

Hon. Mr. LEGER: I am just asking the question. I am not sure myself.

Mr. REILLEY: The point is, Senator, if there is a trust fund and there is no money in that fund then it is only a debt.

Hon. Mr. LEGER: It would be a trust fund which has been mingled with the assets.

Mr. REILLEY: Unless it can be traced in its identical fund it becomes only an ordinary debt. The principle is that it must be traceable.

Hon. Mr. LEGER: If it has been deducted it would be traceable.

Mr. REILLEY: Not necessarily. The basis of all trust funds in a situation of this kind is that it must be traceable. Under the other legislation there was no trust fund they could find or trace, and consequently they deleted it and put in this section making it a debt to the Crown.

Mr. McENTYRE: Will you excuse me Mr. Reilley? I think you will find the tax provisions are still there. The part that was deleted was simply a priority division which was previously there and found not to hold in the courts. We put in a stronger provision, which is subsection (7A). Subsection 6 reads:—

Any person who, pursuant to subsections one or two of this section, deducts or withholds any amount from any payment which he is liable to make to any person shall be deemed to hold the amount so deducted or withheld in trust for His Majesty.

Subsection (7) reads:—

All amounts deducted or withheld by any person under subsections one and two of this section shall be kept separate and apart from the moneys of the person so deducting and in the event of any liquidation, assignment or bankruptcy of the person who made such deductions the said amounts so deducted shall remain apart and form no part of the estate of such person in liquidation, assignment or bankruptcy.

Then subsection (7A) reads:—

Every person who deducts or withholds an amount under this section is liable to pay to His Majesty on the day fixed by or pursuant to subsection two of this section an amount equal to the amount so deducted or withheld and such liability shall constitute a first charge on the assets of such person and shall, notwithstanding the Bank Act, the Bankruptcy Act or any other statute or law, rank for payment in priority to all other claims, either of His Majesty in right of a province of Canada or any other person, of whatsoever kind heretofore or hereafter arising, save and except only the judicial costs, fees and lawful expenses of an assignee or other public officer charged with the administration or distribution of such assets.

Hon. Mr. LEGER: Would you not be in a stronger position, if that last subsection were not enacted?

Mr. McENTYRE: We found that we met two sets of circumstances. We first said the employer would provide the full amount of his payroll, and he would allocate the part for payment to employees and the part to be sent to the Department of National Revenue; that part for the Department of National Revenue would be segregated into a trust fund. In those circumstances we found that the trust fund does not form part of the bankrupt estate; it belongs to the Crown, and should not come under the control of the trustee but should be paid over directly. That was one step. The other thing that happened was when an employer became in financial difficulties instead of providing his full payroll he would calculate his net payroll after tax deduction, and he would provide only that which he had distributed to his employees, but as for the part that went to the Department of National Revenue, it did not exist.