

Income Tax Act

evaded," or both the fine as described and imprisonment "for a term not exceeding 2 years." In this instance, it is a properly constituted court that determines whether a man is to go to jail or merely be fined. Yet by proceeding by way of indictment, if convicted a man is liable to a jail sentence, and this on the decision of a political individual, the Attorney General of Canada, or of some faceless bureaucrat behind him who does not have to answer for his decision. This may be the Deputy Minister or the Director of Prosecutions, who does not have to answer for his decision or recommendation to proceed by way of indictment, and the facts being what they are, if the taxpayer either pleads guilty or is convicted, and I am not trying to exculpate him at all, he must go to jail. True enough, he can be fined; but he must go to jail.

• (5:00 p.m.)

Mr. McCleave: That is barbaric.

Mr. Lambert (Edmonton West): Who is the one who decides to play such ducks and drakes and why, Mr. Chairman? Is there some pecuniary yardstick that is applied? The hon. member for Halifax-East Hants, my colleague, referred to a recent case. The amount was large; but I can honestly tell you that a few years ago out in my part of the country a number of taxpayers were involved in an equally blatant and apparent fraud. I am not prejudging the Toronto case. Let us say that there is an alleged fraud. Nevertheless, in the case to which I refer, shortly after the proceedings started the defendants pleaded guilty. It was all arranged, it seemed. The court affixed a penalty, pursuant to what is now section 239(1), and it cost the parties dearly for their years of syphoning off profits during a building boom. Actually, one firm almost went into bankruptcy, because the penalty cleaned them out. There had been some skimming off, but nobody went to jail, Mr. Chairman. There was no proceeding by way of indictment. And why was there not, Mr. Chairman? Was the reason religion, or was the reason political persuasion. Is it by reason of the status in the community of the individuals that the decision is made one way or the other, or is it made by reason of the fact that somebody might be a political force and might be friendly to the government?

Let me read section 239(1)(d), the basket clause:

(d) wilfully, in any manner, evade or attempted to evade, compliance with this Act or payment of taxes imposed by this Act, . . .

It is an offence under section 239(1)(d) to fail to file a return when requested. Failure to file is caught by that basket clause. It is as such a failure to comply with this act. I have no quarrel with the offence being subject to summary conviction. It is up to the magistrate to judge in any particular case. I know of many instances where an individual refused to file an income tax return after being requested to do so. Section 235 now says that every person who has failed to make a return as and when required by regulation under subsection 215(4), by regulation under section 221, and so on, is liable to a penalty. This is not governed entirely by statute. This matter comes under regulations that are passed by the governor in council under the authority of section 221 of this act.

An hon. Member: But the matter is scrutinized.

Mr. Lambert (Edmonton West): I do not object to the fact that there is an offence. That particular offence is caught up by the basket clause. A good many other offences are created under this act in cases where you do not comply with a requirement of the act or of the regulations. Those offences may merit summary conviction. I accept that. Yet, if the Attorney General of Canada shall decide otherwise, and he has only the good Lord to answer to under this act, he can proceed against the taxpayer by way of indictment. It is he who decides; the taxpayer may have no defence. After all, you either file an income tax return or you do not. There is no way of getting around that. Whether or not you should pay tax in a stated amount may be a matter of honest dispute; but your failure to file a return is a fact and, so, one is guilty of failing to file a return and proceedings may be by way of indictment. Very likely they would not be, but instituting them is within the power of the minister. A conviction means a minimum of two months in jail.

You know, this is arbitrary power. It is only the court that should determine whether a person shall go to jail; but this discretion is not given to the court. If the court of first instance awards too lengthy a jail term, the taxpayer has the right to appeal, as a common thief would, as a bank robber would or as any other criminal would. Yet, under section 239(2) of the Income Tax Act, he must go to jail. Mr. Chairman, that should not be. I repeat, that should not be. Section 239(2) should be stricken from this act. If the penalties are not great enough under section 239(1) to take into account the higher level that is provided for in section 239(2), then let us amend section 239(1). But, for goodness sake, let a court of law decide whether a man goes to jail or not, and not the minister or one of his faceless individuals. I do not mean that in any derogatory sense, but they are not identifiable. There is none amongst them who must answer for his actions.

• (5:10 p.m.)

The Assistant Deputy Chairman: The hon. member for Halifax-East Hants rises on a question of privilege.

Mr. McCleave: Mr. Chairman, I misled the House. I referred to the fact that at the end of the indictment procedure the person convicted might go to jail for a day or a number of hours. As a matter of fact it is set forth very clearly that it is not less than two months. I apologize for my inadvertence.

The Assistant Deputy Chairman: Order. It is my duty pursuant to Standing Order 40 to inform the House that questions to be raised tonight at the time of adjournment are as follows: The hon. member for Selkirk—The Canadian Economy; the hon. member for Winnipeg North—Manpower—Availability of Jobs in Thompson and Sudbury; the hon. member for Oshawa-Whitby—Regional Economic Expansion.

Mr. Aiken: Mr. Chairman, I want to raise the same point. Previously in the debate on this bill, the question was raised about double jeopardy for people who may be considered by the tax department not to have paid their tax or filed their return. The penalty is additional tax under a previous section which we have already discussed. The second penalty under Section 239 is a fine of