

June 13th, 1936.

W. Murdoch, Esq.,
211 Booth Building,
Sparks Street,
Ottawa, Ontario.

Dear Mr. Murdoch,

I am returning your opinion as to the constitutionality of the Dominion income tax. I have read it through with great interest, and I must say that you have made out a better case for the unconstitutionality of the tax than previously I should have thought was possible. At the same time I am afraid you have not changed my original opinion that your argument would not prevail in the courts. In the first place, the Privy Council I am sure would hesitate to render a decision which would have such drastic consequences in Canada as would the denial to the Dominion Parliament of the power of direct taxation. As you doubtless realize, the trend of decisions since the *Aeronautics* case has been rather to strengthen the Dominion powers, a notable example of which was the judgment in the *Coal Combine* case last summer. In the second place, they would have to overrule *Caron v. The King*. In the third place it is so easy to avoid the startling conclusion you advocate by distinguishing between direct taxation for provincial purposes, which admittedly belongs to the province, and direct taxation for Dominion purposes which could quite simply be held to be a Dominion power. And lastly, the rule is so well established that the plain and literal meaning of the words of the Statute are to be taken as correct when unambiguous that I do not believe you could persuade a court to look to the highly uncertain and indefinite passages from political speeches and abandoned drafts of resolutions and bills which preceded the final wording of the British North America Act itself.

I shall be interested to learn about any further developments of your idea, but I will of course keep the matter entirely confidential.

Yours very truly,

F.R.Scott.