

*Income Tax Act*

(c) to facilitate the assessment of tax where deductions or exemptions of a taxpayer have changed in a taxation year,

I agree with that. Then we have this paragraph:

(d) requiring any class of persons to make information returns respecting any class of information required in connection with assessments under this act,

That one becomes a little more difficult. In any event, we come again to what I consider to be the bugbear. It is something that is built in and which gives a discretion to the minister and the Governor in Council and allows no review. It will be very interesting to hear the argument of ministers and the reaction of the Attorney General of Canada to paragraph (j) of subsection (1) of section 221 which reads:

(j) generally to carry out the purposes and provisions of this act.

Who has the discretion to determine whether a regulation generally is to carry out the purposes and provisions of this act? If a regulation were to be challenged in the Federal Court appeal section, I put it to the hon. gentleman that the court would refuse to adjudicate because it will not substitute, as a general rule, its discretion for that of the government or of an official. This is precisely one of those instances where the greatest injustice can be done to a taxpayer. Remember, the taxpayer is not standing there almost naked, almost cold, ready to be plucked and sheared of everything he possesses; this is not the position of the taxpayer.

My colleague says that all these things have been done to him. They have, but that is not the position of the taxpayer. The taxpayer is an ordinary citizen of the country. He may be a corporation, an individual or a partnership. Whatever is the legal entity in existence, he is the taxpayer and he has rights: they are not all on one side. But here we have regulations "generally to carry out the purposes and provisions of this Act."

Fortunately, the government do not include in this act what they were attempting to do in an act which I believe dealt with sales finance companies. There is the famous provision in the regulations section authorizing the Governor in Council on the recommendation of the minister to make regulations generally which in the opinion of the minister would properly carry out the purposes and provisions of the act. I have seen it described elsewhere as "generally for the proper carrying out of the purposes and provisions of this Act." That just cannot be. A court must determine that matter. One cannot have that subjective opportunity built in authorizing, shall we say, the author of the regulations to judge whether they are correct or not.

As I have said, it would be very interesting to have the Attorney General of Canada appear before the committee on statutory instruments, when it next meets, to see whether he would insist that either he or his colleagues, whatever may be the political stripe of the administration, judge whether or not a regulation shall be generally to carry out the purposes and provisions of this act.

There are those who would say that once Parliament has granted the authority to a ministry to make regulations, that is an authority which cannot be removed by

Parliament. This was argued at the time of the passage of the Statutory Instruments Act: it was said that Parliament did not have the power to revoke the authority to make regulations. Here we come to a real question of principle and I put it to you, Mr. Chairman, that this House and the other place, having passed a bill authorizing the making of regulations, can at any time, by proper action, amend, delete or revoke any such regulation. It has the right to alter that authority.

• (5:50 p.m.)

But on the side of the ministry there are those who insist that once the authority to make regulations has been given, it is gone and forever has been transferred from parliament to the administration. That is something that members of the House must never accept and never allow, even for reasons of expediency. It is much better to protect the right of individuals and of this House than to fall down in adoration of the false god of administrative or governmental efficiency.

I want to complete my remarks now, because after eight o'clock I want to discuss the particular matters raised in sections 239 and 232 and then we can proceed with sections 245 to 247, and if we have time I have suggested to the government House leader that we could proceed with section 248 which is a most voluminous interpretation section; it covers some 16 pages of text and might possibly provide a fair amount of progress.

**Mr. Aiken:** I have one question remaining on section 221 (2) which concerns me considerably. It reads:

No regulation made under this act has effect until it has been published in the *Canada Gazette* but, when so published, a regulation shall, if it so provides, be effective with reference to a period before it was published.

This afternoon and on previous days we have raised the problems of double jeopardy and heavy penalties in connection with offences under this act. But here is a situation where a regulation can be published in the *Canada Gazette* and shall be effective at a time before it was published. This indicates to me that one could be convicted in a court and sent to jail for two months, which is the minimum under the indictment section we have just finished discussing, for breaking a regulation which had not even been published. This seems to me to be a terrible provision in any act of the Parliament of Canada.

The second point is that the section seems unreasonable in itself—not just with regard to the penalty—unless the limitation is to the time at which the regulation is actually passed, because if this provision is taken at face value, with no limitation or exception, a regulation could be passed requiring a person to file a return of a certain type, in a certain manner or at a certain time, that regulation being effective two months before it was published. A person then could be in breach of the regulation without its having been in existence. So I think that subsections (1) and (2) of section 221 deserve very serious consideration, particularly in light of the other matters which the ministry has asked to stand for further consideration.

May I call it six o'clock. Mr. Chairman?

**The Assistant Deputy Chairman:** Before rising may I point out to the committee that the hon. member for Edmonton West mentioned that he would like to discuss.