

*Income Tax Act*

not less than 25 per cent and not more than double the amount of tax that was sought to be evaded. Finally, we have Section 239(2) which provides a jail sentence without the option of a fine.

It seems to me that this subsection is unreasonable and in favour of tax administration. Among other things, we have been trying to give the taxpayer a reasonable break as against the all powerful Income Tax Act. There is no doubt in the world that the procedures and penalties under this act are greater than under almost any other federal legislation. You can prove the mailing of a notice from the department by affidavit evidence given in court saying that the minister has sent out a notice. That is absolute evidence that the notice was sent out without anybody appearing to say so. I think Section 239(2) is not only overpowering against the citizen, but it leaves a political tool in the hands of the government in a case where such a penalty was never intended. We have here the option for the Attorney General of Canada to decide whether to proceed against an accused person by way of summary conviction. This would give the provincial judge the right to determine the sentence, whether it be fine or jail, depending upon how he sees the circumstances, and would give the right to the minister to make that decision. We feel this is wrong.

It is easy for inspectors and investigators going through the taxpayer's papers to talk to the taxpayer and other people and come to the conclusion that perhaps this person has fraudulently misrepresented his case and tried to deprive the government of taxes. It is absolutely no part of normal justice in this country that the prosecution shall prejudge how the case shall be disposed of by the courts, but that is what this particular section allows. It leaves this tool in the hands of the government. They may say to a taxpayer that they are going to proceed by way of indictment, and they may say to the judge that the taxpayer has to go to jail for two months. It does not leave the judge the option of hearing the defendant's case. Surely, this is fundamental justice, that the defendant may bring forward certain facts for the court's consideration in determining sentence. In this case when the individual has been found guilty there is no option for the judge to decide to impose a fine. There is no alternative but to send the accused to jail or to acquit him.

This section, first of all, takes away the right of the courts to determine sentence and, second, takes away the right of individuals to place a case before the courts in mitigation of sentence. This gives a third kick at the cat, a third penalty that the Department of National Revenue can impose upon the taxpayer. This is the final and most severe, that he can be sent to jail.

As I said earlier, there is always the other possibility, that we are placing in the hands of the government, of the Attorney General, and of the Attorney General's officers a very powerful instrument and that is the right to say to this individual, "We are only going to prosecute you under summary conviction and you may be fined", or to say to him "We are going to ask for procedure by indictment and you may go to jail". It is too powerful a tool in a tax situation. It is open to abuse at a lower level within the department because in a lot of cases I presume that the Attorney General does not make the decision. This section leaves it open to the investigator or someone above him to

make this decision and to hold out a threat of some sort against the accused. If he does not squawk too hard, if he pays his penalty and admits everything the case will not proceed by way of indictment.

• (5:20 p.m.)

While this is not likely to happen, it is not likely that any attorney general would take such a position, the power does exist and it is the most dangerous power open to the government, the power to discriminate between one citizen and another. There may be reasons for which a certain individual who is friendly to the government, who has been a regular contributor out of the money he has saved from taxes, who has been a helper of the government—and I am not referring now to any particular government—might be dealt with more lightly than another person who did not happen to be known to the government or to the attorney-general.

While we do not have much complaint about the remainder of this administrative and enforcement portion of the bill, we feel this is the appropriate point for a reconsideration of 239(2). It is no use bringing the matter up a year from now or two years from now by way of a private member's bill. The time to do it is now, while we are considering a new piece of tax legislation. I, therefore, suggest there should be a reasonable modification of this subsection before we proceed with the remainder of the sections.

**Mr. McCleave:** While the ministry is considering the points my hon. friend has raised, I should like to inquire about two matters which were put forward by the Canadian Bar Association in its brief dated August 20, 1971. The first concerns section 231(2). The Bar Association made this point:

We suggest there is no need for an ex parte application as the minister already has the documents involved. The question is whether or not he should give them back within 120 days. Surely, the taxpayer should be able to present his views to the court as to why the documents should be returned, particularly where they can be photostated.

The second point arises out of something which appears later in that particular section, in 231(8). The Bar Association made the point:

The appointment of the hearing officer by the tax review board is a welcome change if the hearing officer is someone other than a member of the Department of National Revenue. If members of the department are still to be appointed they might as well be appointed by the minister in the first place.

I would ask whoever is to reply whether it is the intention of the government to appoint someone other than a member of the Department of National Revenue in connection with the provisions of 231(8).

**Mr. Gray:** With regard to the second point the hon. member raised, it is my understanding the intention would be to appoint someone other than an official in the category he mentioned.

With respect to the first point, I should like to have it taken under advisement. We shall attempt to make some further response, possibly later this evening, at which time we would also be in a better position to respond to the argument put forward by the hon. member for Parry

[Mr. Aiken.]