put the question to the Senate and I thought we had unanimous consent.

We might take what happened this afternoon as an example, so that in the future, when I ask whether there is unanimous consent, if there is not—and any one may dissent as a matter of right—any honourable senator objecting will please rise in his place and say clearly that he does not give his consent. I will then be so informed, and will rule accordingly.

I regret that some misunderstanding may have occurred this afternoon. Let us hope it will not happen again.

Hon. Mr. Roebuck: With my apologies, may I give notice to those who are here now that the Committee on Legal and Constitutional Affairs will meet in the Smoking Room at ten o'clock tomorrow morning? Thank you.

INCOME TAX ACT

SECOND READING—DEBATE CONTINUED

Hon. Salter A. Hayden: Honourable senators, may I now continue with the explanation of Bill C-191?

In case it was not clearly understood from what I said concerning the amounts that are included in the policyholder's income, for purposes of the discussion that we were having on the tax on the policyholder, I suggest that you look at page 28 of the old bill dealing with new section 79D. I have checked that against what I said, and it appears that I have read correctly what is there.

However, I should point out several additional features. For example, the bill permits the use of a three-year averaging formula. That three-year averaging formula is in section 35 of the act, and is made applicable to the situation we are discussing now. It would enable the policyholder to compute profit or gain from the disposition of a policy, "disposition" being the big word for selling or disposing of a life insurance policy in some fashion. Now he can follow the averaging under section 35, but there is the additional feature of a valuation date. For policies now in existence, for example, there is a valuation date. I refer you to page 32 of the old bill and pages 36 and 37 of the new bill. The valuation date is the second anniversary date after October 22, 1968. It excludes from income the cash surrender value accumulated up to the second anniversary date after October 22, 1968. You see, a policy has a cash surrender value, and when you are trying to determine what is income and what is not income to a policyholder for tax purposes you have to have a starting point or date from which to start for valuation purposes. That is why this covers the cash surrender value accumulated up to second anniversary date after October 22, 1968. In reality, it gives you two years.

Then, honourable senators, you have this little quirk that you never get very far in an income tax bill without coming across the words "at arm's length." And so we move along and we find it on page 32 of the old bill and page 36 of the new, subsection 8. If you give away an interest in a policy, other than an annuity contract, in a non-arm's-length transaction, the donor of that is deemed to be entitled to receive the proceeds of the disposition and the interest paid at the time of the disposition, and that interest is deemed to be the cash surrender value of the policy and must be taken into his income.

Hon. Mr. Isnor: But is there not a difference between the cash surrender value and the value at the expiration date?

Hon. Mr. Hayden: Of course, but the cash surrender value simply means what the policy has earned in the period up to a certain date, and that value grows as you approach the maturity date of the policy. What we are talking about here is that if a man gives the benefit of a policy to his wife for a nominal consideration, then immediately the question comes up: Why should the man have to pay tax on or take into his income the cash surrender value of that policy at that time? You might also think that we have just finished with gift taxes and have provided that a man can give money to his wife without being subject to gift tax. That is true.

Hon. Mr. Phillips (Rigaud): Except in Quebec.

Hon. Mr. Hayden: Well, it is true but there are a few other exceptions. As you know, income tax-wise things are not always what they seem, because there is the difference between a transaction under which a man gives something to his wife and the transaction under which a man earns income. Now, it is income when he gives the policy away, and since it is income he pays tax on it. If it were not for the new gift tax exemptions, he would also pay tax when giving the policy to his wife; so, at least he only has to pay one tax now. Having dealt with the gift tax provisions in the Estate Tax Act, at least on the donation of the policy by him to his wife for a nominal consideration, the cash surrender value of the policy whether large or small