

Hon. Mr. HAYDEN: In one case the door is closed, but before the Committee can argue his case.

Hon. Mr. BENCH: I have been wondering about this particular point. Mr. Davies gives me the impression that he is afraid that if he comes to Parliament with a bill designed to convert this company into a mutual company and seeking to employ its surplus as his brief indicates the company desires to do, that he will be met with the provision in the Income War Tax Act which is insurmountable. Do I understand you correctly, Mr. Davies?

Mr. DAVIES: I think, Senator Bench, that it is more than fear I have. We have been told that it will happen.

Hon. Mr. BENCH: I suggest to you that if Parliament so decides when dealing with your bill designed to amend your constitution, that it should declare that the surplus being used in this way shall be free of tax, notwithstanding sections 17, 19 and 32A of the Income War Tax Act, that that would be perfectly within the competence of Parliament. It also seems to me that the place and time to argue this particular point is when you come with your proposed bill to amend the constitution of your company.

Hon. Mr. HAIG: He would have all the expense of that application and of the fight that he would be up against. He is in the right church.

Hon. Mr. HAYDEN: Certainly he is.

Mr. DAVIES: Here is the situation, Senator Bench. Suppose that was put in our Act that our scheme or plan was exempt from taxation and that the provisions of these sections did not apply, if the Income Tax Department took a different view they would present our out-going shareholders with a bill. Then we would be subject to a law suit.

Hon. Mr. BENCH: I should say that you would be on perfectly safe ground.

Mr. DAVIES: Maybe, but we do not want to have to go through litigation to prove our case.

Hon. Mr. HAIG: I do not think any committee would make the thing final for you. We would be just as likely to give you as much as any other committee.

Hon. Mr. HAYDEN: The Senate could not give anything that would mean a release from taxation.

Hon. Mr. HAIG: He wants us to recommend that the income tax law be amended so as to permit the company to do that kind of thing.

Hon. Mr. FARRIS: A question that we have to consider is on what basis a company should be facilitated in making a reorganization that would free it from taxation for ever afterwards.

Mr. DAVIES: This is a very serious question for you to decide, because it is my considered opinion—and I think it is easy to get support for it—that as the Act now stands no life insurance company in Canada can accomplish mutualization.

Hon. Mr. HAIG: Did the North American Life pay the tax?

Mr. DAVIES: In its original act of incorporation the North American Life had a clause permitting it to mutualize. So far as I know, no other company has that.

Hon. Mr. HAYDEN: Maybe you should first get an amendment to your act of incorporation giving you the power to mutualize.

Hon. Mr. BENCH: Did the North American Life, by reason of its original act of incorporation containing a clause permitting it to mutualize, escape the incidence of tax on its surplus?