

The ACTING CHAIRMAN: You feel you may have a claim against them for those funds, and under this section of the Act you would specifically rank *pari passu* with other Crown claims.

Mr. McENTYRE: Yes.

Hon. Mr. LEGER: My point was, whether it would be a claim or whether the Crown would simply walk in and take its property.

The ACTING CHAIRMAN: I think very likely it could if the employer is the agent of the Crown. It might be made clear if you have a suggested amendment.

Mr. McENTYRE: The rest of my memorandum is rather short.

Hon. Mr. LEGER: I am sorry I interrupted, but I just wanted an explanation.

Mr. McENTYRE: The priority for payment quoted therefore gives the Crown a right of preference greater than that contemplated in section 126 of the bill. It is recommended that the bill should provide for the payment of taxes deducted at source in a manner consistent with the Income War Tax Act.

Under section 121 of the present Bankruptcy Act the claim for taxes deducted at source would rank second after the costs and expenses of the custodian and the fees and expenses of the trustee. To be consistent with the provisions of the section of the Income War Tax Act quoted above, it is submitted that the bill should provide for the payment of this claim immediately after item (c) in section 125, subsection (1).

Paragraph (c) is the levy payable under section 132. I understand that is one-half of one per cent which the Superintendent in Bankruptcy receives.

Hon. Mr. LEGER: You just want to advance the priority, that is all?

Mr. McENTYRE: Yes, sir.

In this way it would rank ahead of claims for arrears of wages. This is reasonable because employees are in a favourable position to insist on the payment of their salaries and wages as they become due, and, in the case of a corporation, they can assert their claim against the directors personally according to the various provisions in the different Companies' Acts. Furthermore, the tax deduction claim is in effect a claim for arrears of wages because it is a claim for that part of the employee's wage which is to be placed to his credit against his eventual liability for Income Tax. Ranking the tax deduction claim ahead of the employee's claim would be in accord with the common-law principle that the Crown is to be preferred to other claimants of equal rank.

It is therefore recommended that the following item (d) be inserted after item (c) of section 126, subsection (1) of the bill and that the subsequent items (d), (e), (f), (g), (h), (i) and (j) become items (e), (f), (g), (h), (i), (j) and (k) respectively:—

(d) The claim of the Crown in the right of the Dominion of Canada for the amount of the deductions made from salaries and wages pursuant to the Income War Tax Act.

This is an incomplete memorandum prepared to introduce the subject and there are other important reasons which can be given in support of the submission made.

The ACTING CHAIRMAN: Do you not think (j) should be amended also? "All claims of the Crown in the right of Canada or of any province thereof *pari passu* notwithstanding any statutory preference to the contrary . . ." other than claims provided for under subsection (d).

Mr. McENTYRE: Perhaps that is so, but I wonder whether it is necessary. The draftsman does not seem to have thought so, because under (h) there would be claims of the Crown.

The ACTING CHAIRMAN: That will be considered, anyway.