

confer the power of indirect taxation, the first reason would no longer exist, and the second would exist only if some provinces refrained from imposing an indirect tax or if the rate of tax imposed varied as between provinces.

It would seem that the exemption of goods sold for shipment outside the province should be in the discretion of the provincial legislature. If the exemption is in the provision authorizing the tax it would place a premium on interprovincial trade and offer wide scope for evasion as no province would be in a position to levy a tax in respect of interprovincial sales.

The interpretation to be attached to the word "goods" and to the phrase "consumption or use and not for resale" is of the utmost importance, since the enabling section will represent the sole source of the provincial taxing power and any taxation statute made under its authority will be strictly construed. Questions immediately arise as to whether "goods", as here used, would include services, such as medical services; combinations of services and materials, as automotive repairs; or intangibles, such as electricity or telephone service. Similarly, the question will arise as to whether materials purchased at retail and incorporated in and forming part of a substantially new product, later also sold at retail, are, in the first instance, consumed or used. For example, a small bakery establishment might purchase flour, sugar, shortening, etc., from a retailer at retail prices and, in the broad sense, use these materials in the ordinary course of the business of a baker. The product of the bakery would subsequently be sold at retail and there is at least the possibility of double taxation. Reference to the interpretation applied to the word "goods" as used in existing federal and provincial statutes is not of much value, inasmuch as the meaning given to the word can be and is expanded or restricted by definition within the statute or by supplemental regulations. It would not be possible to define the meaning to be attributed to goods in the enabling section by a definition in the taxing statute of the province. Similarly, no definition could be supplied in a provincial taxing statute as to the meaning to be given to the phrase "consumption or use and not for resale". It is very difficult to express a taxing power of limited scope in terms as brief as those proposed. The alternatives are to assure that the taxing power is sufficiently broad and to place the restrictions in the actual taxing statute, or to make the section conferring the taxing authority sufficiently comprehensive to cover the exact limitations for the taxing authority. If the latter course were followed it would perhaps be necessary to include within the enabling section definitions of the key words of the section after discussion had determined just what that meaning should be.

The final clause of the proposed amendment is apparently designed to prevent anything in the nature of a provincial customs duty. It is suggested that discrimination in favour of the goods of the enacting province as against those of other provinces would be ultra vires under section 121 of the act in any event, but if considered desirable for other reasons there is no particular objection to this clause.

As the basis of consideration and negotiation it might be suggested that head (2) of section 92 be left as it now stands and that a new head (2A) be added to section 92 in some such form as:

"(2A) the raising of a revenue for provincial purposes by indirect taxation at a rate not exceeding three per centum of the sale price in respect of sales within the province to purchases for purposes other than resale."

TEXT OF LETTER SENT TO THE PREMIERS
OF ALL THE PROVINCES

Office of the Minister of Justice

Ottawa, January 20, 1951

The Hon. A. L. Macdonald, P.C., K.C.,
Premier of Nova Scotia,
Halifax, N.S.

Dear Mr. Macdonald:

Since I wrote you on January 2 enclosing a suggested constitutional amendment to make it possible, *inter alia*, for provincial governments to impose an indirect sales tax at the retail level, it has become clear that such a proposal will be subject to the most powerful opposition of the retailing industry throughout the country. Apparently the attack will be made partly on the plausible ground that if provincial governments are allowed the right to levy indirect sales taxation, they may discriminate between different classes or types of retailers based on their residence, or their ownership, or their marketing methods, or what not—thus setting up effective trade barriers between different parts of the country. You will recall that it was on this general ground that a somewhat similar proposal was defeated in the Senate in 1936.

I think you will agree that it would be most unfortunate if, as a result of a similar attack based on similar grounds, we should fail to secure the enactment of a measure which provides for an extension of the taxing powers of the provincial governments. After very careful consideration, therefore, we would propose that there be added to the draft amendment already sent you, dealing with retail sales taxation, the following words:

"and not so as to discriminate between sellers or classes of sellers of the same class of goods."

Yours very truly,

Stuart Garson

Office of the Minister of Justice

Ottawa, January 22, 1951

Hon. A. L. Macdonald, P.C., K.C.,
Premier of Nova Scotia,
Legislative Building,
Halifax, N.S.

Dear Premier Macdonald:

Thank you very much indeed for your letter of January 19 and the exceedingly useful material enclosed in it, which will have our most earnest consideration.

You are right in your assumption that when we have heard from all of the other provinces and got an amendment in more advanced form, we will again send a copy to you so that you will have a chance of looking at it before it is introduced or passed. Indeed, there may be some intermediate correspondence concerning some of the points such as those raised by you in the above-mentioned material which you just sent to me.

May I express my appreciation of the careful attention which you have given to this matter. Your suggestions will be exceedingly helpful.

Yours sincerely,

Stuart S. Garson