

Income Tax Act

the second time and referred to the Standing Committee on Finance, Trade and Economic Affairs.

He said: Mr. Speaker, I welcome this opportunity to say a few words. On hearing the debate on my bill this afternoon, Your Honour may say that it sounds like old-home week. I do not want to accomplish my purpose by lèse-majesté or otherwise, but at the time of the lengthy debate on Bill C-259, you were my colleague in dealing with many of the matters in that bill and, therefore, know full well the subject on which I now speak. Perhaps the discretion of the Chair is proving greater than the valour and Your Honour is now moving to another place.

• (1700)

I wish to draw to the attention of hon. members, particularly those who are of more recent vintage, that although there are many provisions in the Income Tax Act to which hon. members would take exception, there is one that I doubt 95 per cent of the members of this House know exists. I refer to Section 239, the subject matter of the intention of my bill.

If any hon. members are interested, I invite them to refer to the debate of November 30, 1971, page 10018. It was a rather lengthy debate and is where this provision had its start. Section 239(2) reads as follows:

Every person who has failed to comply with or contravened subsection 116(3), 153(1) or 227(5), or section 230 or 231—

This by the way, covers a lot of territory.

—is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

- (a) a fine of not less than \$200 and not exceeding \$10,000, or
- (b) both the fine described in paragraph (a) and imprisonment for a term not exceeding 6 months.

I am sorry, Mr. Speaker, I read section 238(2). Section 239(2) is as follows:

Every person who is charged with an offence described by subsection (1) may, at the election of the Attorney General of Canada, be prosecuted upon indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to imprisonment for a term not exceeding 5 years and not less than 2 months.

My undying opposition to that section is that it is an official of the government, normally the Attorney General of Canada but in actual practice either the deputy minister of the Department of Justice or the Director of Prosecutions, who decides in what way a man shall go to court and to jail. The magistrate or the judge, depending upon the jurisdiction, has no power whatsoever to relieve against the penalty of imprisonment when proceedings are by way of indictment.

The minimum penalty of imprisonment is two months. This is not one of those cases where there can be a technical offence. Because of the action taken by an individual, or if it is a matter that can be considered less serious, the judge might impose a sentence of one day or, as is done with many other offences, grant a conditional discharge. Under this section, there is a minimum period of incarceration of two months or a maximum of up to five years. This is because some offence has been committed under the Income Tax Act. Section 239(1) includes all sorts of offences, even the offence of refusing to file an income tax return. There is no way a magistrate or judge can give relief. The individual must go to jail. The court of

[Mr. Lambert (Edmonton West).]

appeal can reduce a fine or a jail sentence, but it cannot go below two months.

We can comb the Criminal Code or the offence provisions of all sorts of statutes and we will not find anything as barbaric as this. Because there has been some offence, even the suppression of some records, the individual goes to jail at the whim of the Director of Prosecutions. Perhaps that is the wrong term. I should say at the discretion of the Director of Prosecutions. There is no other provincial or federal jurisdiction where there is this absolute discretion in a government official who is not answerable to anyone and whose decision is not reviewable by the Court of Appeal, unless the Court of Appeal finds that no offence has been disclosed. However, all too often, we know that the offence has been committed.

One only has to read the terms of the regulations or the statutory provisions of the Income Tax Act to find that there are offences aplenty. Almost by turning around or signing a document, one may be said to mislead. I am not trying to excuse the offences, but I find it passing strange that in an act that was supposed to contain great reforms, this provision was carried forward. Hon. members on the government side sprained their shoulders by patting themselves on the back when boasting about these great income tax reforms. That bill was piloted through the House by the former member for Calgary South. He was a parliamentary secretary at the time. He and others on the government side refused to budge on this. The government has introduced bail reform bills, bills dealing with first offenders and other matters. However, with regard to income tax, the state is going to extract its pound of flesh and quart of blood as well because a transgression under the Income Tax Act seems the most heinous of all offences.

We as Canadians have a strange quirk. In no country in the world are people jailed for so many types of offences, and here we have a classic example. Under summary procedure, however, one does appear before the magistrate who has the right to impose a jail sentence. If we look at Section 239(1)(f) we see that if there has been a further offence, in addition to any penalty otherwise provided, the individual is liable on summary conviction to a fine not less than 25 per cent and not more than double the amount of the tax sought to be evaded, or both the fine described in paragraph (f) and imprisonment for a term not exceeding two years.

• (1710)

So you see, if the crime is flagrant enough, and goodness knows there are some, the provincial judge or magistrate has the right to impose a pecuniary penalty of up to double the tax sought to be evaded and, in addition, send the offender off to jail for two years. So there is not a question of a rich man buying his way out. These are penalties in addition to those I have described before, including a fine of up to \$10,000.

My amendment proposes that we strike out this procedure of the indictment route which guarantees that a man goes to jail, willy-nilly on the initial and binding decision of a bureaucrat. In order to compensate, why could not the judge or the magistrate, if the case before him is severe enough, increase the period of incarceration up to