis*,⁵ still cited in the courts of the English-speaking world and taught in law schools everywhere. That was the case in which Premier Duplessis directed that Frank Roncarelli, a wealthy restaurant owner here in Montreal, who was putting up bail for all of the Jehovah's witnesses arrested for distributing anti-Catholic literature on the street-corners, should have his

¹ *Switzman v. Elbling*, [1957] S.C.R. 285, 7 D.L.R. (2d) 337.

² *An Act respecting Communistic Propaganda*, R.S.Q. 1941, c. 52 [*Padlock Act*].

³ R.S.C. 1985, c. C-46.

⁴ *R. v. Brodie*, [1962] S.C.R. 681, 32 D.L.R. (2d) 507.

⁵ [1959] S.C.R. 121, 16 D.L.R. (2d) 689 [*Roncarelli* cited to S.C.R.].

liquor licence cancelled and thus be deprived of the revenue to put up bail for all of the people who had been arrested. The Supreme Court of Canada held in a famous judgment by Mr. Justice Ivan Rand that this was an abuse of statutory power. The case was actually tried under the *Civil Code of Quebec*, something that most of us in the common law world weren’t altogether familiar with. Mr. Justice Rand, after saying that Duplessis’ act was tortious under the Civil Code, stated that in the common law it would be as well. I think some of those decisions laid the groundwork for the Quiet Revolution here in Quebec.

Frank Scott became one of my heroes, and in 1963 we went to the Supreme Court together to argue the *Oil, Chemical and Atomic Workers* case against the Attorney General for British Columbia.⁶ Frank argued it and I was his junior, carrying his bags. In that period it wasn’t just Premier Duplessis who brought in repressive legislation. Premier W.A.C. Bennett of British Columbia brought in a law which said that trade unions could not contribute to political parties. You can guess the political party that he did not want them to contribute to. There was no equivalent restriction on contributions by corporations. We lost by four judges to three at the Supreme Court, but it was an opportunity for me to get to know Frank. I recall as a young man still in my twenties, from the backwoods of British Columbia coming down to Montreal to work on our factum, he took me out to a lovely restaurant on Saint Helen’s Island, and he did something I had never seen anyone do: when our wine was brought and he was asked to sample it, he sent it back! I’ve never had the courage to do that myself, but it’s something I’ve never forgotten.

When the *Atomic Workers* case was before the Supreme Court of Canada, Frank was asked questions by the Francophone judges in French, and he answered in French, and of course answered in English to the Anglophone judges. I as his junior, and all of the lawyers representing the Attorney General for British Columbia, were consternated by this and looked at each other with a wild surmise—a “what’s going on here?” I decided then that Frank was the kind of lawyer I wanted to be.

Not long after that, I too took on a case against Premier Bennett, who bestrode the political life of our province like a colossus for twenty years. He had made a speech at a political gathering about the chairman of the Purchasing Commission, whom he had just fired. The chairman’s role was something like that of an auditor general—an independent post reporting directly to the legislature. The chairman, Mr. Jones, wouldn’t leave his office, so they had the RCMP remove him. At a certain point, someone questioned the premier as to why he had fired Mr. Jones. The premier said: “I’m not going to talk about the Jones boy. I could say a lot, but let me just assure you of this; the position taken by the government is the right position.” Well,

⁶ *Oil, Chemical and Atomic Workers International Union, Local 16-601 v. Imperial Oil Ltd.*, [1963] S.C.R. 584, 41 D.L.R. (2d) 1 [*Atomic Workers* cited to S.C.R.].

Mr. Jones came to me and we sued Mr. Bennett for defamation and succeeded.⁷ The award was \$15,000, which was the highest non-jury award for damages in a defamation case in British Columbia up until that time, and it went all of the way to the Supreme Court of Canada, where the decision was upheld.⁸ Mr. Jones, during the pendency of the case, spoke to a group of students at the University of Victoria law school—a group something like this. He had a gift for turns of phrase. He was asked: “Why were you fired, Mr. Jones? The premier wouldn’t say.” Jones said: “I’ve got so many skeletons in my closet, I could keep a Halloween party going for a month!”

I mentioned at the outset that when I went to law school we didn’t discuss civil liberties. In the mid-1950s, we discussed the decisions of nineteenth-century English judges. They were good judgments and gave you a good grounding in the law, but we didn’t discuss *R. v. Boucher*,⁹ we didn’t discuss *Switzman v. Elbling*,¹⁰ we didn’t discuss any of the cases in Quebec that were making history. And there was another neglected subject: that of the rights of Aboriginal people.

Believe it or not, as law students we were never asked to consider how the governments erected in North America by the Europeans acquired title to Canada. How comes it that in Canada, a government established by Europeans is sovereign? Most important of all, do the Aboriginal people who were here before us, occupying this whole country, governing themselves by their own lights, who are still among us, have any rights? The subject simply never came up.

I had the good fortune to be asked very early in my career to represent two Indian men in a hunting case on Vancouver Island.¹¹ Their names were White and Bob, and the case went all the way to the Supreme Court, where we were successful.¹² It meant that I became the only lawyer in British Columbia with experience on these issues as they relate to Aboriginal people.

The Nisga’a Tribal Council, representing the Nisga’a Tribe in the northwestern portion of British Columbia, who live in the Nass Valley and have done so for thousands of years, came to me and said: “We would like you to sue the British Columbia government to obtain a declaration that our Aboriginal title to the Nass Valley has never been extinguished.”

I was just starting my own practice. I didn’t have many clients—didn’t have any in fact—and I spent a lot of time in the law library at the courthouse studying this subject, where I read the great judgments of Chief Justice John Marshall of the

⁷ *Jones v. Bennett* (1967), 59 W.W.R. 449.

⁸ [1969] S.C.R. 277, 2 D.L.R. (3d) 291.

⁹ [1951] S.C.R. 265, [1951] 2 D.L.R. 36, rev’g [1949] B.R. 238, 95 C.C.C. 119.

¹⁰ *Supra* note 1.

¹¹ *R. v. White* (1964), 50 D.L.R. (2d) 613, 52 W.W.R. 193 (B.C.C.A.).

¹² 52 D.L.R. (2d) 481 (S.C.C.).

Supreme Court of the United States, delivered in the 1820s and 1830s.¹³ After reading these cases, I thought: Yes, the concept of Aboriginal title is well-known to the common law, and it is applicable to British Columbia because (with the exception of southern Vancouver Island and northeastern BC) no treaties have ever been made here. There has never been a surrender by the Indians in British Columbia of their Aboriginal title.

We weren’t expected to get very far. Prime Minister Trudeau came to Vancouver in 1969 while this case was before the courts and he was asked, “What do you think of the whole subject of Aboriginal rights?” His answer was, “We will not recognize Aboriginal rights, because no society can be built on historical might-have-beens.”

The action was brought in the name of Frank Calder, who was the president of the Nisga’a Tribal Council.¹⁴ On the way, Chief Justice Davey of the Court of Appeal for British Columbia, who was a fine and upright judge, said something about the Nisga’a claim that reveals the attitudes that were prevalent in those days, which obscured and obstructed recognition of Aboriginal title and rights: he said that Aboriginal people were, at the time of European settlement, a primitive people with none of our notions of private property.¹⁵ Well, the comment was quite revealing. The famous French anthropologist Claude Levi-Strauss had said that the native peoples of the West Coast of Canada, including the Nisga’a, deserved to be compared to the Greeks and the Romans on the basis of their artistic achievements. Of course, they also had their own notions of collective ownership of land—it was a form of tribal ownership, though families would own their own particular fishing places and trap lines and so on. Justice Davey betrayed an appalling ignorance of people amongst whom we had lived all of our lives, and I say this with all due deference to his memory.

At the Supreme Court of Canada, Mr. Justice Hall wrote a judgment saying that Aboriginal title had never been extinguished.¹⁶ He had the support of two of his colleagues on the Court. Three other judges held that the Nisga’a had held title, but that it was extinguished by the old colonial government of British Columbia. And a Quebec judge, Mr. Justice Pigeon, refused to decide the matter on the basis that we had not used the proper procedure to come to court. Prime Minister Trudeau and Jean Chrétien, who was then Minister of Indian and Northern Affairs, turned to their legal advisors and asked who was right, Mr. Justice Hall or his opposing colleagues on the Court? Had Aboriginal title been extinguished in these non-treaty areas of Canada? Gérard LaForest later disclosed at a Conference in Victoria celebrating the thirtieth anniversary of the *Calder* case, in 2003, that he was the chief legal advisor to the Department of Justice on this question, and that he concluded Mr. Justice Hall was

¹³ See e.g. *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

¹⁴ *Calder v. British Columbia (A.G.)* (1969), 8 D.L.R. (3d) 59, 71 W.W.R. 81 (B.C.S.C.).

¹⁵ (1970) 13 D.L.R. (3d) 64 at 66, 74 W.W.R. 481 (B.C.C.A.).

¹⁶ [1973] S.C.R. 313, 34 D.L.R. (3d) 145 [*Calder* (S.C.C.) cited to S.C.R.].

right. Prime Minister Trudeau decided it was necessary to enter into land claims agreements wherever no treaties had been signed in Canada. As a result, we now have land claim settlements in the form of modern-day treaties in James Bay, Northwest Territories, Nunavut, and the Yukon, and in British Columbia with the coming into force of the *Nisga'a Treaty* in 2000.¹⁷

When the Nisga'a first came to see me, I had a walk-up law office and my widowed mother was my secretary. I remember the Nisga'a chiefs entering my office; there wasn't enough room for all of us to sit down, and they must have wondered, "Who is this young guy that we're entrusting our case to?" The rent was \$120 for the whole office. Out of that came the case that went to Ottawa and led to the judgment of the Supreme Court, resulting in treaties being made since 1973 that now cover half of the land mass of Canada.

There was always a question I had wondered about relating to Quebec, because Quebec was not under the British Crown until 1763 with the Treaty of Paris. The British, as they expanded their empire, had always accepted the notion of Aboriginal title of the peoples inhabiting the land they occupied, whereas the French didn't recognize the title of the original peoples. So if that had been true in New France, and in Quebec, then there would have been no Aboriginal title here in Quebec: it would have been extinguished before 1763, and Quebec's Aboriginal peoples wouldn't be able to take advantage of *Calder*,¹⁸ *Sparrow*,¹⁹ and the whole line of cases upholding Aboriginal rights.

In *Adams*,²⁰ which went to the Supreme Court in 1996, the issue was squarely before the Court. The question was one of Aboriginal fishing rights in Quebec. The government of Quebec argued that those rights had been extinguished because they were not recognized by the ancient regime, thus they didn't exist when Quebec came under the rule of the British in 1763 and could not be asserted today. Chief Justice Lamer, writing for the Court, disposed of that argument in just a few lines, saying that section 35 of the constitution "would fail to achieve its noble purpose of preserving the integral and defining features of distinctive Aboriginal societies if it only protected those defining features which received the legal approval of British and French colonizers."²¹ So that disposed of my concern in just a few lines—I needn't have worried about it all those many years!

There is a postscript to this story about Aboriginal law. All along, there lurked the question: if the Aboriginal people have a legal interest in this land, whether by treaty or by reason of their claims to title, what rights to self-government do they have? In 2000, the Nisga'a signed a treaty with Canada and British Columbia, in which it was acknowledged that they had a measure of self-government encompassing certain

¹⁷ See *infra* note 22.

¹⁸ *Supra* note 16.

¹⁹ *R. v. Sparrow*, [1990] 1 S.C.R. 1075, 70 D.L.R. (4th) 385.

²⁰ *R. v. Adams*, [1996] 3 S.C.R. 101, 138 D.L.R. (4th) 657 [*Adams* cited to S.C.R.].

²¹ *Ibid.* at para. 33.

powers that could not be interfered with by Ottawa or Victoria.²² The then leader of the opposition in British Columbia, Gordon Campbell, claimed that the Nisga’a and other Aboriginal peoples had no right to govern themselves, and he brought a lawsuit against the Nisga’a to have the courts set aside those portions of the *Nisga’a Treaty* that affirmed self-government.²³ After the Nisga’a had come to see me so many years before in that little walk-up law office, they came to see me again and requested that I represent them, which I was pleased to do.

Mr. Justice Paul Williamson of the Supreme Court of British Columbia upheld the *Nisga’a Treaty*, finding that the Nisga’a had an inherent right to self-government that applied to their people, land, and resources. Mr. Campbell appealed to the Court of Appeal for British Columbia, but in the meantime he had won the provincial election of 2001 and become premier. He therefore had to abandon his appeal because he realized, I think, that the treaty signed by the province was an engagement that had to be honoured by a successor government. Nevertheless, in preparing our argument for that case, we relied on what Prime Minister Trudeau had said in 1983, opening a first ministers conference to consider an amendment to section 35 relating to Aboriginal self-government. It was a conference between the premiers, Prime Minister Trudeau, and leaders of the Métis, Indians, and Inuit. Mr. Trudeau said he had devoted more thought to this subject than any other since becoming prime minister. Bear in mind that in 1969, Trudeau had said he couldn’t recognize Aboriginal rights. He said in 1983 that the heart of the matter, “the crux of our efforts to improve the conditions of our Aboriginal peoples and to strengthen their relationships with other Canadians, is to be found within the set of issues concerning Aboriginal self-government.” So his journey was in a way that of the Canadian people, rejecting the whole idea of Aboriginal rights in 1969, but by the 1980s affirming the idea.

I served as a judge of the Supreme Court of BC from 1981 to 1983, and left because I spoke out about the failure to include in the 1982 constitution a provision earlier agreed-to, recognizing and affirming the Aboriginal and treaty rights of the Indians, Inuit, and Métis. That is something I won’t go into now, but I will tell you that I believe my intervention in the public debate had something to do with Mr. Trudeau and the other premiers deciding to reinstate what is now section 35. I have been asked whether I would have spoken out if I had known that it would mean my leaving the bench. I have always said that I was glad to have spoken out. It was one

²² *Nisga’a Final Agreement* (entered into force 11 May 2000), being a schedule to the *Nisga’a Final Agreement Act*, S.B.C. 1999, c. 2, online: Department of Indian and Northern Affairs <http://www.ainc-inac.gc.ca/pr/agr/nsga/nisdex_e.html> [*Nisga’a Treaty*]. See also the fact sheet prepared by the department, online: Department of Indian and Northern Affairs <http://www.ainc-inac.gc.ca/pr/info/nit_e.html>.

²³ *Campbell v. British Columbia (A.G.)*, 189 D.L.R. (4th) 333, [2000] 8 W.W.R. 600, 2000 BCSC 1123.

of those occasions where you're obliged, I think, to speak up for the things you believe in. The motion to investigate me was, oddly enough, made by a Quebec judge, Chief Justice Jules Deschênes, and I discovered that he had written a book in which he castigated his fellow judges for failing to uphold a fetus' right to be considered a person.²⁴ I thought, "Isn't this what's known as the pot calling the kettle black?"

While all of this was going on, I was still sitting as a judge, and some people wondered whether I should be hearing cases involving Aboriginal people. But Allan McEachern, chief justice of the Supreme Court of British Columbia, had no qualms about it. In fact, my wife was working at the time as a counselor to native students at the University of British Columbia, and they often used our home as a meeting place. One day, I heard a lot of laughter downstairs and my wife came up later on and said that some of the students were going to occupy the offices of the Indian Affairs Department overnight, and they wanted to borrow some of our kitchen utensils. The next day, the Chief Justice phoned me and said that the federal government was seeking an injunction, that they wanted to remove the occupiers, and would I hear the case? I said, well, Chief Justice, I think I have a conflict of interest: as we speak, our frying pan is being held hostage!

I left the bench in 1983 and returned to practice. In 1991, I represented a refugee from Guatemala named Marcos Gonzales-Davi. He had been beaten by the secret police in Guatemala, and had made his way somehow to Canada, but on entering Canada through Vancouver was denied legal aid, as all refugees were in that day. We went to the Court of Appeal for British Columbia, and they ordered the legal aid society of BC to provide aid for Gonzalez-Davi.²⁵ The precedent took hold, and all refugees entering Canada through Vancouver or any other port in British Columbia are now required to be provided with legal aid, which has cost BC approximately \$3.5 million annually.

I have been involved in much litigation involving the *Charter*,²⁶ and I think that section 15, the equality provision, is now the most litigated section. Under section 15, the most salient issues in recent years has turned on the rights of homosexual persons. In the *Trinity Western* case, which went to the Supreme Court of Canada in 2001, I defended the authority of the British Columbia College of Teachers to refuse to certify a teacher education programme at a private university that countenanced,

²⁴ Jules Deschênes, *The Sword and the Scales* (Toronto: Butterworths, 1979).

²⁵ *Gonzalez-Davi v. British Columbia (Legal Services Society)*, [1991] 55 B.C.L.R. (2d) 236, 81 D.L.R. (4th) 12 (C.A.).

²⁶ *Canadian Charter of Human Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

based on Biblical authority, discrimination against gays.²⁷ Well, we argued, they had the right to keep gays out of their university, it being a private institution, but having inculcated in their students the view that homosexuality is a perversion, they were not entitled to have them qualified, without more, as teachers in the public school system, where, of course, there is not supposed to be discrimination. That was the argument.

The board of governors of Trinity Western is purportedly guided by the teachings of Saint Paul, who wrote letters (which now form the bulk of the New Testament) after he had visited places throughout the Mediterranean spreading the Christian religion. It is my respectful view that Saint Paul urged upon his readers a somewhat different view of Christianity than the founder himself had argued for in his lifetime, but many of the churches, including the Catholic Church, have adopted what Saint Paul said about homosexuality. By this time, the Church had long ceased to be a vessel of Quebec’s identity, but it was still a force in secular affairs. The National Council of Catholic Bishops intervened. We argued that Trinity Western as a private institution could teach anything it wanted, but that students who trained as teachers and wished to teach in public schools should be required to take six months at Simon Fraser University, where they would be exposed to a broader view of the world and to opinions other than those expressed by the instructors at Trinity Western. We lost in the Supreme Court of Canada. I won’t go into the judgment because I become almost speechless every time that I have to. I will point out that Madame Justice Claire L’Heureux-Dubé, the Supreme Court’s greatest champion of civil liberty and minority rights, wrote a powerful dissent. She described the struggle taking place in these terms:

[T]he principal metaphor for the homosexual and bisexual experience of discrimination has been that of the closet, an isolated refuge of invisibility often enveloped in fear. Indeed, the history of struggles against sexual orientation discrimination has been described as a battle against “the apartheid of the closet.”²⁸

Primordial fears and ancient stereotypes still inform our attitudes. Religious institutions continue to denounce homosexuality as perverse and unnatural. The place of homosexuals as a vulnerable minority entitled to the protection of the *Charter* has not yet been fully accommodated in our consciousness. I’ve discussed the *Trinity Western* case not just because I lost the case (the advocate’s lament: “I’ve never lost a case that wasn’t wrongly decided”), but to show that the elaboration of *Charter* rights is not going to be easy. We are not there yet.

Aspects of Quebec’s legal history—its great legal figures and historic cases, and the role of the Catholic Church—continue to be relevant to cases that I have taken on in my recent career. In November 2004, I argued *D.E. (Guardian ad litem of) v.*

²⁷ *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772, 199 D.L.R. (4th) 1, 2001 SCC 31 [*Trinity Western* cited to S.C.R.].

²⁸ *Ibid.* at para. 89 [references omitted].

British Columbia (A.G.),²⁹ a case before the British Columbia Court of Appeal on behalf of eighteen mentally infirm women who were sterilized between 1940 and 1968, during a period when the province had a eugenics law. Alberta, too, had such a law, but no other provinces did, even though the eugenics movement had spread far and wide in North America. It was the influence of the Catholic Church in Quebec and other provinces that held the eugenics movement at bay in Canada.

The case required me to argue, relying on *Roncarelli*,³⁰ that there had been an abuse of statutory power (now properly called misfeasance in public office) by successive superintendents of the British Columbia Mental Hospital and, in order to get around the province's limitation period (thirty years), that the medical sterilization of these women amounted to sexual assault—the only exception allowed in British Columbia's limitation law. This gives you an idea of what it means, in a practical sense, to think like a lawyer.

The *D.E.* case was decided last Friday, on the 11th of March, 2005. The Court of Appeal held in favour of our claim that the offense perpetrated against these women constituted sexual assault and ordered a new trial for nine of them.³¹

Then there is the case of the Manitoba Métis Federation against Canada and Manitoba. It has already been to the Supreme Court of Canada once, on the issue of the Métis' right to bring the suit.³² I will be arguing this case at trial before the Manitoba Court of Queen's Bench, commencing 3 April 2006. The case takes us back to 1869-70 and the Métis uprising at Red River led by Louis Riel. It involves John A. Macdonald but principally Georges-Etienne Cartier, his partner in the creation of Canada, who made promises to the Métis which, though never kept, we will claim are enforceable today. It was, of course, Cartier's dream that Manitoba should be Catholic and French-speaking. The promises to the Catholic Church to fund Catholic schools and to make French an official language of Manitoba were not kept. Nor was the promise to provide 1,400,000 acres of land to the Métis. It is the latter promise we are litigating. We shall see how it turns out.

Well, that brings me to the present. It is time to sum up. In doing so, I would like to leave you with the words of Frank Scott: "If human rights and harmonious relations between cultures are forms of the beautiful, then [Canada] is a work of art that is never finished."³³

²⁹ 252 D.L.R. (4th) 689, 2005 BCCA 134 [*D.E.*].

³⁰ *Supra* note 5.

³¹ A settlement of their claims for \$450,000 was announced on 21 December 2005.

³² *Dumont v. Canada (A.G.)*, [1990] 1 S.C.R. 279, 67 D.L.R. (4th) 159.

³³ Frank R. Scott, *Essays on the Constitution* (Toronto: University of Toronto Press, 1977) at ix (Preface).