

Income Tax Act

kept as private as possible. This right of privacy is necessarily invaded for the purpose of collecting the revenue, but when that purpose has been attained these two provisions of the act preserve to him that right to privacy in all his affairs. I understand that the tax laws of all countries of the commonwealth provide that disclosures of their affairs made to the tax authorities by taxpayers are to be held confidential and secret.

The taxpayer is by statute compelled to produce and file with the government and its officials for the purposes of revenue certain portions of his private affairs, namely his income, contracts out of which his income is earned, his investments, his relations with other businesses, all of which from time to time play a part in determining what the taxpayer's income may be and have to be produced.

On many occasions in litigation between subject and subject litigants in order to advance their case have subpoenaed officers of the crown for the purpose of compelling them in the witness box to disclose information which came into their possession as officers of the crown under the compulsion of the revenue laws. Where the matter was a civil matter between subject and subject the courts have sustained the basic British right of privilege or privacy and secrecy pertaining to a man's affairs, and the inroad into those private affairs is not to be made through the medium of subpoenas.

I am informed that the courts have said that while the right of production as an abstract right is not to be denied the courts, it is equally clear that that abstract right is not to be invoked by order of the court to serve the end of litigants in our courts which are places of public entry. Having secured the abstract right to the courts, they nevertheless realize the paramount need of the nation as a whole and do not issue orders demanding the production of documents which were obtained under compulsion of law in the course of carrying out revenue measures.

In cases of litigation of civil matters between subject and subject our Canadian courts have followed the practice of the British courts of maintaining the right of the court to compel the production of any evidence; but where the Minister of National Revenue or his officials state that it would be injurious to public interest to produce the documents or to give information they have consistently held that production should not be made or evidence given. I submit that is

very important. I should like to quote from a judgment given in 1893 in the British courts, as follows:

They (meaning those who are in the public service and the minister in charge of the department) must know the exigencies of the public service far better than the court and therefore the courts, although not departing from the power to have the question thoroughly investigated, nevertheless recognize, in all except extreme cases, that the word of the officer who is head of the department ought to prevail on the question whether the production of the document would be injurious to the public service.

Mr. Diefenbaker: What is that case?

Mr. McCann: I do not know the number. It was a British case and this decision was given in 1893. I do not know who the litigants were.

The courts have dealt with this subject on the broad basis of public policy. I think I would go further and say not only would it be injurious to public policy, but since there must be such full, complete and comprehensive disclosure of private affairs by force of a public statute for a public purpose, there is the implied, indeed the distinct understanding that the information will be received by the crown for the purpose of revenue only, and will not be used directly or indirectly in any other direction or for any other purpose.

They should not be permitted to become a source of information for others whom the statute never intended should have them, namely third parties; and those parties should not have access to them either through the courts or through any other channel that would make the documents so received public property. It is essential that the public should know that their affairs must be disclosed completely and fully for revenue purposes so far as those laws may require, and they must be assured and have complete confidence that their disclosures will have that same secrecy that they themselves maintain in relation to their own affairs.

The right of the taxpayer to have his appeal heard by the board in camera is but a continuation of his right to have his affairs kept private and confidential. Court procedures may well expose the trade secrets and every financial operation of a corporation to the full view of its competitors, a process which would completely eliminate the fruits of good business principles and administration and do irreparable harm to the business. His right to appeal to the courts for a judicial interpretation of the law should not depend upon his willingness to forgo his right to privacy. Without that right many taxpayers would not appeal, and thus indirectly would be denied a review of an administrative decision by the court.