

Income Tax Act

to file a return, for the purpose of evading tax, and, 300 days after the return is due, he files a return in which he gives false information. Let us say that he is finally caught, that everything is fixed, so to speak, and that the amount of tax involved is \$5,000. Am I correct that under section 162 this person might be assessed 5 per cent for failing to file a return, which amounts to \$250? He might also be assessed under section 163(1) for 50 per cent of the tax for failing to file a return, which would be \$2,500. He might be assessed under section 163(2) for putting in false information when he did file a return, and that would amount to an additional \$2,500. Under section 238 he may be charged in the police court with the offence of failing to file a return. The minimum penalty for that offence is \$25 a day for 300 days which amounts to \$7,500.

• (4:20 p.m.)

If I am correct, this person would have to pay \$15,000 in penalties and assessments for failing to file a return and making a false statement if he were liable for \$5,000 in taxes. If I am wrong, please correct me or show me where I am wrong. Also, please state the correct assessable penalty in the event that I am mistaken. It seems there would be a hell of a pile of money to pay.

Mr. Mahoney: First, Mr. Chairman, the penalties under sections 162 and 163 cannot both be levied.

Mr. Hogarth: Are they leviable? That is what I want to know.

Mr. Mahoney: If I may answer to the best of my ability, the penalties under sections 162 and 163 cannot both be levied at the same time. The offence under section 162 is only one of the elements in the offence under section 163. If the minister decided to proceed with section 163, that is where he would go. In the situation the hon. member described, the person ultimately got around to filing a return, and that clearly takes him out of the provisions of sections 163(1) and puts him into the provisions of section 163(2). That person is still subject to prosecution under section 239 and to the penalties that might be imposed under that offence section.

This gets us back to the point originally raised by the hon. member for Parry Sound-Muskoka where we started the discussion on this section. It is quite true that both penalties could be levied under section 163 and under section 239, but the point is that the penalty under section 163 could not be assessed unless it had been assessed before the information and complaint were made. Therefore, the magistrate or judge trying the case under section 239 would be aware and would presumably take into account the section 163 penalty in deciding what penalty he should levy under section 239.

Mr. Hogarth: Mr. Chairman, I want to know what penalties could be assessed. I do not say they would be assessed. I do not say the minister would move under both sections. I want to know if they could be assessed.

It is my understanding from what the parliamentary secretary said a few minutes ago that the gist of the offence under section 163 is for evasion of filing a return. It seems this is not part and parcel of 162. Section 162 relates to failing to file a return. Section 163(1) is concerned with evasion. First, I do not think they are one and

the same offence or that one is included in the other. Second, I cannot see any prohibition against the minister assessing under both those sections if my first premise is correct. Third, I cannot see where there is any obligation on the magistrate to be concerned with whether the man has been assessed under section 162 or section 163, because the penalty is not less than \$25 a day for each day of default.

It is my understanding that the failure to file a return is a failure to file a return as required by section 150. Surely, if you are 300 days late you are not filing as required by section 152. Even assuming I am wrong on the first argument that sections 162 and 163 are one and the same and there would not be an assessment under both sections, is it true this person can be assessed \$12,500 in penalties or fines for failure to pay \$5,000 in taxes and evading the payment thereof?

Mr. Mahoney: Mr. Chairman, I am afraid I was not able to follow this. I leave it to *Hansard*. I will have somebody do the arithmetic and report to the hon. member.

Mr. Alkenbrack: Mr. Chairman, I think this is a pretty serious situation. With the defeat of the amendment moved by the hon. member for Parry Sound-Muskoka, I cannot understand why members on the government side are in such a hurry to support an unreasonable policy which, as someone has said, can put a taxpayer into triple jeopardy.

Section 163 is quite small. It only has three subsections. Since it deals directly with penalties, it should be placed at the end of the bill. This is usual. This is the first bill I have seen, either in this House or in other places, that does not have the penalties listed at the end where they should be listed. I move:

That this section be stood at this time and be included with other sections that are already stood.

The Deputy Chairman: Order, please. The hon. member knows the normal procedure is to ask the committee to consent to standing a clause of the bill. In my opinion, the hon. member cannot do this by means of a formal motion. The Chair is at the disposal of the committee. If it accepts the suggestion of the hon. member, I will gladly stand the particular section.

Mr. Alkenbrack: I ask the parliamentary secretary to do that at this time. We could consider it later when there are more representatives present on both sides of the House. This can be dealt with in a conclusive fashion later along with some of the other sections that have been stood. It would be better for the government and better for the committee if this were done.

Mr. Mahoney: Mr. Chairman, I was going along very well with the hon. member until he started to give the reasons for doing this. This is something the committee should decide. The members who happen to be here at this time are the committee. I am not sure why the member feels he needs additional members on his side of the House to help him make a determination on this matter. I really cannot agree with the reasons given to stand the section.