

Income Tax Act

The Deputy Chairman: Shall section 174 as amended carry?

Mr. Aiken: Mr. Chairman, another point was raised in connection with subsection (5) (b) of section 174. I made the suggestion that the word "not" was there by mistake in line 15. I do not think we should pass the section until I am assured that it should be in there.

• (8:30 p.m.)

Mr. Béchard: I will read this in English because I have it in English. A question has been raised regarding the wording of subsection (5) of section 174. The suggestion is that the word "not" in paragraph (b) of that section is inappropriate. I hope the following explanation will persuade hon. members that the wording of the paragraph is correct and appropriate.

Subsection (1) of section 174 provides that the minister may make application to the Tax Review Board or to the Federal Court in certain circumstances. Subsection (2) of that section permits the minister to name the taxpayers he wishes to have bound by such order as the board or court may issue. When such an application is made, subsection (5) provides that the time in respect of any appeal periods of persons named in the minister's application ceases to run. When the order of the board or court is finally made, paragraph (a) of subsection (5) provides that the time for appeal periods starts to run again but only for those taxpayers who are named by the board or court as being bound by the order.

A provision is therefore required for those persons who are named in the minister's application and for whom, consequently, the time period for appeals was stayed, but who are not named in the order of the board or court. Paragraph (b) of subsection (5) is that provision. It provides for the giving of notice for persons who have not been named in the order of the board or court. When such notice is given to such person, the time for his appeal period begins to run again. Consequently, the word "not" in paragraph (b) of subsection (5) is correct and appropriate.

I hope the hon. member followed that explanation.

Mr. Aiken: If the parliamentary secretary and the government are satisfied, then so am I. I raised the question because it seemed to me that a person did not need to be served with a notice telling him he had not been named in an order. But I am happy to accept the explanation which is given and which appears to be satisfactory.

Clause 1, section 174, as amended, agreed to.

The Deputy Chairman: Shall section 176 carry?

Mr. Aiken: I am not sure. We have already passed 176, I believe.

The Deputy Chairman: Then the committee will return to the examination of section 220.

On clause 1—section 220: *Minister's duty.*

Mr. Aiken: On a question of procedure, I presume Your Honour called section 220 so that we might proceed with our discussion of the block of sections running from 220 to 247. I should like to know at this point whether the government has reached any decision on what it intends

to do with respect to subsection (2) of section 239 which was stood in order that further consideration could be given to it.

We think it is important that the court should have the final say in regard to sentence and that it should not be a matter for the Attorney General of Canada to decide. What has the minister to say about the absolute right of the Attorney General to proceed by way of indictment without the option of a fine being provided?

Mr. Gray: I am advised that this type of provision has been in the act since 1948. There is no indication that it has been used other than in a manner appropriate in the circumstances. This being the case, I respectfully submit that the circumstances which led to it being in the act in the first place continue to prevail at this time.

Mr. McCleave: Mr. Chairman, the minister used the phrase "appropriate in the circumstances". Appropriate in what circumstances? Does he mean appropriate in the circumstances of a government department trying to collect taxes, or appropriate in the eyes of a court, which would never be asked to rule in any case when it is dealing with a case by indictment because if a person is found guilty the court has no option but to sentence him to a jail term under the provisions of the subsection. He cannot say "appropriate in the circumstances" when each one of us would have to decide how to proceed in such cases as Smythe in Toronto and Drapeau in Montreal. One is dead and the other is before the courts. I say the minister cannot use the phrase "appropriate in the circumstances" because what is involved is an absolute judgment.

Courts are either faced with a summary conviction procedure and if they find the accused guilty they carry out the law as they find it in the act, or if it is an indictment procedure and they find the accused guilty they have no option but to impose a prison sentence plus a fine. I think the minister is treating us ill when he says it is appropriate in the circumstances. It is a judgment matter and that is what we are trying to get away from in this chamber.

We are trying to pass a new, so-called tax reform measure under which the Attorney General of Canada can be faced with an awful decision. I think it must be awful for a man to decide whether he will prosecute somebody for tax evasion to the point where the man pays a fine and may have an option of going to jail, or to proceed by indictment and, by God, if you are found guilty the judge will send you to jail.

For the Minister of National Revenue, one of the few for whom I have admiration because he buckles down to considering the problems we send to him, to say "in appropriate circumstances" beggars the intelligence of the House of Commons and I hope he can do better than that on the second round.

• (8:40 p.m.)

Mr. Bigg: Mr. Chairman, I will yield the floor to the minister if he wishes to answer at this time. If not, I wish to make a few remarks on section 239(2). I am wondering how there can be equality under the law in view of the differing treatment given individual tax evaders and large