

## The Moldowan Decision (S.C. 1977)

The Discussion Paper states "It is generally considered that farms with equity in excess of 50 per cent of total assets are in a relatively strong position. According to the FCC survey, about 91 per cent of farms fall in this category."

It is ironical that this decision was based on income for the appellant from employment, investment and business income as well as a farming enterprise consisting of training, boarding and racing horses for himself and others. The business income and loss reported (1970) in this appeal was <sup>NOT</sup> at issue. The only issue was whether the taxpayer had a reasonable expectation of profit. Dickson, J. (as he then was) giving reasons for the Court said that "source of income, thus, is an equivalent term to business" when referring the words of Section 13(1) now Section 31. He said that the following criteria should be applied in determining what reasonable expectation of profit means:

"The profit and loss experience in past years, the taxpayers training, the taxpayers intended course of action, the capability of the venture as capitalized to show a profit after charging capital cost allowance. The list is not intended to be exhausting. The factors will differ with the nature and extent of the undertaking."

- One would not expect a farmer who purchased a productive going operation to suffer the same start-up lossess as the man who begins a tree farm on raw land. -

"The distinguishing features of chief source are the taxpayers reasonable expectations of income from his various revenue sources and his ordinary mode and habit of work."