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F.R. Scott and Legal Education*

The Hon. Mr Justice Gerald Le Dain**

Frank Scott taught law at McGill for some forty years. The profound impression he made as a teacher remains with one for life. By his example as a university man of law with a unique range of achievement he inspired his fellow teachers and made a significant contribution to the recognition and development of the academic branch of the legal profession.

I first encountered Frank Scott in his constitutional law class in 1946. We were for the most part a class of returning veterans, glad to be back, looking forward to careers in civilian life and eager for intellectual stimulation. He made us think, disturbed our complacencies, and enlarged our understanding and perspective. He was then forty-seven, had been teaching since 1928, and was at the height of his powers and creative activity. He himself was engaged in a kind of combat, full of zest, interest and commitment. His teaching had an energizing as well as an illuminating effect. It was challenging. What he was talking about, broadly speaking, was the nature of Canada and what it meant to be a Canadian, and the role of constitutional law in relation to the supreme values, as he saw them, of Canadian life. As veterans we had thought much about what it meant to be a Canadian and what the shape of the post-war world should be like. His was one view, and it was a stimulating one.

Perhaps the outstanding characteristic of Frank Scott as teacher and legal scholar was his point of view or philosophic frame of reference. There was no pretence of neutrality in his teaching and writing. He had strong convictions on what should be the broad goals of government policy, and these provided the framework within which he considered the implications of the distribution and exercise of legal power. A consistent thread of social

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policy and purpose runs through his constitutional thought. The key ideas are economic planning, social justice and the protection of human rights.

Frank Scott believed in strong, central government capable of stimulating and regulating economic activity and redistributing income in order to maintain minimum standards of welfare. Much of his work in constitutional law was devoted to demonstrating how the judicial interpretation of the constitution by the Privy Council had changed its nature as conceived by the Fathers of Confederation and had so weakened the powers of the central government as to make it incapable of dealing effectively with national problems. He often observed that the failure of democratic government to act did not mean that there would be an absence of effective government; the vacuum would be filled by the governmental power of the large corporation. His perception of the corporation as a rival to government had affinities with the main thesis of Galbraith's *The New Industrial State.*

In administrative law, Frank Scott sought to explain and justify the growth of the modern administration — the positive state, as he would call it — and he expressed concern about the use of judicial control to defeat the policies that the administration was required to implement. "Judges", he said, "must not substitute their notions of social purpose for those of the legislature; indeed, they are there to see that the policy of parliament is carried out, not that it is altered or frustrated."[1] At the same time, he valued the role of the courts in maintaining the Rule of Law and the protection of civil liberties, and by is own interventions in this field he helped to affirm that role. One of his themes in administrative law was the importance of making the state and its instrumentalities fully liable for the damage caused by their wrongful acts. He urged the elimination of the immunity of the Crown and public corporations enjoying the status of Crown agents. "If the state creates risks of damage", he said, "it should assume these risks as fully as any private person."[2]

An important theme in his work as teacher and scholar was the development of Canadian independence. His writing on this subject reveals his deep love of country and his appreciation of the unique nature of Canadian nationhood. Of the political nationalism that inspired Confederation, he wrote: "Its principal aim was to achieve those democratic ends which all true nationalism strives for — the elevation of a whole people to a new status in the community of nations. Canada was to be 'redeemed from provincialism'; her public men were to move into a larger world where great duties and great opportunities would evoke great responses."[3] Some of

[1] Scott, *Administrative Law: 1923 — 1947* (1948) 26 Can. Bar Rev. 268, 277.
[2] *Ibid.*, 282.
[3] F.R. Scott, "Political Nationalism and Confederation", *Essays on the Constitution: Aspects of Canadian Law and Politics* (1977) [hereinafter *Essays*], 3, 34; (1942) 8 Can. J. of Econ. and Pol. Science 386.

his most interesting writing discusses the nature of constitutional relationships in the Commonwealth and the question of the patriation of the Canadian constitution.

Finally, Frank Scott was profoundly concerned as teacher and scholar with the problems of Canadian unity, particularly the position of French Canada in Confederation. Here his constitutional philosophy encountered a major problem: how to reconcile the emphasis on more power for the federal government with the desire of French Canada for a stronger constitutional basis for the development of its life as a distinct cultural community. Scott was always sympathetic to the claims of French Canada for a fairer opportunity to share in the advantages of Canadian life, but he questioned the identification of French Canada's interests with the provincial government of Québec as the sole or principal defender of those interests. He contended that "minority rights" should not be confused with "provincial rights". He argued that the larger opportunity French Canada sought could only be opened up by federal action. A closely related theme in his work was the relationship between minority or group rights and individual rights, and how these two kinds of rights are to be reconciled in practice and given adequate protection at the same time.

Scott approached these issues from an historical as well as a contemporary perspective. The historical approach was an important feature of his work as teacher and scholar. He had honoured in history at Bishop's and had continued his study of history while at Oxford on a Rhodes Scholarship. He credited H.A. Smith, who taught him constitutional law at McGill, with persuading him of the importance of the historical approach to the constitution. "It was he", Scott said, "who taught me to see the problems which the *Act* of 1867 was intended to remedy, to look at the conditions in the British North American colonies in the 1860s, and to seek the intentions of the Fathers of Confederation not only in the words of the statutes but also in all the material available to historians, including the Confederation debates and other *travaux préparatoires.*"[4] I have already quoted from his essay on "Political Nationalism and Confederation", which is full of historical perspective. There is one very characteristic passage in it, where, speaking of the commercial interests which saw advantages, and in some cases salvation, in Confederation, Scott said: "A fact to which Canadian historians have drawn far too little attention was the union in 1863 through the International Financial Society Limited, of the two largest corporations with a stake in Canada, the Grand Trunk Railway and the Hudson's Bay Company."[5]

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[4] F.R. Scott, "Our Changing Constitution", *Essays,* 390, 390-1; (1961) 55 Series III Transactions of the Royal Soc. of Can., 83.

[5] *Supra,* note 3, 4.

Frank Scott taught law in the liberal tradition. His courses in public law could have been given to arts students as well as law students. They had the broad foundation of learning, the perspective, the range and the connection with other disciplines such as history and political science. It is significant, I think, that his articles were published over the years in a variety of learned journals and that, when finally brought together as a collection of essays on the constitution, with the sub-title "Aspects of Canadian Law and Politics", they were crowned with a Governor General's Award. Scott shared the conviction of Karl Llewellyn as to the value of the liberal approach to legal education. In an address at the Chicago Law School in 1960, entitled "The Study of Law as A Liberal Art", Llewellyn said : "The truth, the truth which cries out, is that the good work, the most effective work, of the lawyer in practice roots in and depends on vision, range, depth, balance, and rich humanity — those things which it is the function, and frequently the fortune, of the liberal arts to introduce and indeed to induce." Llewellyn concluded that "the best *practical* training, along with the best human training" that a university could give a lawyer was the "study of law, within the professional school itself, as a liberal art."[6]

At the same time, Scott's courses had professional rigour. They were concerned with fundamentals, and they were comprehensive in their treatment of their subject. Scott taught constitutional law in two parts : the first part, given in first year, dealt with the general principles of the constitution derived for the most part from the unitary system of Great Britain, including such matters as the nature of the legislative, executive and judicial branches of government, the distinction between constitutional law and constitutional convention, the royal prerogative, the legal position of the servant of the Crown, the nature and implications of legislative sovereignty, and the meaning of the Rule of Law. These questions were examined in their distinctively Canadian context. There was, for example, a very full analysis of the precise effects of the *Statute of Westminster.*

The second part of the subject, given in second year, was concerned with the nature of Canadian federalism and the distribution of legislative power. What my lecture notes in constitutional law for the years 1946 and 1947 reflect is Scott's emphasis on a good all-round grasp of fundamental principles. He covered aspects of constitutional law which other teachers and scholars might not have considered deserving of the same priority. Current events have proved them to be of supreme practical importance. There was consideration, for example, of the various theories as to the essential nature of Confederation and the extent to which there had been consultation of the provinces in connection with the amendments of the constitution. It is striking how many of the fundamental questions he considered are still living

[6] K. Llewellyn, *Jurisprudence* [,] *Realism in Theory and Practice* (1962), 375, 376.

issues today. Frank Scott said once that we had a rendez-vous with the *BNA Act,* and although he said that with particular reference to the distribution of legislative power, he taught constitutional law as if he wanted his students to be prepared for that rendez-vous, whatever the agenda might be.

When speaking of professional rigour and comprehensiveness, I should observe that, while Frank Scott came to specialize in public law, he had a solid grounding in private law as well. He had taught Obligations at McGill. And it showed in his work. He did not suffer from the limited view and range resulting from premature and narrow specialization. *Roncarelli v. Duplessis,* after all, was a case that involved the principles of the civil law of responsibility, *i.e.,* fault, damage and causal connection, as well as the principles of public law governing the limits of ministerial authority and the validity of administrative decisions. One of its interesting aspects from the point of view of legal theory was the inter-relationship of private and public law principles. It was a fitting focus for Scott's kind of legal breadth.

In *The Aims of Education,* Alfred North Whitehead said that the essence of university education was the imaginative consideration of learning. Teachers, he said, must be filled with living thoughts : they must be able to bring their subject to life. Frank Scott met this requirement pre-eminently. In his case, it sprang not only from his intellectual gifts and general cultivation, but from the nature of his interests and involvement. One of the occupational hazards of teachers in basic courses is that they will grow stale by repetition and lose their inspiration (or what may be as bad for the students) seek to maintain their own interest by moving into increasingly specialized and esoteric areas so that they are really substituting post-graduate for undergraduate teaching. Scott never seemed to lose his enthusiasm for teaching fundamentals. The secret, I believe, was that he continually renewed his interest by relating the fundamentals to contemporary conditions and events. He was what the students in the 1960s used to refer to as "relevant". He was not interested in constitutional doctrines and principles as mere abstractions, but in their operating nature and effects. His teaching and scholarship were policy-oriented and concerned with functional implications. This emphasis is reflected in his statement, "[W]hile the law of the constitution went one way, the facts of modern industrialism went the other."[7]

Playing over the whole field was his interpretative perspective, which perceived the underlying significance of things and the connection between them and was capable of throwing fresh light on issues. This was probably the outstanding mark of his scholarship. One could cite many examples. A typical observation was the suggestion in his Plaunt Memorial Lectures on

[7] F.R. Scott, "Constitutional Adaptations to Changing Functions of Government", *Essays,* 142, 147; (1945) 11 Can. J. of Econ. and Pol. Science 330.

"Civil Liberties and Canadian Federalism" that we should celebrate October 1st as our independence day because 1 October 1947, was the effective date of the Letters Patent which transferred "all powers and authorities" of the Crown in respect of Canada to the Governor General.

Perhaps in no other piece of writing is his imaginative perspective more strikingly demonstrated than in his highly original article on s. 94 of the *BNA Act*. This provision, which provided a means by which the federal Parliament, with the consent of the common law provinces, could assume legislative jurisdiction with respect to matters of property and civil rights, was generally thought to have become a dead letter. Scott's purpose was to draw attention to the original significance of the provision and to its future possibilities for constitutional flexibility. To this end he raised the startling hypothesis that the federal *Industrial Disputes Investigation Act* (the "Lemieux Act"), as amended after the decision of the Privy Council in the *Snider* case to provide for its provincial adoption for disputes within provincial jurisdiction, had in fact been adopted by most of the provinces in such a manner as to meet the requirements of s. 94 of the *BNA Act:* the consequence, Scott argued, was that legislative jurisdiction with respect to the subject matter of the *Act* had been irrevocably transferred by the adopting provinces to the federal Parliament. Scott himself acknowledged that this view was unlikely to be adopted by the courts, but it was typical of the imaginative question that he was capable of raising in his analysis of a legislative provision. This was undoubtedly one of the qualities that made his advocacy, when he finally went to court, so impressive and compelling. His mind ranged freely. He was not hidebound by an exaggerated concern for what was "sound". Frank Scott once said to me in a letter that he had "tried to see the law in the round", and that was reflected in his approach to teaching. The image I retain of the effect of his teaching is of him holding a precious stone in his fingers and turning it slowly so as to allow the light to play on its many facets.

There was undoubtedly a relationship between Scott's teaching and scholarly vocation and his literary vocation. He perceived and exhibited the aesthetic quality in the law. It is reflected in the title of one of his papers, "The State As A Work of Art." He was concerned with what Llewellyn referred to in the address from which I have already quoted as "the quest and study of beauty in and within the institution of law-government". His care for form was a valuable example in a profession that lives by the word. Scott spoke and wrote as teacher and scholar with simple elegance, clarity and force. He had, of course, the poetic power of going to the heart of the matter.

Enlivening his teaching and writing was his irrepressible sense of humour, expressing itself in epigram and aphorism, delighting in irony and a sense of the ridiculous. The title "Duplessis *versus* Jehovah" is only one of many examples. Speaking of "the growing use of monetary policy, taxation

and planned government spending, as factors in maintaining economic equilibrium", he said, "Keynes became a kind of post-natal Father of Confederation".[8] Writing in "The Redistribution of Imperial Sovereignty" on the form which patriation of the Canadian constitution should take, he said:

> To borrow another analogy from the well-known eastern myth, we may say that until now all legal rules in Canada, from municipal bylaws to whole codes of law like the Quebec Civil Code or the Criminal Code, have derived their validity from the elephant of the *BNA Act*, which stood firmly upon the turtle of the sovereignty of the United Kingdom Parliament. Beneath the turtle nothing further has existed to support a stable universe. Now the various Dominions are getting their own turtles, and we are looking for a Canadian turtle.[9]

Of the validity of the spending power he said, "generosity in Canada is not unconstitutional" and "making a gift is not the same as making a law".[10] My constitutional law notes for 1946 and 1947 show that, speaking of the contribution which Canada's participation in the two world wars made to the achievement of Canadian independence, he said, "Canada won her independence fighting against Germans".

Throughout his career, Frank Scott was passionately concerned about the recognition and development of university legal education. It was a subject that came up often in his discussions with fellow teachers, academic administrators and other members of the legal profession. He knew long periods of discouragement and frustration. For many years progress was painfully slow. But before his teaching career came to a close he saw full-time academic legal education established in Canada on solid foundations. He had helped to keep the faith alive through the difficult years.

Frank Scott had a true vocation for the life of the full-time law teacher, and he remained faithful to it to the end. He tells how he was sitting as a beginning lawyer in 1928 in the Montreal firm of Lafleur, McDougall, Mcfarlane and Barclay, with whom his older brother was associated, when he received a letter from McGill. He says that before opening it, and without any prior intimation of what it contained, he knew intuitively what it was about, and he knew what his answer would be. It was an invitation from the dean of the McGill Law Faculty to accept appointment in succession to H.A. Smith as Professor of Federal and Constitutional Law. He did not hesitate and he never regretted his decision.

The condition of academic legal education in Canada when Frank Scott joined the full-time faculty at McGill in 1928 was far from robust. Before

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[8] *Supra*, note 4, 397.

[9] F.R. Scott, "The Redistribution of Imperial Sovereignty", *Essays*, 244, 246; (1950) 44 Series III Transactions of the Royal Soc. of Can. 27.

[10] F.R. Scott, "The Constitutional Background of Taxation Agreements", *Essays*, 291, 297; (1955) 2 McGill L.J. 1.

1900, legal training had been based essentially on a system of articling or law office apprenticeship followed by bar examinations. It was not necessary to obtain a law degree, and little credit was given for having one. The period of articling varied from three to five years depending on the candidate's previous education. The educational requirements for admission to the study of law were modest for a learned profession: in most cases, a senior matriculation. A university degree in Arts or some other undergraduate course was recognized by the reduction of one or two years in the period of articles, and a law degree was at first given a similar recognition in some jurisdictions. There were seven law schools in the country, all of them in the east. They were staffed by a small nucleus of full-time teachers who were heavily outnumbered by part-time instructors drawn from the bar and bench. In some jurisdictions there was a system of concurrent law school and law office training. This was still essentially the picture after World War I, except that by 1921 there were law schools established in each of the prairie provinces.

The under-developed state of legal education in Canada was brought forcibly to the attention of the profession during the 1920s by a small but distinguished and dedicated group of full-time teachers who sought through the Legal Education Committee of the Canadian Bar Association to arouse the profession to the need for greater support of full-time academic legal education. In his report in 1923, the chairman of the committee, Dean D.A. MacRae of Dalhousie, referred to the comparative sizes of the full-time staffs of American and Canadian law schools as follows:

> As compared with the better law schools of the United States Canadian Law Schools are sadly deficient in the matter of staff. Harvard has fourteen full-time teachers, Northwestern thirteen, Columbia thirteen, Yale thirteen, Cornell seven, to take only a few instances at random. The maximum number of full-time teachers at any Canadian Law School engaged in teaching common law subjects is at present only three.[11]

Commenting on the system whereby students attended lectures for part of the day and worked in offices for the rest, H.A. Smith observed in the spirited discussion which followed the presentation of the MacRae Report that "the needs of the student are thought to be met by giving one lecture after breakfast and another before supper, and he is expected to spend the remainder of the day picking up what odds and ends of information he can in an office".[12] That was essentially the state of affairs when Frank Scott became one of the three full-time members of the McGill Law Faculty.

Full-time academic legal education made relatively modest progress in the 1930s and 1940s. Professor Maxwell Cohen, who was one of Scott's colleagues at McGill and who also made a distinguished contribution to the

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[11] Committee of the Canadian Bar Association on Legal Education, *Legal Education in Canada* (1923) 1 Can. Bar Rev. 671, 677.

[12] (1923) 8 Proceedings of the Can. Bar Assoc. 101.

development of legal education in Canada, reported on its condition in 1949.[13] His article drew some comfort from a perceptible improvement in conditions relative to the 1920s, but it revealed that full-time faculties were still very small, library resources, with few exceptions, insignificant, and physical accommodation in many cases inadequate. The number of full-time staff in the eleven law schools of Canada ranged from one to a maximum of seven. There were four at McGill, one more than when Frank Scott had joined the faculty twenty years earlier.

As every report on the condition of legal education observed, the university priorities were a reflection of the relative lack of professional interest and support. Recognition by the profession of the necessity and value of full-time academic legal education was required. For many years there was uncertainty in the profession as to the best approach to legal edueation and training. The proper distribution of responsibility among the universities and the practising profession was being worked out. It took a long time to reach a satisfactory accommodation. In the process, there was a good deal of misunderstanding and recrimination, and, I suppose one would have to say, mutual distrust. The practising profession was concerned about the adequacy of academic legal education as a preparation for the practice of law. It was also concerned about its own capacity to provide and adequate system of practical training. For their part, the full-time teachers of law resented the practising profession's lack of confidence and support and felt frustrated by its efforts to control the content of the academic program. Both sides thought they knew what was required. Neither could do it alone. It required an adjustment of responsibility and a renewed dedication on the part of each to do what they could do best. The system that was ultimately worked out was the full-time degree program followed by a period of organized practical training, including systematic instruction as well as law office experience.

Academic legal education can be effectively imparted by part-time teachers. There have been some outstanding part-time teachers, and there will always be a certain number on the staff of a well-organized and well-balanced law school. But the profession requires a corps of men and women who have the ability and the time for research into and deep reflection upon the nature and development of the law in its various fields, and for providing critieal perspective. This is well understood by the judicial branch, which depends heavily on the quality of the materials that are put before it. The full-time teacher has the independence and the detachment for critical evaluation of the law and the legal process. This is a supremely important function and almost a justification in itself for a distinct branch of the profession. Moreover, the development of suitable teaching materials and an

[13] Cohen, *The Condition of Legal Education in Canada* (1950) 28 Can. Bar Rev. 267.

effective educational process in each field is a difficult task that requires the leadership of persons devoting their full time to this objective.

The quality of the academic branch of the legal profession and the respect which it enjoys in the rest of the profession depend, of course, on the quality of its individual members. It has always been difficult to recruit and hold outstanding persons with a true vocation for teaching and scholarship. There are many competing attractions and opportunities for the exercise of legal ability. There is a certain ambivalence about the respective pulls of the life of action and the life of contemplation. Underlying the career decision must be a strong belief in the validity and worth of what one is doing. Frank Scott had that strong belief, and he projected it to a remarkable degree. It was a source of encouragement and inspiration for his colleagues in the academic branch of the profession.

In the late 1940s Scott initiated the discussions which led to the formation of the Association of Canadian Law Teachers (ACLT), now known as the Canadian Association of Law Teachers. He was elected its first president. The Association helped to strengthen the sense of professional identity and purpose among law teachers. It afforded an annual opportunity for contact and exchange on matters of mutual interest — so important as a means of overcoming the sense of isolation of the individual scholar in this vast country. The report of his committee on legal research, to which I shall refer shortly, alluded to the special problem of getting together in Canada, where, in speaking of the early years of the Association, it said : "Its chief difficulties at the moment are the usual Canadian ones — too little money and too much geography".[14] The founding of the ACLT was one of several such university initiatives in which Frank Scott participated during his academic career. He believed in the association and co-operation of teachers for the pursuit of common interests. He was first and foremost a man of the university. He had the respect of his colleagues in the other faculties, and he enjoyed intellectual exchange with them. I can see him now in what we used to refer to as the "circle" in the McGill Faculty Club, holding forth at lunch. The spirit of the university was in his blood.

The 1950s were difficult and crucial years for legal education in Canada. They were also years of outstanding achievement for Frank Scott. Unlike his great contemporary "Caesar" Wright at Toronto, it was not given to him to have a position of administrative responsibility and leadership during those years. As is well known, Frank Scott had been repeatedly passed over for dean of the McGill Law Faculty, when he was the obvious choice, because of his political opinions and activities. When he was finally offered the deanship in 1961, he accepted it, with some misgiving, as much to set matters right, if somewhat belatedly, as because of what he felt he could accomplish in the

[14] *Report of the Committee on Legal Research* (1956) 34 Can. Bar Rev. 999.

very few years remaining to him before the age of retirement. But the fact that he was not dean during the 1940s and 1950s, when one was appointed dean for life, in no way lessened his personal authority and influence in the academic community. And he was, as a result, freer to pursue his wide range of individual and independent activity. In 1952, for example, he spent a year in Burma as resident technical representative of the United Nations. This was a reflection of his devotion to the goal and responsibility of world community, another important aspect of the idealism and conviction that inspired his endeavours.

In 1954, the recognition of the profession was reflected in his appointment as chairman of the special committee established by the Canadian Bar Association to inquire into and report on the state of legal research in Canada. It was a strong and representative committee that included Dean Wright among its members. Its report, on which Scott spent many hours of careful labour, is an impressive document and a forceful statement on legal education as the necessary foundation of good legal research. "The first requisite for better legal research in Canada," it said, "is better law schools. On this point your committee is unanimous. It is in the law schools that the young men and women entering the profession learn the habit and techniques of research. There they will acquire a respect for legal scholarship if they are ever going to, and will meet the instructors who can inspire them with a desire to make their own contribution to the legal thought of their country."[15]

The report emphasized the great disparity in the comparative support for legal education and medical education — a point that had been referred to in the MacRae Report of 1923 and Cohen's survey of 1949. It was something Frank Scott felt particularly strongly about because he had seen at first hand the striking difference in the support which medicine and law had received at McGill. Medicine was the jewel in the McGill crown. It must be said that it had earned its position by outstanding achievement that had brought it an international reputation. But behind the high level of professional, and therefore university, support for medical education was the individual concern for personal health and survival, which could always be relied on to stimulate the flow of financial support. The individual did not think as much of what he or she owed to the blessing of personal security and freedom under law. As Scott's report put it, "Is the health of the individual body of more concern than the health of the body politic?"[16]

The report called for a new status for the law schools, and there was reference to the central issue in legal education in the 1950s: the struggle in Ontario for the full recognition of academic legal education by the Law

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[15] *Ibid.*, 1020.
[16] *Ibid.*, 1004.

Society of Upper Canada. That struggle began with the departure of Wright, Willis and Laskin from the Osgoode Hall Law School in 1949 and ended with the settlement of 1957, in which John Arnup and Alex Corry played leading roles. The report of the Committee on Legal Research was written when the controversy was at its height. The bitterness engendered by it was reflected in the observations of Dean Wright, who dissented from the majority recommendation for the establishment of a legal research foundation by the Canadian Bar Association on the ground that it would detract from the support that should be given to the law schools. He spoke of the future in pessimistic terms: "After nearly thirty years spent in legal education in this country, I regret having to state that the prospects for improvement in educational standards in law are far from bright. Schools that have struggled to preserve and to improve standards have met and are still meeting with opposition from the organized profession."[17]

As it turned out, Dean Wright's remarks were made when legal education was on the threshold of the important break-through that was to open the way to the great development of the 1960s. In 1957, the Law Society of Upper Canada surrendered its monopoly of legal education to permit the full recognition and development of university faculties of law. The Society established the present system of legal education and training by which a full-time three-year degree course is followed by a period of practical training called the Bar Admission Course, which consists of twelve months' articling followed by six months of systematic instruction of a practical nature at Osgoode Hall. Although Frank Scott could not play a direct role in the resolution of this conflict, of such far-reaching consequence for legal education in Canada, it may be assumed that the report of his Committee on Legal Research, because of its strong affirmation of the importance of academic legal education and the need for increased support for the law schools, contributed to the climate of professional opinion that furthered its resolution.

It was during the 1950s that Frank Scott took his long-standing advocacy of civil libertics into the courts with striking success. What his participation as counsel in the *Switzman* and *Roncarelli* cases reflected was not just his professional ability but his independence and moral courage. It is difficult for someone who did not live in Quebec at that time to appreciate the atmosphere of psychological intimidation that was created by the Duplessis regime, and the determination that it took to challenge Duplessis in such a direct manner. Prominent counsel felt obliged to decline the *Roncarelli* brief. In my opinion, it is as much for his independence and moral courage, reflected over the years in the strong stands he took on contentious issues, as for his unusual gifts and intellectual achievements, that Frank

[17] *Ibid.*, 1059.

Scott is so respected in this country. As we may say of someone that he is worth his salt, so we say of Frank Scott that he was worth his tenure. Bora Laskin, who was then a distinguished professor of law at the University of Toronto, expressed one perception of what Scott's example meant to the academic branch of the profession, when, in his review of Scott's Plaunt Memorial Lectures in 1959, he said:

> Professor Scott, by any measure, is already a heroic figure in Canadian public life. Both contemplative and active, he has combined careers as law teacher and lawyer, political theorist and party strategist, poet and man of letters, speaker and author. His contribution to Canadian public law has come as significantly from his advocacy before the Supreme Court of Canada as from his law review writings. The debt of the full-time law teacher to Professor Scott is a lasting one. This most academic of lawyers has, once and for all, I hope, laid the ghost of the inadequacy of the law teacher to perform in the practical arena of the court room. His arguments in *Switzman v. Elbling* on the validity of the Quebec Padlock Act and in *Roncarelli v. Duplessis* on the delictual responsibility of a minister of the Crown (even if he be a premier or prime minister) were delivered as much on behalf of the full-time law teachers of Canada as on behalf of Scott, himself.[18]

I end as I began. Frank Scott was a model of excellence for his students and his fellow teachers. He inspired them both. He stimulated the love of law and the professional aspiration of his students, and he stimulated the sense of professional identity and purpose of his fellow teachers. By his example, he enhanced the image of the academic branch of the profession, helped to attract others to full-time teaching and scholarship and strengthened the claim of the academic branch to recognition and support.

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[18] Laskin, Book Review, (1959-60) 13 U.T.L.J. 288-9.
[Editor's Note. For those readers who are unfamiliar with F.R. Scott's career, the following citations may be helpful: *The British North America Act,* 1867, 30 & 31 Vict., c. 3, (U.K.), (R.S.C. 1970, App. II, No. 5). *The Statute of Westminster,* 1931, 22 Geo. V, c. 4, (U.K.), (R.S.C. 1970, App. II, No. 26). *The Industrial Disputes Investigation Act* S.C. 1907, c. 20, am. S.C. 1925, c. 14, *Toronto Electric Commissioners* v. *Snider* [1925] A.C. 396, *Switzman* v. *Elbling* [1957] S.C.R. 285, *Roncarelli* v. *Duplessis* [1959] S.C.R. 121. F.R. Scott's essay on s. 94 of the *B.N.A. Act* can be found in *Essays,* 112; (1942) 20 Can. Bar Rev. 525.]