

Income Tax Amendment

this problem we cannot permit plans to remain in existence which have the effect of using the device of profit sharing for such purposes.

Mr. Fulton: Mr. Chairman, again I must say that I have no objection to stopping the use of these plans for that purpose. I do not differ from the minister in saying that now the decision has been made we must stop them indulging in abusive practices. But the minister is not just saying that they may no longer continue that practice even though up to now they have been allowed to do it and in fact in the past it was not an abuse.

• (6:20 p.m.)

The minister used a word which I think was very revealing in this situation. He used the word "misconduct." I point out to him that it was not misconduct in the past; this practice was specifically approved. Yet when this legislation is passed we will define the past practice as misconduct and we will say to these employers: Your past conduct, which was valid at the time, is now misconduct. You must now undo it, and in addition we are going to penalize you now for doing something which the Minister of National Revenue approved in the past.

I am not suggesting that because the acquisition of this kind of asset was allowed in the past it should be continued. I say, make a cut-off in this respect, do not allow them to do it in future. But surely it is not necessary, in preventing abuses, to go back in time and penalize that which was not an abuse when it was done.

Mr. Lewis: Mr. Chairman, earlier today the hon. member for Kamloops suggested that my colleagues and I ought perhaps to support his objection to what he calls retroactivity. I may not be following him but it seems to me that the proposition he puts forward is really indefensible. He must agree, by implication, that there are often abuses in this connection because he says he agrees that the minister ought to take steps to plug the holes which enabled these abuses to take place. It follows therefore from his own statement, if I understood him correctly, that there have in fact been cases where a deferred profit sharing plan was used in a way not contemplated by the legislation.

If the minister uses the word "misconduct", I join him in using it. I am sure he did not mean it was misconduct in the sense of being a violation of the law. I would use the word misconduct as being a violation of the spirit

[Mr. Sharp.]

of the law even though the words of the law were obeyed. If you admit that the intention of the law was violated and abused by setting up funds which did not carry out that intention, I cannot understand how anyone can propose that funds which were set up contrary to the intention of the law should be permitted to continue to be administered contrary to the intention of the law. This is precisely what the hon. member for Kamloops is proposing. This is why I cannot join him in his objection. I cannot weep for employers who have in fact abused the intention of parliament, have not paid attention to the needs of their employees but have used deferred profit sharing plans for other and what I would call without hesitation improper purposes.

I suppose that the law as it stood heretofore did not give the Minister of National Revenue any alternative but to approve plans which met the letter of the law even though they violated the spirit of the law. As I understand the minister's proposal, it is in three parts. The first is that the intention of the law be made very clear and that all plans in the future be made to comply with that law. The second is a recognition of the fact that there are now plans which result in abuses of the law in terms of not fulfilling the intentions of the law. The minister says to us, and I say without hesitation entirely properly and in the interests of equity, that those plans which have in the past abused the intentions of the law must be brought into line with the new rules that seek to impose the proper application of those intentions. Third, the minister says to the employer who has a plan which does not meet the new requirements, "I give you a term of years"—if I remember correctly it is until 1970, which is four years—"during which you must divest yourself of investments that do not meet the qualifications of this legislation, and you must adjust your plan to meet the present requirements which are intended to plug the loopholes through which you crawled in the past five years."

I cannot see that that is retroactive legislation. It seems to me that if you did not do that you would impose upon employers who introduced profit sharing plans tomorrow a set of strict rules which an employer who introduced a profit sharing plan yesterday would not have to obey. He could go on forever with a plan that violated the intentions of the legislation and the genuine intentions of profit sharing plans because he would have been lucky enough to get that improper