

*Income Tax Act*

corporations. Obviously it is impossible to punish a corporation by putting it in jail, yet an individual taxpayer who may be guilty of no great offence against the state is in double jeopardy. Not only is he subject to what may be double or triple penalties under the act, but at almost the whim of the Attorney General of Canada he can be indicted and put in jail.

I could name cases involving millions of dollars where large corporations got off scot-free or made retroactive tax payments—and I shall have something to say about making tax laws retroactive when we come to section 221. Surely the purpose of reforming our tax laws is to make them equitable. An individual in breach of the tax laws is almost persecuted, not prosecuted. I should like to hear from the minister how the law can be equitable when corporations and individuals who similarly breach the regulations or the act are treated differently.

**Mr. Gray:** Mr. Chairman, in the circumstances outlined by the hon. member I think there would very likely be evidence that would lead to individual officers or employees of the corporation being charged. Therefore, the problem he refers to is not so likely to occur as he thinks may be the case.

**Mr. Bigg:** That may be half an answer, but as we well know senior members of corporations very rarely are held personally responsible for the misdemeanours of the corporation as such. It is very easy for them to claim that they were away on leave when the books were kept or the returns were made. On the other hand, an individual taxpayer does not have this professional protection or ability to fight. He is the one who is faced with what I have referred to as double jeopardy. A loophole still exists in the law since it is impossible to put in jail a corporation and all the members jointly responsible for tax evasion.

In the case of multinational corporations it is impossible to round up the people concerned since they are not subject to our law, certainly not subject to our criminal law. The only way of penalizing them is to impose an enormous fine. In some cases this might mean putting the corporation concerned out of business. Be that as it may, they would not lose their personal liberty.

My personal view—and I have had experience of the law—is that the only kind of law that is any good in a country like this is that which treats us all equally. As I say, I see no equity in a law that makes an individual subject to double or triple jeopardy whereas some other outfit that hides behind legal jargon is able to escape entirely its responsibility and thwart our properly thought-out and administered revenue laws. I am still not satisfied with the answer.

**Mr. McCleave:** Mr. Chairman, earlier this afternoon I raised this particular problem. Since one is sometimes asked what one would do to solve problems one raises, might I be permitted to give the Minister of National Revenue, his officials and parliamentary secretary an opportunity to consider this suggestion. In the case of certain offences, where an accused wishes to see the kind of evidence that is brought against him he is allowed to do so by way of preliminary hearing before a magistrate. That official then decides whether the evidence is sufficient to send the accused to a higher court for trial. On the

[Mr. Bigg.]

other hand, there are cases where the accused is given the option to proceed by way of summary conviction in a lower court. The advantage in being tried in a lower court is that the penalty that is usually imposed is much less severe than that imposed in the higher court for the same offence.

I suggest we can tackle this problem in one of two ways. Perhaps it is not capable of solution tonight. In any event, I think the government should study this proposal overnight, and I would also be interested in the views of any of my colleagues as to whether I am on the right track. I suggest that we extend the maximum under section 239 from two years to five years. Perhaps this remedy is not as palatable as my other suggestion, which is simply to give the accused the option of deciding whether he wishes to proceed by way of summary conviction or by way of indictment. If the latter, he runs the risk, if convicted in the higher court, of suffering an additional three years' sentence, though every other factor would remain the same.

I do not know whether that suggestion commends itself to the government, but at least it would not put the Attorney General of Canada in the position of having to decide what type of procedure he would use against particular individuals. The individual would be put in the position of deciding that he prefers one course or the other. Since I raised this problem initially, I thought I should try to come up with some kind of answer to it.

**Mr. Gray:** Mr. Chairman, we would certainly be pleased to take the suggestion made by the hon. member under advisement, and for that purpose I ask that this section stand.

**Mr. Lambert (Edmonton West):** Mr. Chairman, I spoke at considerable length on this point. I heard the minister's reply just as I came back into the committee and I was astounded to hear him say, especially since he is a lawyer, that he accepts the principle that a public servant will determine whether a man goes to jail or not. The minister knows as well as I do that a mandatory penalty is attached to the indictment procedure. That can follow from any non-compliance with the act, pursuant to section 239 (1)(a), (b), (c) or (d). That includes the failure to file an income tax return on demand.

• (8:50 p.m.)

There is no way that the administration can justify that it must have the right—I emphasize this—to determine that a man shall go to jail. It is the courts that will send a man to jail. We have courts of law for that purpose. It is the judge who will decide, on the merits of the case—not the Attorney General, not the Deputy Attorney General or the director of prosecutions. None of those persons is in a position to determine that a man shall go to jail. Therefore, subsection (2) of section 239 must be wiped off the statute books.

The penalty can be increased, if it is so desired, under paragraph (g) of subsection (1). I prepared amendments. I have the amendments ready and I intend to move them so they will be before the committee. I want hon. members to determine and to vote on the question of whether they are prepared to have government officials or a minister of the