

THE CANADIAN BAR REVIEW
LA REVUE DU BARREAU
CANADIEN

VOL. XLVII

MAY 1969 MAI

NO. 2

IVAN CLEVELAND
RAND

1884-1969



On April 22nd 1943, Ivan Cleveland Rand, one of His Majesty's Counsel learned in the law, was appointed a Judge of the Supreme Court of Canada. His career had already been a distinguished one, a Bachelor of Arts of Mount Allison University, an honour graduate of Harvard Law School, a member of the Bar of three of our provinces and a former Attorney General of New Brunswick, he brought to his new task a wealth of knowledge and experience.

The readers of the *Canadian Bar Review* know well the brilliance of his record on the Bench. Few judges in this country have left a legacy comparable in consistently high quality to that comprised in his judgments. They constitute a memorial which will endure as long as our system of the administration of justice continues. Their value is attested by the frequency with which they are quoted in argument and relied upon in judgments in all our courts.

Ivan Rand combined, in a rare degree, profound knowledge of the law, clarity of thought and facility of expression but his greatest attribute as a judge was his deep and abiding sense of justice, his almost passionate desire to reach the right answer in every case that came before him. He never lost "that pure horror of injustice which is a great beauty of the innocent".

I have known no one who possessed a more complete independence of mind than he. He was impatient of authority unless it could be shown to be founded upon reason. He was always prepared to discuss and reconsider and I have the happiest recollection of hours spent in his room thrashing out points of doubt or difficulty. He shared generously his time, wisdom and experience.

I will not dwell on all the public service he performed in addition to his judicial duties. His capacity for work was tremendous and in spite of all his activities he had found time for such reading that he was familiar with all that is best in our English literature, both prose and verse. He was not much given to quotation but I have heard him recall lines from many of our poets, particularly Rupert Brooke, Matthew Arnold and Tennyson. Shortly after the sudden death of his wife I remember his quoting the single line from *Locksley Hall*:

I myself must mix with action, lest I wither by despair.

As we all know, he never ceased to be active and his attainments after leaving the Bench were indeed impressive, first as

Dean of the Law School at Western University and then as Royal Commissioner in several inquiries.

He had a wide range of interests, by no means limited to the law. I still cherish his letter from Western University acknowledging a copy of Dorothy Sayers' essay *The Tools of Learning* which I had sent to him and telling me that he had ordered many copies of it.

One of his fondest memories was of the years which he spent at Harvard. When he was at Western University I sent him a book published in the last century, of views of Harvard which I had come across in a second-hand book shop. His letter of thanks contained the following sentences:

Looking at Austin Hall I felt as I did fifty-two years ago when I first entered its doors. And the buildings in the yard! as I contemplated them all I had a rush of feeling that made me realize that I had been one of the most favored persons on earth to have been privileged to spend three years in such a surrounding and atmosphere. When one thinks about it, what an insignificant percentage of this world's population ever do enjoy such a privilege?

One of my greatest privileges has been the enjoyment of his friendship for many years.

It was altogether fitting that in April 1968 Her Majesty, on the recommendation of His Excellency the Governor General, bestowed upon him the honour of becoming a Companion of the Order of Canada. The motto of the order "*Desiderantes meliorem patriam*" might well have served as that of Ivan Rand. Not only did he desire that Canada should become a better country, he worked tirelessly to bring about that result: I know that he was deeply moved at receiving this award.

He was a great judge, a great man and a peerless friend. He leaves many friends to mourn his loss, but how good it is to know that to the very last moments of his life he suffered no diminution of his great intellectual powers. For him the time never came "to rust unburnished not to shine in use".

Can we not say in the words of one of the poets whom he knew so well?

Nothing is here for tears, nothing to wail
Or knock the breast, no weakness, no contempt,
Dispraise or blame, nothing but well and fair.

J. R. CARTWRIGHT*

* * *

*The Rt. Hon. J. R. Cartwright, P.C., Chief Justice of Canada.

The French philosopher Voltaire wrote that work is the salvation of man; it saves him from the three great evils that beset humanity: boredom, sin and want. The Hon. Mr. Justice Ivan Cleveland Rand may or may not have concurred in this dictum but, certainly, he was a prodigious worker and the wonder is that one man, during a lifetime of eighty-five years, could have accomplished so much.

He was born in Moncton, New Brunswick, on April 27th, 1884 and died on January 2nd, 1969. He took his Bachelor's degree in Arts at Mount Allison University, attended Harvard Law School from whence he graduated in 1912 with the degree of LL.B., was admitted to the New Brunswick Bar in the same year, and, in 1913, moved to Medicine Hat, Alberta where he practised in partnership with Messrs Laidlaw, who had once been a great hockey player, and Blanchard, cultured lawyer of many talents and practical joker extraordinary, until 1920.

Perhaps, like Rudyard Kipling, he was intrigued with the name of that cattle-ranching and railroad community from whence other outstanding Canadians have sprung. Another wonder is that the austere and scholarly young lawyer from New Brunswick, via Harvard, practised successfully and harmoniously in association with two such high-spirited western gentlemen, the record of whose exploits, both professional and otherwise, are woven deeply in the folklore of the Medicine Hat area. Ivan Rand never participated in, or even appreciated, the fabulous practical jokes of his partner Blanchard, but he earned the respect and affection of his associates and of the citizenry of that robust and uninhibited community.

In 1920 he returned to Moncton where he practised law until 1926. He became a K.C. in 1924, and for a short time, he was Attorney General of New Brunswick. From 1926 to 1943, he was Canadian National Railway regional counsel in Moncton. He was appointed to the Supreme Court of Canada on the 23rd of April, 1943, and retired, on reaching the age of seventy-five, on April 27th, 1959.

The late Mr. Justice Rand then embarked on a new career as Dean of the Faculty of Law at the University of Western Ontario, serving from 1959 to 1964. His record of public service is extraordinary. He was the author of the famous Rand Formula which formed the central part of his arbitration award late in 1945, and which brought to an end the bitter dispute between the Ford Motor Company and the United Automobile Workers Union. In 1947, he was the Canadian nominee to the United

Nations Special Committee on Palestine and he played a prominent role in the partition recommendation which resulted in the establishment of the State of Israel.

In 1954, he presented a report on Legal Education in Canada, prepared for a survey of the legal profession.¹ In 1960, he was honoured by being asked to deliver the Holmes Lecture at Harvard Law School where he spoke on "Some Aspects of Canadian Constitutionalism".² Shortly thereafter, he conducted a one-man Enquiry into the coal industry in the Maritime provinces.

In 1966, when an Enquiry was set up into the the conduct of a provincial Supreme Court Judge, it was the former Mr. Justice Rand who was appointed to conduct it. In the same year, he took on an onerous assignment as a Royal Commission to enquire into labour disputes in Ontario and he reported in a significant document in August, 1968. He was on another assignment, this time for the Newfoundland Department of Labour, at the time of his death.

The late Mr. Justice Rand was deeply read in both literature and history, as well as in legal philosophy. He loved music, especially the opera, and was himself an accomplished pianist. He was a great admirer of the late Ralph Waldo Emerson, whom he often quoted. He was unusual among judges in that he dared to write in scholarly legal journals, even while he was on the Bench. Amongst these writings were "The Role of an Independent Judiciary in Preserving Freedom".³ and "Man's Right to Knowledge and Its Free Use".⁴ His article on the Canadian Bill of Rights was entitled, "Except by Due Process of Law".⁵

He reviewed books; he participated in debates and in discussions, mixing with the Bar, with law professors and with students with equal ease.

His contributions to the public law of Canada will be permanent. It has been said by an eminent Canadian jurist and scholar that the Rand philosophy of life may be discerned from portions of his judgments in *Saumur v. Quebec and Attorney General of Quebec*,⁶ in *Roncarelli v. Duplessis*⁷ and in *Switzman v. Elbling*.⁸ It was he who wrote the tribute to the late Sir Lyman Duff. He

¹ (1954), 32 Can. Bar Rev. 387.

² (1960), 38 Can. Bar Rev. 135.

³ (1957), 9 U. of T.L.J. 1.

⁴ (1954), 10 U. of T.L.J. 167.

⁵ (1961), 2 Osgoode Hall L.J. 171.

⁶ [1953] 2 S.C.R. 299.

⁷ [1959] S.C.R. 121.

⁸ [1957] S.C.R. 285.

stands with Duff as one of our few great judges of international renown. It can be said of him as he said of Duff that "a semblance of severity concealed a surprising generosity of mind and spirit".

J. J. SAUCIER*

* * *

The late Dean Rand, and I never think of him otherwise than as "Dean", was a man of many parts and for all seasons.

Virtually everyone is familiar with what he accomplished during a long and illustrious career of service. He was one of the great civil libertarians of our time and the author of fundamental and stirring civil rights judgments; he was an internationalist of stature and one of the principal architects of the modern State of Israel; his work in the field of labour relations has made his name a household word; and, of particular importance, he was always the conscience and ethical guardian of the legal profession, both Bench and Bar.

What is perhaps not so well known, or tends to be overlooked, was his role as a legal educator and the indelible imprint he made on the academic community during his five year tenure as Dean, and founder, of the Faculty of Law at the University of Western Ontario. His contribution was immense and much of his impact in that respect was a product of his own unique personality and the force of his own deep-seated principles and convictions.

I recall being somewhat intimidated at the prospect of meeting Dean Rand prior to seeing him for the first time in 1959. He had a reputation for being aloof, forbidding and austere and of being intolerant of the private weaknesses of others. Reputations, like rumours, often, however, bear little resemblance to the truth. From our very first association in 1959, when the Western Law Faculty was founded, and thereafter until his death, I discovered that he was shy, not aloof, warm, not austere, and very human and approachable. If he was intolerant it was only to the extent that his ruling passion was for truth. He hated hypocrisy and he hated deviousness and he had no patience with those he felt were trying to be slick or sly. But he was tolerant of other defects and he would overlook them if, by his example, he could not correct them.

He was a man of prodigious work habits. It was he, and not the comparative youngsters on his faculty, who would undertake

*J. J. Saucier, Q.C., President of the Canadian Bar Association.

the heaviest course load, often volunteering to teach a subject on a moment's notice both in the Law Faculty and elsewhere in the University. He abhorred a vacuum in the curriculum and would fill it himself, principally, I suspect, because he disliked administration and loved to be with the students. To him the students were what a law school was all about and his object was to ensure that their interests were served above all else.

He was also such a delightful person. For all his experience there was a very appealing, small boy innocence about him. He would not believe that the world abounds with cutthroats, knaves and scoundrels and this led to many interesting and humorous incidents which are still recounted with genuine affection by his former associates. And perhaps it is the fact that he generated such affection, and not simply respect and admiration, that best indicates the true measure of the man.

R. S. MACKAY*

*R. S. Mackay, Q.C., Dean of the Faculty of Law, University of Western Ontario, London, Ontario.