

*Income Tax Act*

Drafting is more a science than an art; it lies in the province of mathematics rather than literature, and its practice needs long apprenticeship.

• (4:20 p.m.)

I pay this tribute to the draftsmen. I hope they served a long apprenticeship, but I am not very sure that this bill gives evidence that that apprenticeship, and the time they had to prepare the bill, were as long as they might have been.

Somebody else, when discussing the language of legislative draftsmanship said:

The lawyer, like the theologian, is faced with a number of texts that he regards as authoritative and that are supposed to settle any question that can conceivably arise. Each text was once drawn up by someone who presumably meant something by it; but once the document has left the author's hands it is the document that matters, not any unexpressed meaning that still remains in the author's mind.

I think that is the point my hon. friend was making a moment ago when he said that most of this bill is unintelligible to the general public.

For the lawyer, the words of the document are authoritative as words and there is no possibility of obtaining further information from the author, either because the author is dead or because of the rules of evidence precluding reference to him.

Perhaps some of the lawyers in this House hope, as I do, that this rather stupid rule of evidence, that precludes courts from using draftsmen and policy papers when considering what a statute means, will soon be changed. But that is another subject. No one can expect pretty writing from the legal draftsman, who has the duty to try to imagine every possible combination of circumstances to which his words might apply and every conceivable misinterpretation that might be put on them, and to take precautions accordingly. But the trouble with the income tax bill is that when passed it has application, despite its reformative element, to the vast majority of the people of this country, and I very sincerely suggest that it should be understood by those people to whom it is applied.

My plea is that the object of a draftsman is to be precise without being obscure. Surely, it is not too much to expect that a bill should be intelligible to those who debate it and have the ultimate responsibility for it? I suggest that there is a good deal of lulling of Canadians going on through the use of such phrases as "tax reform" and "improvement over the hodgepodge of the present tax law." These phrases are bandied about by people who have not the vaguest idea of the present income tax law or the new law that we are considering. It seems to me that it is all really quite unreal, something like a trick at Hallowe'en.

The three tests should be: will the new law be easier to interpret? Will the new law be simpler to administer? Will the taxpayer have to resort to more professional advice than ever before? I am perfectly certain that the government's bill fails on each of those three tests. It will not be easier to interpret. It will certainly be much more difficult to administer. And I have a very grave suspicion that there will be more professional help needed than ever before when one makes out one's income tax return and is sending a donation to the government of Canada.

The Institute of Chartered Accountants and the Canadian Bar Association have issued what can only be fairly called objective criticisms of the bill as a piece of drafts-

[Mr. Fairweather.]

manship. They have drawn attention to obvious obscurities. I have not heard from anybody on the government side whether any attempts are being made to clear up these useful criticisms, objective and non-partisan. I want to know, are such attempts to be made or are we to proceed with consideration in Committee of the whole House despite the warning signals we have heard from these professional people?

I have one other comment to make on this aspect of the bill. Here I quote Mr. Robert Warner who on the CBC show "Viewpoint" on August 18 gave the example of clause 39, which I confess now I cribbed from him earlier in my speech. He said:

An example of the bill's tortuous wording is the section describing what a capital gain is. That section, No. 39, is about half a page long. As statutes go, that isn't too bad. However, after reading four lines, the reader is directed to turn back to section 3 and read in another page of type. If this were not bad enough, you are told at the same time to read section 3 as though it said the opposite of what it does say.

The explanation for this, I think, is that the draftsman, working under great pressure, took what to him was a helpful short cut. He probably understands what he was saying. But, for years afterwards, taxpayers, their advisers and judges will have to do these mental gymnastics a thousand times over. Little drafting short cuts like these are going to cost the country a great deal.

I know that many say that the tax experts are merely adding hypocrisy to their other sins by complaining. But we—

I assume Mr. Warner is in the category of an expert.

—are not so selfish and irresponsible as to believe that an economic bonanza for us is necessarily good for the country. None of us want to be the beneficiaries of a law which imposes a higher than necessary compliance cost on the rest of society. As Canadians we want the laws to be such that most people can understand and comply with them without the constant attendance of a professional adviser.

I sincerely believe that this is a very legitimate complaint about this huge and complex document.

I remind the House that a statute has been defined very simply. Mr. Speaker, you know this definition well. A statute is "the will of the legislature." I am not at all sure that the interpretation of that will is plain in its meaning. I think that is a fatal flaw in the legislation.

I now wish to deal with the proposed income tax changes as they affect co-operatives. I may say that the Official Opposition has been very much helped by the interest shown by government backbenchers in this aspect of the bill. I am sure the minister has heard both from my leader and others who have spoken, and also from his own supporters, with respect to these proposed changes.

In late August I myself had a very helpful meeting with representatives of Maritime Co-operative Services Ltd. of Moncton, and one of its supporting groups, the Sussex Co-operative. The latter has a paid up membership of 1,400 in my constituency. Representatives of the membership are understandably upset about the new legislation and, as a representative of an area where the co-operative movement has greatly benefited farmers and fishermen, I am glad to remind the minister and the House of the changes proposed and of some of the objections to them. The bill withdraws the three-years exemption for new co-operatives; the bill changes the definition of co-operative corporations; the bill radically alters the way in which members handle patronage dividends for income tax pur-