

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

June 22nd 1936

Dear Mr. Murdoch,

I have your letter of the 18th. As it does not alter my opinion, I do not see much point in my entering upon a debate with you upon the questions involved. There are one or two points I should like to add to my previous letter, however.

You say the Privy Council is not concerned with consequences. Theoretically, of course, it is not, any more than is the American Supreme Court when passing upon New Deal legislation. Theoretically it simply applies "the law" in majestic impartiality. But I should have thought that that theory of the judicial process was quite dead by this time. The Privy Council will know very well that a decision in your favour will stirle the entire Dominion. Therefore they will avoid that consequence if they can do so. In this case they easily can.

The *Aeronautics, Radio and Coal Combine* cases are emphatically relevant to my contention that the present tendency is to interpret the B.N.A. Act so as to give the Dominion powers their full and logical development. Your interpretation does the exact opposite.

No matter how unprepared the court may have been in the *Caron* case, the fact remains that the decision is against you. I do not think you will induce the Privy Council to alter its opinion by telling them that they gave their previous decision in ignorance of the facts.

Those arguments are not based on strict law; they are simply factors which convince me your case would be lost. But on the straight question of interpretation I am equally convinced you are wrong. I strongly deny that the Quebec Resolutions are a "compact". If there was any such animal, and of course in a legal sense there cannot be, then it was to be found in the B.N.A. Act itself and nowhere else. The Quebec Resolutions were altered in a number of respects, notably in such important matters as Education, Marriage, Immigration and Agriculture. They were just a starting point for the final compact. The Act itself does not by its words or by any accepted rule of interpretation require the Dominion taxing power to be so drastically reduced, for the utmost you can carve out of 91-3 is 92-2, which still leaves the Dominion direct taxation for Dominion purposes. And I cannot see that it is any more astonishing for the Dominion to pay provincial subsidies out of direct than indirect taxation. In both cases it is taken from provinces. It would be more astonishing to think the Fathers assumed all provincial debts, and yet agreed to this major limitation.

Yours very truly,