

five years? This would be no greater than that now provided by the indictment procedure, but at least the judge would have the option and it surely must be a court that finds a man guilty, not some faceless bureaucrat.

I will admit there may be all sorts of preliminary screenings and so forth and so on in the department, but I invite hon. members to read what I had to say back on November 30. The debate at that time lasted right through to December 6, as we came back to this section several times. I invite hon. members to consider why there should be a provision in the Income Tax Act whereby the indictment procedure can be used at the discretion of an official of the Department of Justice, with the least penalty prescribed as a mandatory two months imprisonment. Regardless of anything else, there must be a minimum of two months imprisonment. We do not have such a provision anywhere else and I find it extremely difficult to see why we must maintain this type of provision in this act.

As I pointed out during the debate over a year ago, I have known firms and individuals whose fraud on the income tax was considerable, yet somehow or other, because of either political influence or some other consideration, they were proceeded against by way of summary conviction. They paid dearly, but nobody went to jail. We know of other cases in which there may have been other considerations, yet the Crown proceeded via the indictment route with no valid explanation for the distinction. This is the point I want to make. There is no way one can confront the Attorney General of Canada or the individuals who make the decisions and ask why they proceeded by way of indictment rather than summary conviction. One cannot inquire of the Attorney General of Canada about a case that is sub-judice. He will not answer questions about the case while it is in process. When it is finished, it is too late. The individual has gone to jail. Nor can one question the Deputy Attorney General of Canada or the Director of Prosecutions.

I would invite the sincere consideration of all members of this House in support of this bill. Members have all taken some humanitarian steps in respect of other aspects of the justice process. Here is one that I maintain is deserving of such a consideration, because the decision to proceed by way of indictment is almost like the ancient "lettre de cachet" of 15th and 16th century France. The decision to proceed by way of indictment is not reviewed, yet it commits a man to jail should there be the likely conviction under the Income Tax Act. I would invite hon. members to accept this motion that the bill be now read a second time and sent to the Committee on Finance, Trade and Economic Affairs so it can hear further representations, if need be, and examine the officials of the Department of Justice. This is something that demands immediate attention. I thank hon. members for the careful attention they have paid to my remarks, and I hope they will be moved to accept the motion.

**Mr. Mark MacGuigan (Parliamentary Secretary to Minister of Manpower and Immigration):** Mr. Speaker, the hon. member for Edmonton West (Mr. Lambert) has entertained us with an impassioned plea on behalf of the tax offender. Who is this tax offender he is defending and for whom he has urged our consideration?

#### *Income Tax Act*

I should like to direct your attention to Section 239(1) of the Income Tax Act which informs us that the people who are in the situation about which my hon. friend is speaking are those people who have made, or participated in, assented to or acquiesced in the making of false or deceptive statements in a return, or those who have tried to evade payment of a tax imposed by this act or destroyed, altered, mutilated, secreted or otherwise disposed of the records of books of account. The section also refers to those who have made false or deceptive entries in tax returns, and to those people who have wilfully or in any manner evaded or attempted to evade the tax imposed by the act. The hon. member is not referring to a man who has paid his tax late or who has made a mistake in his income tax return. He is referring to a man who has in some way wilfully sought to evade the payment of part or all of his income tax. This is the gentleman on whose behalf we are asked to be so solicitous.

I think we should look at the elements of the offence presented here. First, there is the element of the laying of the charge, as provided for in Section 239(1) and (2). Taking them together, the Crown can proceed either by way of summary conviction or by way of indictment on the election of the Crown. This is not an unusual provision in our law. The Criminal Code of Canada is filled with instances where such discretion is given to the Crown. It may be as my hon. friend has asserted that this is not a matter on which the Attorney General of Canada can be directly called to order in this House, but the fact remains that this is a usual power that the Attorney General of Canada has in the administration of criminal or quasi-criminal statutes. The onus for its exercise is by statute placed squarely on the Attorney General of Canada. It may be that he will see fit to delegate his power to the Director of Prosecutions, but even so this is an official in his department to whom he would normally refer for advice in the exercise of his power in other cases. Therefore, it is not an unusual power for the Director of Prosecutions to exercise under the Minister of Justice, nor is it an unusual power for the minister himself to exercise. Therefore, I see no novelty in this kind of option being given to the Crown. It seems to me that if we are to take seriously the claim that is being made by the hon. member for Edmonton West, we must look to the other elements of the offence for the gravamen of the charge he would seek to make to the act.

• (1720)

The second element, I would suggest, concerns the finding of the court. We must not overlook the fact that the gentleman upon whom a fine or a sentence of imprisonment would be imposed is a person who has been convicted by a court. The imposition of such a penalty is not a decision taken by the Attorney General of Canada; only after a court, following due process of law, has formally convicted an accused of a charge laid under section 239 can the penalties come into effect at all. This is the usual course of justice and there is nothing here that is very surprising to a student of law.

Therefore, I suggest we must turn to the third element, the penalty element, before we can find any novelty whatsoever. The element here that may seem to the hon. member for Edmonton West to be one of novelty is the