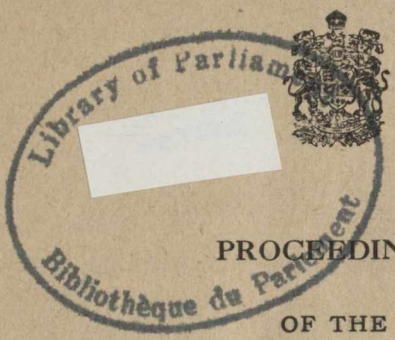
Canada. Parl. Sénate. Special Comm.on Income War Tax Act and Excess Profits Tax Act, 1946.

# THE SENATE OF CANADA






PROCEEDINGS

OF THE

## SPECIAL COMMITTEE

Appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon.

No. 1

TUESDAY, MARCH 26, 1946

CHAIRMAN

The Honourable W. D. Euler, P.C.

CONTENTS:



OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1946

## ORDER OF APPOINTMENT

*(Extracts from the Minutes of Proceedings of the Senate for 19th March, 1946)*

Resolved.—That a Special Committee of the Senate be appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon;

(2) That the said Committee be composed of the Honourable Senators Aseltine, Beauregard, Bench, Buchanan, Campbell, Crerar, Euler, Farris, Haig, Hayden, Hugessen, Lambert, Léger, McRae, Moraud, Robertson, Sinclair and Vien;

(3) That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. MOYER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

Wednesday, 20th March, 1946.

Pursuant to Notice the Special Committee appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, met this day at 2 p.m.

*Present:* The Honourable Senators: Aseltine, Beauregard, Crerar, Euler, Haig, Hayden, Hugessen, Lambert, Léger, Moraud and Robertson.....11.

*In attendance*: Mr. H. H. Stikeman, counsel to the committee.

The Honourable Senator Euler, P.C., was elected Chairman and took the Chair.

On Motion of the Honourable Senator Hayden, it was,— Ordered,— That the proceedings of the Special Committee of the last session be incorporated in and form part of the record of this Committee for the present session.

Mr. H. H. Stikeman, counsel to the committee, was heard and outlined his activities since the last Session of Parliament, and made certain proposals as to the future work of the Committee.

Following consideration and discussion of the Order of Reference, it was,— Resolved, — To report to the Senate recommending:—

1. That the quorum of the Committee be reduced to nine members.
2. That the Committee be empowered to sit during sittings and adjournments of the Senate.
3. That authority be granted to print, from day to day, 1000 copies in English and 200 copies in French of the proceedings of the Committee and that Rule 100 be suspended in relation thereto.
4. That the Committee be authorized to employ such technical and clerical assistance as may be required from time to time.

At 2.35 p.m., the Committee adjourned to Tuesday, 26th March, instant, at 2.30 p.m.

ATTEST:

R. LAROSE,
*Clerk of the Committee.*

# MINUTES OF PROCEEDINGS

TUESDAY, 26TH MARCH, 1946.

Pursuant to adjournment and notice the Special Committee appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, met this day at 2.30 p.m.

*Present:* The Honourable W. D. Euler, P.C., Chairman; the Honourable Senators Aseltine, Beauregard, Buchanan, Campbell, Crerar, Haig, Hugessen, Lambert, Léger, McRae .....11

*In Attendance:* The Official Reporters of the Senate.

On Motion of the Honourable Senator Haig, seconded by the Honourable Senator Campbell;

The Honourable the Chairman (Honourable Senator Euler, P.C.) and the Honourable Senators Campbell, Bench, Haig, Hugessen, Lambert and Léger were appointed a Steering Committee on agenda.

The Honourable Senator Haig read a pamphlet entitled "The Administration of The Income War Tax Act", by D. A. MacGibbon. (An article reprinted from the Canadian Journal of Economics and Political Science, Vol. 12, No. 1, February, 1946).

The Honourable Senator Euler, P.C., Chairman, read an extract from a letter written to him by Professor J. L. McDougall, M.A., Queen's University, Kingston, Ontario.

On Motion of the Honourable Senator Aseltine, seconded by the Honourable Senator Campbell, it was,—

Resolved,—To invite Mr. Charles Oliphant, Assistant General Counsel, Treasury Department, Washington, D.C., U.S.A., to appear before the Committee.

At 3.25 p.m., the Committee adjourned to Thursday 28th March, instant, at 11 a.m.

ATTEST:

R. LAROSE,
*Clerk of the Committee.*

# MINUTES OF EVIDENCE

THE SENATE

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Hon. Mr. EULER in the Chair.

The CHAIRMAN: Gentlemen, there is no one to appear before us today. On Thursday Mr. Thorvaldson will complete his brief. Then the Montreal Stock Exchange will present a brief, copies of which are before you now.

I would suggest that first of all we appoint a Steering Committee.

On motion of Hon. Mr. Haig, seconded by Hon. Mr. Campbell, the Steering Committee of last session was re-appointed.

The CHAIRMAN: I should like your opinion on this point. There is not much doubt that some briefs may be presented dealing with government policy. As each man personally reads his brief and raises the question should we at once shut him off?

Hon. Mr. HAIG: This stock exchange brief deals with nothing but the amount of income tax a stock brokers' partnership should pay.

The CHAIRMAN: Apparently there is a misunderstanding on the part of the general public that this committee is supposed to review not only the machinery but also the policy of the Income Tax Department.

Hon. Mr. HAIG: As I understand it, we are trying to get at the administration or machinery of the act, and to suggest means whereby decisions shall be based on what I may term a rule of law, rather than on the whim of any official.

The CHAIRMAN: Some organizations would be greatly disappointed if they were not permitted to advance their views as to what the rate of taxation should be.

Hon. Mr. LÉGER: It seems to me, Mr. Chairman, that when the parties have gone to the trouble of preparing a brief to submit to us, we should hear them. Whether we pay any attention to their proposals would be for us to decide later on.

The CHAIRMAN: The chances are it would be pretty difficult to separate what bears on policy and what does not.

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Hon. Mr. McRAE: I think, Mr. Chairman, we might let them come and state their questions of policy, but point out that it is not within the power of this Committee to deal with those questions. Probably no harm would be done by putting such material into the record, but we would call to their attention the fact that it is not within the province of this Committee to deal with it.

The CHAIRMAN: Yes; once you shut off these people it is very discouraging all along the line.

Hon. Mr. LAMBERT: Mr. Chairman, this brief from the Montreal Stock Exchange is scheduled to come up here on Thursday. In view of the irrelevant material with relation to our reference, surely the secretary of the Committee or Mr. Stikeman should draw the attention of the representatives of the Montreal Stock Exchange to the reference under which we are working, and make it quite clear to them that they are wasting their time coming here if they expect any sort of cross examination on that subject. I think they ought to be advised in writing that they are not coming within the order of reference. I do not think we should sit silently by, and let them submit their brief without telling them that they are outside the scope of our reference.

Hon. Mr. McRAE: That seems logical.

Hon. Mr. HAIG: Yes, I agree with Senator Lambert's views.

Hon. Mr. HUGESSEN: Did the secretary or the counsel communicate with these organizations and tell them what was our scope?

Mr. HALL: Yes sir, we did that. We quoted the reference in most of our letters to these organizations.

Hon. Mr. HUGESSEN: Would it be a good thing when they send in a brief such as this sent by the Montreal Stock Exchange, to point out to them that it really is not within the scope of our reference.

Mr. HALL: I do not think we did that after the brief was submitted.

Hon. Mr. HUGESSEN: Do you not think it would be a good idea?

Mr. HALL: Yes.

Hon. Mr. HAIG: I think Senator Lambert put it the right way. I do not think we should quote the reference to them but just tell them in plain language that we can not deal with it.

Hon. Mr. LAMBERT: As a matter of fact, we might quite considerably impair our usefulness when it comes to dealing with the real essence of our task.

Hon. Mr. HAIG: The first statement made by Senator Lambert is correct; just call attention to the fact that our reference does not permit us to receive certain material. If they want to come and present their brief they can do it, but they must understand we can make no report on that.

Hon. Mr. LÉGER: Just as an argument is presented in court, we might hear it, and refer the brief to the Department of Finance.

The CHAIRMAN: I would like to be clear on this question, whether if certain people come here and begin to discuss policy the Chairman should stop them.

Hon. Mr. LÉGER: I should say not.

The CHAIRMAN: Let them finish their brief?

Hon. Mr. LÉGER: Yes.

Hon. Mr. HUGESSEN: I think it is only fair before they come up to point out to them that we are not competent to deal with certain parts of the brief which they wish to submit.

The CHAIRMAN: Will you let them come and present it?

Hon. Mr. HUGESSEN: If they wish to.

The CHAIRMAN: That is, in all cases, if there is notice that policy is to be discussed, that they should be notified that the subject is outside our scope.

Hon. Mr. HAIG: This brief deals with a little more than policy. What they are trying to show is the way the tax rate works. They are not saying anything about the rate of tax, but that the tax is not fair as between two classes of people. We really ought to hear that part of the brief, if possible.

The CHAIRMAN: Well, you cannot very well separate it.

Hon. Mr. HAIG: It is pretty difficult.

Hon. Mr. CAMPBELL: I think I know something of what is in the mind of the Montreal Stock Exchange, because I know the Toronto Stock Exchange is concerned with the same question. It seems to me that these representations should have been made before us when the last amendments to the Excess Profits Tax were being made. In spite of the reduction that was intended to be granted to the taxpayer, the effect of the Excess Profits Tax Act as it now stands is that the taxpayer pays more than he did formerly when the tax was 100 per cent. That is what they are objecting to principally and seek, I think, to bring before this Committee. It is true that under the terms of our reference we cannot deal with that matter, but the matter should be brought specifically to the attention of the Department of National Revenue. If we did hear the evidence we might see fit to refer the matter to the Department.

Hon. Mr. LAMBERT: There is one aspect which I think should be considered. The evidence given before this Committee receives considerably publicity in the press. If we are going to go outside the bounds of our reference and deal with matters relating to the incidence of taxation, then we need to be careful not to give anyone cause for thinking that we are discriminating in favour of certain groups. The appeal of a labour group, for instance, or of others in the low income tax brackets for a reduction in taxation might seem to the public to be more worthy than the appeal of a stock exchange. I am inclined to think it would be the part of wisdom to stick definitely to the job of trying to make the income tax law apply fairly to all classes without any arbitrary factors being involved. People who present such a brief as this one from the Montreal Stock Exchange can be referred to the Department of Finance or the Department of National Revenue. We could tell them that such matters as are referred to in this brief do not come within our reference and should be taken up directly with one of the Departments.

The CHAIRMAN: But when a brief refers to things that we are empowered to deal with and to other things as well, what are we to do then?

Hon. Mr. HAIG: I would suggest that we leave it to you, Mr. Chairman. I agree with Senator Lambert.

The CHAIRMAN: I am just wondering what harm it would do if we allowed them to run a bit wild. Of course we cannot make a report on anything outside our reference.

Hon. Mr. HAIG: I think that before the brief comes in we should tell them that we cannot report on parts of it.

The CHAIRMAN: I am just wondering whether we could tell them that we cannot deal with certain parts of it. The brief refers to some matters that we are authorized to deal with, and also it goes on to refer to matters of policy. We would have to tell them that we cannot deal with policy.

Hon. Mr. HAIG: I think Senator Lambert has hit the nail right on the head. What we started out to do, at least what I started out to do, was to get the law amended so that the regulations and the law would be clear. I personally did not want to deal with the question of policy, that is of rates of taxation. I am not objecting to hearing the brief, but I think it deals with matters outside the scope of our intended investigation, whether covered by the actual words of the reference or not.

The CHAIRMAN: That does not answer my question.

Hon. Mr. LÉGER: Who is to tell us that the Minister of Finance would not be interested in this brief? We could refer it to him after it has been presented to us.

Hon. Mr. CAMPBELL: The Minister of Finance does not wish us to trench upon matters of policy at all. He mentioned to me that he felt we should keep away from it, and he resented the fact that some of those who had appeared before us had given evidence on the question of taxation.

The CHAIRMAN: Very well. What shall I do on Tuesday when this brief, which definitely deals with matters of policy, is presented to us?

Hon. Mr. HAIG: I think Senator Lambert's suggestion should be followed.

Hon. Mr. CAMPBELL: I think we should receive the brief. It will take only a short while to present.

The CHAIRMAN: Are we not then trespassing on a field that the Minister of Finance does not want us to enter?

Hon. Mr. CAMPBELL: We cannot make any hard and fast rule. If a person has travelled some distance to get here I do not think we could refuse to hear him. I think we would be doing our duty if we requested him to confine his discussion to matters within the scope of our reference.

Hon. Mr. HUGESSEN: According to the actual terms of reference, we are "to examine into the provisions and workings of the Income War Tax Act and the Excess Profits Tax Act, 1940,—" Of course that brings up the question of taxation. When we have examined those provisions and workings, all we have to do is "to formulate recommendations for the improvement, clarification and simplification of the methods of assessment and collection of taxes thereunder and to report thereon."

The CHAIRMAN: The reference says we are to examine into "the provisions and workings" of the Act. That definitely includes policy. We could hear them on that, but we would not make any recommendations.

Hon. Mr. LAMBERT: I understand the mineworkers are claiming that their wages are not adequate to the work they are doing and that the deduction for income tax is excessive. Suppose they want to come down here to show us how the income tax is too burdensome, I do not think we would feel like hearing them, though it is practically the same sort of case as is covered by the brief now before us, but it comes from another group. I think it is better not to open the door too wide.

The CHAIRMAN: Is it the wish of the Committee that when briefs are received they will be studied and examined, and if they contain irrelevant matters that those who submitted the briefs will be notified that we are not empowered to deal with those particular features of their briefs, but if they still wish to come and present their briefs we will allow them to do so?

Hon. Mr. HAIG: Certainly, under those circumstances, if we have given them notice.

Hon. Mr. CRERAR: Mr. Chairman, when the Committee was set up I think it was clearly understood that it would not examine into incidents of taxation, and its power to make recommendations was confined to matters relating to administration. If in presenting the brief some criticizes the administration, but they also include something relating to the incidents of taxation, the latter should be excluded when we come to consider our report.

The CHAIRMAN: Quite so.

Hon. Mr. CRERAR: We can tell them when they give their evidence that we are not dealing with those matters; that we are considering the methods of administration, and if they want to put the material in the record, such as this brief we have before us now, no harm is done, and there may be some information contained in it.

Hon. Mr. HAIG: I think they should be notified before they come.

The CHAIRMAN: That is the understanding, that they be notified, and if they persist in putting such irrelevant matters into their briefs we will tell them we cannot make reports on them.

Hon. Mr. CRERAR: Those people who are coming before us have perhaps already prepared their briefs. If we notify them in that manner it might involve their having to re-write their briefs, and cause a delay of two or three weeks.

Hon. Mr. HUGESSEN: Senator Crerar, I do not think you were here when counsel told us that everyone who was invited to submit a brief was told the clear terms of the reference. If their briefs do tread on something we are not empowered to deal with, it is their own fault.

The CHAIRMAN: You would allow them to come here?

Hon. Mr. HAIG: I would.

Hon. Mr. LÉGER: I agree with Senator Crerar. You can not very well stop them at this stage. I do not think I would notify them beforehand. If we do, they will not come, and they will feel slighted because they were practically told not to come.

Hon. Mr. CRERAR: Then any examination by members of the Committee of witnesses who present briefs, such as Mr. Thorvaldson, must be confined wholly to the administrative matters and should not deal with incidents of taxation, although they were dealt with in the briefs.

The CHAIRMAN: The members of the Committee will have to govern themselves and not go outside the scope of reference in their questioning.

Hon. Mr. HAIG: If we are through with that subject, I should like to bring to the attention of the Committee an article written by Dr. D. A. MacGibbon, one-time professor in the University of Alberta, and one of our grain commissioners for Canada. This article was published in the *Journal of Economics and Political Science,* Volume 12, No. 1, February, 1946. The article reads as follows:

## THE ADMINISTRATION OF THE INCOME WAR TAX ACT

BY D. A. MACGIBBON

*Reprinted from the Canadian Journal of Economics and Political Science, Vol. 12, No. 1, February, 1946*

### THE AMINISTRATION OF THE INCOME WAR TAX ACT

At the present time the Income War Tax Act, to give its official title, is receiving a good bit of public attention. The Minister of Finance has intimated that a general revision of the measure is in contemplation. This, however, is not likely to take place until an agreement has been reached between the federal administration and the provinces over the allocation of tax sources. It will be recalled that in 1942 the federal government, in order to put itself in a position to cope with the financial burdens imposed upon it by the war, obtained an agreement from the provinces by which the latter relinquished the use of an income tax as a means of securing revenue during the war in return for compensation. This placed the Dominion authorities in complete control of this important instrument of direct taxation and made possible the increased use of the income tax in the national emergency.

A rapid expansion in the federal taxation of income followed this agreement and the yield of the tax increased enormously. Several reasons account for this increase. The tax was made more inclusive; the rates of levy were sharply stepped up and vigilant efforts were made to secure complete coverage in collections. Loop holes in the Act by which the tax could be avoided were closed and more drastic measures were taken to make certain that individuals and corporations did not succeed in escaping the net of the collector. Finally, of importance was the very substantial growth in pecuniary income in Canada.

One aspect of the situation, however, has been growing public dissatisfaction with the administration of the Act. Complaints have become common relating to the slowness with

which assessments are made, the increased intricacy of the statute, the wide latitude available to the taxing officers by virtue of provisions in the Act conferring administrative discretion, and the uncertainties engendered by the difficulty of getting prompt decisions where appeals have been lodged with officials of the Division. An addtional source of annoyance has been the delays which frequently ensue in making refunds to the taxpayer after it has been demonstrated that he is entitled to receive them. On the whole, however, the Canadian public have not been inclined to be excessively critical of the administration of the Income War Tax Act. The public has recognized during the war years that defects in the administration of the Act were due, in part at least, to the enormous burden that was suddenly laid upon the officials of the Income Tax Division. It was obvious that the expansion of the Division entailed difficulties in obtaining and training suitable personnel and in securing adequate accommodation, equipment, and supplies in the face of the scarcities created by prosecuting the war. It is common knowledge that conditions of cronic overwork prevailed among the top officials.

With the advent of peace the time has come when the Dominion government should re-organize the Division with a view to achieving greater internal efficiency and to giving the taxpayers more clear cut and expeditious service. Of the necessity of improvement there can be no doubt. Levying and collecting the income tax is a task of the highest importance for the federal administration. In its magnitude alone it almost qualifies as "big business". In one sense it is the biggest business in which the Federal government is engaged for the Income Tax Division touches more taxpayers, directly and onerously, than any other branch of the administration. Judged by almost any standard of importance the organization of the routine of preparing proper forms, of assessing thousands of returns, of dealing with problems of interpretation, and of collecting the amounts due to the Federal Treasury warrants the most careful examination to ensure the best results. It is in the public interest that the taxpayer's approach to the federal income tax office should not be one of mingled annoyance and frustration but rather one of confidence that he will receive prompt and equitable service.

The present brief note does not deal with the fundamental problems of equity and justice which arise when basic income tax rates, degrees of progression, the special circumstances involving exemptions, deductions, and tax credits come under review. It is directed purely to the advantages of improving the administrative feature of the Act. The taxpayer is clearly entitled to prompt and unambiguous service while the responsibility that falls upon the Minister of Finance in determining the extent to which recourse must be had to the income tax would be obviously lightened if the administration of the Act was functioning smoothly and expeditiously.

In any re-organization of the income tax administration there are certain cardinal points that must be kept in mind if the organization is to perform the duties that devolve upon it with efficiency and with the least inconvenience to the taxpayer. To this end the head of the Income Tax Division should be relieved of much of the ordinary routine of administration in order to be able to devote sufficient time to the larger problems involved in the taxation of income. The income tax should be carefully integrated to the whole economic life of the country. This requires study. The tax has shown itself to be highly flexible in meeting the needs of the exchequer but the effects of income tax changes are far-reaching. "The rates of income tax can easily be raised or lowered; every rise in the rate will have a deflationary effect on incomes for it will reduce people's expenditures, every fall in the rate will have an inflationary effect on incomes, for it will increase people's expenditures."[1] If the head of the Income Tax Division is daily embroiled in the differences that arise concerning assessments and collateral problems, apart from the time involved, he is very likely to lose the sense of perspective and proportion that is so necessary to bring to the consideration of questions of tax policy upon which he may be called to advise the government. It is easy to become absorbed in the fascinating adventures involved in checkmating schemes designed to avoid the income tax or in other problems purely of a routine nature. But the head of the Income Tax Division can be of much greater value to the government. By reason of the nature of his post he possesses an unrivalled opportunity to watch the ebb and flow of national income, to appraise the burden of the tax in respect to different income groups, to probe evidences of avoidance on a mass basis, to consider the removal of inequities, and in general to study the broad social effects of changes in the levy in its wider incidence upon the economic life of the country. It should be possible for the head of the Income Tax Division to give consideration to important problems of this nature while maintaining general supervision over the activities of his Division.

This implies that he should have under him a deputy who would act as his chief executive officer. The deputy in turn would work through the heads of the various branches of the Division. These administratively would come directly under his control and be accountable to him for the performance of their duties. He would also have under him directly the supervision of the branch offices throughout Canada with a view to maintaining uniformity of practice and to preventing any of these offices slipping into careless methods of business. In brief, as the deputy head charged with running the department, as far as its routine functions were concerned, he would be responsible for streamlining its operations in order to accelerate its present rate of performance. The advantages of this arrangement should be two-fold. The chief of the division, relieved of much of the drag of routine work, would be set free to give consideration to the broader questions arising; concentrating chief administrative control in the hands of a deputy, not subject to interruptions arising from other problems, would give the latter an opportunity to do a really good job in this narrower field.

The third point of importance relates to the protection of the taxpayer from arbitrary rulings by officials of the Department. The present statute is notable for the many instances in which it fails to lay down a clear-cut rule of law or procedure but meets the situation contemplated by a grant of administrative discretion. Where differences occur between the taxpayer and the assessing official and the problem is such that administrative discretion comes into play the taxpayer should have some right of appeal if he feels that he is receiving unfair or discriminative treatment. This is important. Where the powers of discretion can be invoked the possibility of unfairness or discrimination always exists. A right of review could be established without too much difficulty by instituting within the Division an appeal board completely independent of the run of administrative work whose sole function would be to review decisions of assessing officers on appeal from taxpayers. Such a board might consist of a chairman with judicial qualifications, an accountant, and an economist or business man. Appeals coming before the board would entail a written decision giving reasons for the conclusion reached which would be binding upon the Division. This would be the surest safeguard against the discriminative abuse of discretion by tax officials. Moreover, there would no doubt quickly build up sufficient "case law" on problems coming before the board to be of great advantage to the individual taxpayer or corporation in making clear the scope and limits of the statute. It would also be of value to the assessing officials by establishing firm precedents upon which to base continuity of practice. Disputes arising between the assessing officer and the taxpayer when referred to the board for decision should carry with them, in the event of dissatisfaction by either party with the decision rendered, the right of appeal to the Excheque Court.

The final point to be emphasized is the importance of enlarging and strengthening the statistical branch within the Income Tax Division. The tax occupies such a fundamental position in the fiscal system of the Dominion that the results of the most refined statistical analysis of the data provided by its operation should be available to the chief of the Division and to the government. The primary function of such a statistical branch would be to supply the fullest information upon which judgments could be formed with respect to possible amendments to the statute. In addition, the nature of the economic data that becomes available through the returns filed with the Income Tax Division should make it not difficult for the Branch to supply reports that would prove of immense valu to the government in determining its basic economic outlook. Investigations for this purpose, when carried on within the branch, would be able to make use of much material that ordinarily would not be available for statistical analysis. This branch would also be the natural source from which the head of the Division would be able to draw information upon which to base conclusions when called upon to advise the government.

There are undoubtedly various other administrative aspects of the Income War Tax Act that could be improved or strengthened. The changes advocated here involve a re-organization of the Income Tax Division with a view to increasing its efficiency as a tax-assessing and tax-collecting agency; to making it possible for the head of the Division to devote more time to the fundamentals of income taxation; to providing him with the requisite technical staff on which he may depend to procure the data he requires; and finally, and not of least importance, to protecting the taxpayer from the danger of arbitrary rulings by the tax official.

D. A. MacGibbon.

Winnipeg.

**The Canadian Journal of Economics and Political Science**
**February, 1946**

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*Applications for membership should be addressed to the Secretary-Treasurer, 273 Bloor St. W., Toronto, Ontario.*

On motion by Hon. Mr. Haig, seconded by Hon. Mr. Leger, it was ordered that the article read by Hon. Mr. Haig be incorporated in the report of the committee's proceedings.

The CHAIRMAN: I have received this letter from Mr. John L. McDougall. (Reads letter). I replied to him in these terms. (Reads letter in reply). Professor McDougall answered me as follows: (Reads letter).

What is the wish of the committee in regard to this correspondence?

Hon. Mr. CAMPBELL: I do not think any of the letters should be inserted in our minutes.

The CHAIRMAN: Suppose we insert the final paragraph of his first letter:

Finally, the facing page to part 6 of your Proceedings describes me as "representing the Income Tax Payers Association of Canada." I cannot claim that honour. I began the study at the request of that association. While it was in progress, I was asked to address it, when completed, to you and not to them. It was done in my private and professional capacity, and I alone am responsible for it.

Is that satisfactory?

Some Hon. MEMBERS: Yes.

Hon. Mr. MCRAE: Mr. Chairman, there is one point which I wish to mention now and which may be considered later. I understand in the United States appeals from assessments are taken care of by some kind of local or district board; they do not go to Washington. It seems to be to be very important that we should get some information along that line. It seems to me that would have some bearing on information we will require later on.

The CHAIRMAN: Mr. Stikeman told me the other day that there was a very competent official of the United States Income Tax Department quite prepared to come over here and give us the benefit of his knowledge and experience.

On motion of Hon. Mr. Aseltine, seconded by Hon. Mr. Crerar, it was ordered that Mr. Olephant of the United States Income Tax Branch be invited to appear before the Committee. Carried.

On motion of Hon. Mr. Haig the Committee adjourned to meet on Thursday, March 28 at 11 a.m.

1946

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

## SPECIAL COMMITTEE

Appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon.

No. 2

THURSDAY, MARCH 28, 1946

CHAIRMAN

The Honourable W. D. Euler, P.C.

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Brief submitted by the Edmonton Chamber of Commerce

OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1946

## ORDER OF APPOINTMENT

*(Extracts from the Minutes of Proceedings of the Senate for 19th March, 1946)*

Resolved,—That a Special Committee of the Senate be appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon;

(2) That the said Committee be composed of the Honourable Senators Aseltine, Beauregard, Bench, Buchanan, Campbell, Crerar, Euler, Farris, Haig, Hayden, Hugessen, Lambert, Léger, McRae, Moraud, Robertson, Sinclair and Vien;

(3) That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. MOYER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

THURSDAY, 28th March, 1946.

Pursuant to adjournment and notice the Special Committee appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, met this day at 11 a.m.

*Present:* The Honourable W. D. Euler, P.C., Chairman, the Honourable Senators Aseltine, Beauregard, Campbell, Crerar, Haig, Hugessen, Lambert, Léger, McRae, Moraud and Sinclair.—11.

*In attendance:* The Official Reporters of the Senate.
Mr. H. H. Stikeman, Counsel to the Committee.

Mr. H. H. Stikeman, Counsel to the Committee read a Brief submitted by the Edmonton Chamber of Commerce, Edmonton, Alberta.

Mr. H. H. Stikeman, Counsel, submitted a Memorandum on Administration and Appeal Procedure of the Income Tax system of several other countries. This memorandum will be taken into consideration at a later date.

Mr. G. S. Thorvaldson, K.C., Winnipeg, Manitoba, representing the Income Tax Payers' Association, resumed the presentation of his brief, and was again questioned by counsel.

At 1 p.m., the Committee adjourned until Tuesday, April 2nd, at 10.30 a.m.

ATTEST:

R. LAROSE,
*Clerk of the Committee.*

# MINUTES OF EVIDENCE

THE SENATE,

THURSDAY, March 28, 1946.

The Special Committee of the Senate to consider the provisions and workings of the Income Tax Act, etc., resumed this day at 11 a.m.

Hon. Mr. Euler in the chair.

The CHAIRMAN: Gentlemen, as we now have a quorum will you please come to order. We have only one witness to appear before us this morning. It was thought that we would have two, but the Montreal Stock Exchange people have found that they can not be here. We have only Mr. Thorvaldson of the Income Tax Payers Association. His plane, I believe, arrived only about twenty minutes ago, but we expect him here very soon.

In the meantime I have a letter from the Edmonton Chamber of Commerce. It is addressed to myself, and reads as follows:—

> The Edmonton Chamber of Commerce appreciates the opportunity of making submissions to the Senate Commission enquiring into the taxation structure of Canada.
>
> Paragraph one, of the attached submission, recommends that a thorough study be made of the present basis of taxation on income; and paragraph two indicates some of the factors in the present Act which should be remedied, changed or eliminated in order to favourably effect the taxpayer.
>
> It is understood, of course, that these recommendations are made only in respect to the present act, and we are still of the opinion that many bases of the present Income Tax Act should be amended.

Hon. Mr. CRERAR: From the letter you have just read it would appear to deal almost entirely with incidence of taxation.

The CHAIRMAN: According to the letter, yes, but I see no objection to it.

Hon. Mr. LÉGER: I move that it be received.

The CHAIRMAN: And read?

Hon. Mr. LÉGER: And read.

Mr. STIKEMAN: The report reads as follows:—

## EDMONTON CHAMBER OF COMMERCE

REPORT OF TAXATION COMMITTEE AS APPROVED BY COUNCIL OF THE EDMONTON CHAMBER OF COMMERCE

*March 20, 1946*

1. It is recommended that a Royal Commission be set up to investigate the present basis of taxation on income, and the effect of present taxation in the economic development of the country; and, further, to recommend (*a*) such amendments regarding administration of the Act as will tend to simplification of the tax structure; and (*b*) such amendments as will assist rather than retard economic development.

The Chamber believes that the present Act shows a regrettable tendency to deal with this important aspect of Canada's economic life on a piece-meal basis rather than on the basis of broad, national policy as it is affected by post-war and national conditions.

2. Specifically, the Committee recommends the following as desirable changes in the present Act:—

(*a*) A general reduction in all taxation, especially in income and excess profits tax;

(*b*) That the normal tax should be repealed and in the interests of simplification revision of rates made to compensate for any loss of revenue which must be made good;

(*c*) That primary allowances for families should be increased. A marked disparity now exists between the tax burden upon married persons and single persons, and the present income tax structure as it affects allowances for families does not give encouragement to marriage and the raising of families;

(*d*) That the $150 tax allowance to the husband of a wife being the recipient of an earned income should be eliminated;

(*e*) The Committee agrees that all business should be equitably taxed: In this connection it is further recommended that new business should be income tax exempt for a period not exceeding one year and that this should apply to all business regardless of type.

(*f*) The Committee believes that legitimate expenses should be allowable as a deduction to all salaried persons whose business requires these expenditures in order to produce income, Members of Parliament for instance, indemnity should be shown as taxable income but the expenses incurred in meeting the obligation, in attendance at Parliament, etc., should be allowable as a deduction.

(1) It is recommended that the Department should admit as expenses of operation those charges which must be paid from a practical business standpoint, and from which no permanent capital asset is obtained, which charges are to-day disallowed because of narrow interpretations of the Act.

(*g*) It is believed that western extractive industry is penalized since income tax rates are not comparable with those of Eastern Canada.

It is believed that all extractive businesses should be given allowances on identical basis either as a percentage or net income or as a percentage of the article extracted and all should have the same depletion allowance as far as dividends are concerned. A number of vital discrepancies are pointed out in this connection, as, for example, pulp, in Eastern Canada, lumber in Western Canada, base metals and coal, oil and gold. It is believed that risk capital would be encouraged by the establishment of standard taxation practice and policy in these industries.

(*h*) (i) Depreciation should be recognized as a right of every taxpayer and and should be removed from the provisions of section 6 in the Income Tax Act. The Act should not restrict the right of the taxpayer to secure basic rates laid down by the Department regardless of his basis of claims in prior years. As a matter of administration the restriction enjoyed during the war with regard to depreciation allowances should be removed to give all taxpayers the right to utilize the known basic rates.

(ii) Functional as well as physical depreciation should be recognized.

(*i*) That Section 15-A should be amended so as not to discourage the investing of risk capital in new ventures and should be regarded as apply-

ing only when existing concerns divide departmentally or geographically into subsidiary concerns for the purposes of increasing income after taxation.

We consider that the writing into the Act of special taxes (such as the tax on capital gains on Alberta bonds) is undesirable.

We recommend continuance of the principle by which capital gains are not taxed nor capital losses allowed. Levies on capital for special reasons should not be made, in the opinion of the Committee, but, if made, should not be included in the Income Tax Act which should be entirely devoted to the consideration of taxes on income.

(*j*) The wide discriminatory powers now vested in the Minister should be the subject to consideration and review.

(*k*) That an Independent Board of Tax Appeal be set up, enabling appeals other than to the same body which issued the assessment (as is now the case), but without eliminating the right of the Crown and taxpayer to carry a further appeal to the Courts.

(*l*) That all taxpayers have the right of appeal from the findings of the Board of Referees to the Courts.

(*m*) That all regulations and rulings of the Department be codified and published.

(*n*) That no rulings or regulations or amendments to the Act should be made retroactively.

(*o*) That no interest be charged on unpaid tax after a period of two years following the filing of the return with the Department.

The CHAIRMAN: I should think that some of those recommendations ought to be amplified; they are a little difficult to interpret.

Hon. Mr. CRERAR: The last ninety per cent of the brief deals with incidence of taxation.

The CHAIRMAN: Some of it does not.

Hon. Mr. CRERAR: The concluding part of it certainly does.

Mr. STIKEMAN: The reference to the tax court would appear to be within our jurisdiction.

Hon. Mr. MCRAE: And interest on payments.

The CHAIRMAN: Also in the matter of appeals.

Hon. Mr. HUGESSEN: And discretion.

The CHAIRMAN: Mr. Stikeman, is there anything else to come before the committee.

Mr. STIKEMAN: I can explain this document a little if you would care, sir. At the last meeting at which I was present we told honourable senators that we would prepare during the Christmas recess certain studies of the administrative set-up and the tax appeal system in the other countries of the Commonwealth, the United States, and Great Britain. It was felt that the preparation of these studies would render a more ready appreciation of the various subjects which may come before this committee and accordingly we have had these papers mimeographed and distributed.

It will be noticed that this document covers five jurisdictions, and for those who wish to have a summary of each piece of material, a synopsis and table will be found at the end. For instance, if you thumb through the first one, that of Australia, of about eight or nine pages you come to two charts, which show the administrative set-up of the department, and the course which appeals from assessments takes. This has been done at the conclusion of each paper so that you can visually compare the results in each case. We have a long sheet which

shows a comparative table across coming, and it should be here tomorrow. I recommend that if the various members of the committee have an opportunity to examine this material they should do so before we hear the Bar Association and the Chartered Accountants' Association, as I think undoubtedly these associations will touch upon material which is basically similar to that included in this document.

Hon. Mr. CAMPBELL: Mr. Stikeman, can you answer off-hand whether or not there is any appeal from the administrative discretion as to questions raised under Appendix B, as to the Commission's power to decide certain matters; that is, referring to Australia.

Mr. STIKEMAN: Yes. If you will look at the chart which immediately precedes the page on which Appendix B is written, you will see in the third block from the bottom "Decision of Commissioner," and in the left-hand block above that: "Board of Review. Independent tribunal consists of chairman and two other members appointed by Governor-General. Reviews decisions of Commissioner and may exercise same powers as Commissioner in making assessments. Decision final on questions of fact."

Hon. Mr. CAMPBELL: So they may review the administrative decisions of the Commissioner?

Mr. STIKEMAN: Yes, sir; but cases may only come before that Board of Review on questions of law.

The CHAIRMAN: Would the members of the committee like Mr. Stikeman to prepare any other report? I suppose we will get what information we want about the United States Income Tax Branch when we hear Mr. Oliphant.

Mr. STIKEMAN: That information is given in the report I prepared, sir.

The CHAIRMAN: Oh, this report is not about Australia only?

Mr. STIKEMAN: No; it deals with the procedure in Australia, New Zealand, South Africa, United Kingdom and the United States.

Hon. Mr. MCRAE: We will be able to ask Mr. Oliphant appropriate questions.

The CHAIRMAN: When would you like to have him here, Mr. Stikeman?

Mr. STIKEMAN: It occurred to me that he might come on Tuesday the 9th of April, and then appear as a witness at the convenience of the committee. It is possible that one of the witnesses whom we expect to have on the 9th may not come. Mr. Oliphant has expressed a desire to be present at a meeting here to hear the general tenor of the objections raised, because in the United States at this time there is a similar movement which has not got to the stage that we have reached here but is still in the domain of public disapproval, particularly of the appeal situation. In the United States some years ago a Board of Tax Appeals was set up as an informal body and then was transformed into a court and became a formal body. The moment it became a court a bottle-neck was created by the inevitable slowing down through the requirements of proof and witnesses and formal procedures that brought about delays. A further bottle-neck was created because appeals are provided from this court to the Supreme Court of the United States, so that as fast as appeals were heard by the Court of Tax Appeals the tendency became to lodge appeals with the Supreme Court of the United States. The Supreme Court was not enlarged and so was incapable of hearing all these appeals, and the result is that the United States Supreme Court is now four and five years behind with its judgments in some tax cases, and the administration of justice is in the same position as it was before the Court of Tax Appeals was created. This situation has brought about a popular movement, sponsored by certain economists, accountants and legal writers, to establish an ancillary or secondary branch of the United States Supreme Court to deal exclusively with appeals from the various tax courts, in order to break that bottle-

neck. The opposing camp would have the Court of Tax Appeals the final body on all tax questions. So Mr. Oliphant is particularly interested to find out the lines upon which we are proceeding here.

Hon. Mr. CAMPBELL: The appeals to the Supreme Court are strictly on questions of law, are they?

Mr. STIKEMAN: Yes.

The CHAIRMAN: Mr. Thorvaldson is here now and I understand Mr. Stikeman wishes to ask him some questions.

Mr. G. S. Thorvaldson, K.C., Winnipeg, appeared on behalf of the Income Taxpayers' Association.

Mr. STIKEMAN: Mr. Thorvaldson, when you left here the proceedings were arrested at page 320 of the published report, before you had an opportunity of answering my last question. I think the simplest thing to do would be to ask that question again and continue from there. On page 8 of your brief you say: "But, in Canada, one of the results of the multiple discretionary powers contained in our two acts render the application of most judicial decisions and some of the vital principles of income tax law for the protection of the taxpayer, completely ineffective." I asked you what decisions of the courts have been rendered ineffective by the discretionary powers.

Mr. THORVALDSON: I do not think I said that any decisions of the courts have been rendered ineffective. What I did say was that the courts became quite ineffective because so many income tax matters in Canada were based not on legal principles but on administrative discretion.

Mr. STIKEMAN: Your language, Mr. Thorvaldson, is: "One of the results of the multiple discretionary powers contained in our two acts render the application of most judicial decisions and some of the vital principles of income tax law for the protection of the taxpayer, completely ineffective."

Mr. THORVALDSON: Well, what I really intended there was that most legal principles applicable to income tax are ineffective, resulting from the discretionary powers, and when I referred to legal decisions I meant essentially legal decisions under the English income tax law, meaning thereby that principles of income tax ought to be the same here as in England, but that by virtue of the fact that so much discretion was interposed under the Canadian Acts the English decisions were wholly inapplicable, even where the legal principles underlying the matter might be entirely similar.

Mr. STIKEMAN: Do you not think that one of the reasons for the inapplicability of the English decisions is the difference between the language of the two statutes?

Mr. THORVALDSON: That would account for many of the English decisions being inapplicable here.

Mr. STIKEMAN: What example can you give as showing that the multiple discretionary powers contained in our two acts render the application of English decisions ineffective?

Mr. THORVALDSON: I have not any example of that kind before me. I am just referring to broad principles.

Hon. Mr. HUGESSEN: Is it a fact that discretionary powers under the English act are much more restricted than under the Canadian act?

Mr. THORVALDSON: Much more restricted, yes. I do not think there is any doubt about it.

Hon. Mr. HUGESSEN: Is that your conclusion too, Mr. Stikeman?

Mr. STIKEMAN: I would not like to answer that, sir. It was my general opinion that administrative discretion created by our statute was wider and hence perhaps more restrictive on the taxpayer in its potential effect, than that under the English statute.

Mr. THORVALDSON: Yes, that is right.

Mr. STIKEMAN: In Canada?

Mr. THORVALDSON: Yes.

Mr. STIKEMAN: But I suggest that the restrictive nature of the minister's discretion has not limited the decisions either of the Canadian courts or of the English courts, because the judgments so far have tended to confirm the principle along which discretion has been exercised.

Mr. THORVALDSON: If you mean our courts are not restricted in their application of income tax law, I wholly disagree with you. That is our complaint, that our courts are completely restricted because of having to hold in general that where the minister exercises his discretion, and has exercised it properly in accordance with the legal principles, the courts cannot intervene. I think the first break in the line of decisions has just recently been made in the Supreme Court in the case of Wright's Canadian Ropes. I referred to that case quite frequently in my submission here in December. That was just after the Judge of the Exchequer Court had rendered a decision which was adverse to the taxpayer and favourable to the minister. Since then, as you know, the Supreme Court has reversed that decision. This may have opened up a new principle entirely which the courts may follow in respect of ministerial discretion. But that does not get away from the fact that we are wholly opposed to the legislature granting all the discretion to the minister which it has granted, and which we claim to be really a grant of legislative power to the Minister of National Revenue.

Mr. STIKEMAN: Your objection is not to the exercise of discretion, but that the statute empowers the exercise of discretion in such a way that the courts have no alternative but to confirm the use of the discretion?

Mr. THORVALDSON: Yes. I hope to make that clear. If the legislature sees fit to grant discretion I cannot complain against the minister, but I do complain against the legislature for having granted that discretion.

Mr. STIKEMAN: From your language I was slightly confused by your reference to some vital principles of the income tax law for the protection of taxpayers. I presume that in specific terms you mean the average British citizen has a right to appeal to the courts from any authority?

Mr. THORVALDSON: Yes; and it was wholly contrary to proper parliamentary principles for the legislature to grant the right of legislative power to an individual or a committee. That is what we claim has been done to such a large extent in the Income War Tax Act.

The CHAIRMAN: In the case you mentioned, the Wright's Canadian Ropes case, the Exchequer Court gave its decision on the ground that what discretionary power was exercised was according to law.

Mr. THORVALDSON: Yes, that is right.

The CHAIRMAN: An appeal was then made to the Supreme Court.

Mr. THORVALDSON: The Supreme Court of Canada.

The CHAIRMAN: And that court reversed the decision.

Mr. THORVALDSON: Yes.

The CHAIRMAN: Its interpretation of the law was other than that of the Exchequer Court?

Mr. THORVALDSON: Yes.

The CHAIRMAN: You would think that would be a precedent possibly?

Mr. THORVALDSON: Well, what the Supreme Court said in effect was this: It is true the minister has exercised his discretion, but in this case the discretion is not based on reason, it is based on unreasonableness. That was the word used by one or two members of the Supreme Court.

The CHAIRMAN: Would not the Supreme Court base its decision on the law, the statute?

Mr. THORVALDSON: The case has been reported, and it is not very easy for me to deal with that case accurately without having it before me. But I do think that is the decision itself, and the language used by the judges should be brought to the attention of this committee and put on the record.

Hon. Mr. CRERAR: Could we infer, Mr. Thorvaldson, that the judgment of the Supreme Court said in effect that the law was unreasonable?

Mr. THORVALDSON: Oh, I think you can infer that from the decision. Naturally the court never likes to go to the extent of saying a law is unreasonable. The court says: No matter how unreasonable the law is, we are here merely to interpret that law, and it is up to the legislature to decide whether it is unreasonable or not.

Hon. Mr. CAMPBELL: Was not the effect of the decision that the discretion exercised by the minister was not a discretion within the provisions of the particular section?

Mr. THORVALDSON: I do not know if that would be a fair statement. The court objected very strenuously to the fact that the minister refused to disclose to the appellant, namely, the Wright's Canadian Ropes, the reason for the exercise of the discretion, namely, what lay behind the discretion, and the court made severe strictures on that fact. Then the court proceeded to say that on the facts before it—not having the facts before the minister, because the minister refused to divulge on what basis he exercised his discretion—it decided that the minister's decision could only be based on unreasonableness. That is the gist of the decision as I recollect it.

Mr. STIKEMAN: I understand that leave for appeal has been applied for to take that decision to the Privy Council.

Mr. THORVALDSON: I hear so. That is all the more reason why I feel the Dominion Parliament should take hold of this thing.

The CHAIRMAN: And make it unmistakable.

Mr. THORVALDSON: Yes, make it unmistakable, that some of these arbitrary powers should be taken away, and taken away quickly.

Mr. STIKEMAN: To whom would you give that power?

Mr. THORVALDSON: I would give it to the courts.

Hon. Mr. HUGESSEN: I read that case. There the company was a wholly-owned subsidiary of the English parent company, was it not?

Mr. THORVALDSON: No, I do not think so; 49 point something per cent only.

Hon. Mr. HUGESSEN: Had it not a contract with the English parent company to provide it with certain services?

Mr. THORVALDSON: Yes, and the English company provided the Canadian company with certain services.

Hon. Mr. HUGESSEN: For which they charged them so much?

Mr. THORVALDSON: Yes.

Hon. Mr. HUGESSEN: Which the Canadian company tried to deduct as expenses for income tax purposes, but the Income Tax Commissioner said: That charge is too high, that is an unreasonable charge for the English parent company to make, and I am going to reduce that amount to what I consider reasonable. In that case, Mr. Thorvaldson—following Mr. Stikeman's question as to whom you would give that power—could you leave it to the two companies without any control to decide as to how much the parent was to charge to the subsidiary? Suppose the Income Tax Commissioner considered that the amount the English parent company charged its subsidiary was unreasonable and had the effect of unreasonably decreasing the Canadian company's income so it paid less tax than he thought it should pay, in whose hands would you leave that discretion?

Mr. THORVALDSON: Do you need to leave discretion to anybody there?

Hon. Mr. HUGESSEN: I think the Commissioner has to have some sort of discretion in a case of that kind. I think that your remedy is in providing some sort of simple appeal whereby the discretion of the minister can be reviewed. It seems to me that you must have some sort of discretion.

Mr. THORVALDSON: Yes, we realize that in a taxing statute there must be discretion on certain phases.

Hon. Mr. HUGESSEN: I was trying to pin you down to that particular provision where discretion was exercised. I don't see how you could administer the act at all unless you had discretion, reviewable if you will, in that particular kind of case.

Mr. THORVALDSON: Of course you are referring to section 6, subsection 2, which gives the Deputy Minister absolute power to determine if any expenditure made by a taxpayer is a proper expense or not. When you give that power to one person you are granting him power of life and death over the stability of companies and individuals.

Hon. Mr. HUGESSEN: I do not altogether agree with you.

Mr. THORVALDSON: I agree that if you decide it is wholly essential to leave Section 6, subsection 2 as it is, then you should have an appeal from the minister's discretion not only on matters of law but on questions of facts as well, and that appeal could be to the Appeal Tribunal that we suggest should be put up.

The CHAIRMAN: At the present time is not their appeal to the Exchequer Court?

Mr. THORVALDSON: There is an appeal, but until this decision of the Supreme Court, the appeal on matters of discretion has generally been held against the taxpayer. In fact in my view it has been quite useless so far as the taxpayer is concerned. It is true that in the Pioneer Laundry case and one or two other cases the Privy Council held on a very close division that the minister was wrong, but nevertheless I do not think the taxpayers—

The CHAIRMAN: The cost on an appeal is so great that if the amount at stake is small the taxpayer will not go to the expense of an appeal especially when he feels that he cannot succeed anyway.

Mr. THORVALDSON: Yes. On the matter of discretion, the lawyers on this committee know that it is extremely complicated litigation, and these judgments are very complicated.

Hon. Mr. CAMPBELL: Mr. Thorvaldson, just by way of summary, is it not your submission to this committee that as the act is now drawn the discretionary power which is vested in the minister is such that it is not subject to review except in some very extreme cases?

Mr. THORVALDSON: Yes.

Hon. Mr. CAMPBELL: And you feel it should be subject to some review by a court or a board of review or some other tribunal by way of appeal from the minister?

Mr. THORVALDSON: That is it exactly.

Mr. STIKEMAN: While we are dealing with your remarks on this question, Mr. Thorvaldson, I notice that at the bottom of page 8 of your brief, speaking of the tendency of the junior officials in the various district offices to pass upon discretionary matters, you state: "One can well realize the only safe decision for assessors and clerks to make is against the taxpayer." You then make a further statement later in the brief to the effect that the district offices have no latitude and that all decisions are made by the head office in Ottawa. Thereby, I

gather, you suggest that a decentralization process should be effected by which discretion might be fully exercised in each district office, and that the junior assessors and clerks to whom you refer should be empowered to make their decision in any way which to them might seem fit under the circumstances. If this is so, is it your opinion that a great variety of reasons and methods of exercising discretion is desirable or harmful?

Mr. THORVALDSON: Your question is pretty long and a bit double-barrelled, Mr. Stikeman.

Hon. Mr. LÉGER: It is a lawyer's question.

Mr. STIKEMAN: I will ask the question again.

Mr. THORVALDSON: I think I have the first part of your question. You say that one can well realize that the only safe decisions for assessors and clerks to make are ones against the tax payer. Then you suggest that clerks and officials have no power—

Mr. STIKEMAN: No, I say one of your objections is that the district offices have no latitude.

Mr. THORVALDSON: I do not know where I say that; I do not say they have no latitude. Will you refer me to the part you have in mind?

Mr. STIKEMAN: Yes, I will.

The CHAIRMAN: While Mr. Stikeman is looking up that material, do you say that all assessments, large or small, must be confirmed by Ottawa, and a decision made on them?

Mr. THORVALDSON: No, I do not believe so at all.

The CHAIRMAN: There is a limit to it?

Mr. THORVALDSON: Yes; I think that the United States practice is that a large proportion of assessments, namely assessments up to a certain amount, are dealt with exclusively in the regional offices, and all the larger amounts go to Washington.

The CHAIRMAN: Is that not the case here?

Mr. THORVALDSON: That is the case here. Mr. Stikeman has that information, and I think he referred to the amount of limitation when we were here last.

Mr. STIKEMAN: I have that portion marked somewhere, Mr. Thorvaldson, but in order to save the time of the committee I will have Mr. Wood go through my material to see if he can find it. For the moment we will eliminate that question. The answer that I am interested in obtaining from you is your view as to whether the latitude should be granted to the junior officials who exercise discretion to find in more ways than one. Naturally, the one way which you infer they usually find is against the tax payer; therefore, your answer must be in the affirmative, but on general grounds do you think, or does your committee believe, that it is useful and helpful to have a variety of methods used throughout the department in applying discretionary rulings.

Mr. THORVALDSON: No, I do not think it is good to have a variety of methods. I think it is always necessary to build up one body of legal principles under which your whole act is administered; and, I am not saying that this matter of decentralization is not without difficulty.

The CHAIRMAN: You are not advocating that the junior clerks, to which reference has been made, in these various districts should have final say as to the amount of the assessments?

Mr. THORVALDSON: No, no.

The CHAIRMAN: I would suggest that it might possibly be well, instead of the many returns coming to Ottawa, some might be left to the discretion of the inspector, that is, the head man in each district office.

Mr. THORVALDSON: As a matter of fact, the thought I had in mind when I made the statement was that one can realize that the only safe decisions for an assessor or clerk to make is against the tax payer. After all is said and done, the clerk and the assessor are engaged and hired by the government, and naturally they expect to collect all the taxes they possibly can. There need be no dispute about that feature, and there is nothing wrong about it. At the same time the junior assessor or clerk knows that where there is an item of two or three hundred dollars involved, he might just as well find against the tax payer because that tax payer is not going to put up four hundred dollars to appeal to the Exchequer Court. The tax payer has to put up either cash or bond to the value of four hundred dollars before he can appeal against any decision of a junior assessor or clerk, involving only two or three hundred dollars. Hence, we say there should be an easy appeal procedure from a case of that kind.

The CHAIRMAN: Do you say then that an assessor is always minded to give his decision on the side of the government in favour of the Income Tax Department. Is it not quite conceivable that he might have a certain sense of justice that would make him deal with the case entirely on its merits?

Mr. THORVALDSON: That is quite conceivable; but let us take the case of the Crown prosecutor who has been in office for five or ten years. He has forgotten anything about the side of the defendant, and his duty, as he sees it, is wholly on behalf of the Crown. It is true in theory that the Crown prosecutor is intended to be entirely neutral, but it is only human nature that his bias will be all in favour of the Crown. The same situation applies to the assessor who is engaged to get and collect as much taxes as he can. I am not blaming the men because I believe it is natural that they should lean heavily in favour of their employer.

Hon. Mr. CAMPBELL: I would like to ask Mr. Thorvaldson a question. Do you say from your actual experience as a practising solicitor that you have found the condition which you now mention exists in local offices throughout Canada or wherever you may have carried on your practice?

Mr. THORVALDSON: I can not say that I have found it to exist in my own relations with the income tax officials. They have always been very amicable, and I felt that I got a very square deal as far as I was concerned.

Hon. Mr. CAMPBELL: I think, generally speaking, that has been the experience of the profession, and I just did not want the statement to go on record without some comment.

Mr. THORVALDSON: That undoubtedly is the experience of the profession; however, a number of letters that we have received from taxpayers have been along this vein.

Hon. Mr. LÉGER: If the deposit was abolished would that remedy the situation?

Mr. THORVALDSON: It would remedy it to a certain extent. The procedure is this, that the appeal is firstly taken to the Minister and if he finds against you, then it is necessary to go to the Exchequer Court. Whether a deposit is required or not litigation in the Exchequer Court is very expensive business. It may also be followed by an appeal to the Supreme Court of Canada. That is to say, if the taxpayer wins in the Exchequer Court he never knows how far he is going to be taken under the present procedure.

Mr. STIKEMAN: Mr. Thorvaldson, I have found the reference that I had in mind. It appears on page two of your brief; perhaps it was in a letter which you wrote to the members of your association preparatory to obtaining their views on your recommendation or proposal to abolish the office of the Deputy Minister. You then put in a paragraph as to how that could be effected. You go on to say, "Under the present system all questions must be referred to the

Deputy Minister at Ottawa, and this has resulted in long delay, loss of revenue, and injustice to taxpayers." From that statement I infer that you would like to decentralize the administration by giving the district inspectors power to perform substantially the functions of the Deputy Minister, as indicated in your preceding paragraph.

Mr. THORVALDSON: Yes.

Mr. STIKEMAN: With that in mind may I ask you if discretion is kept are you in favour of it being exercised according to uniform rules throughout the country?

Mr. THORVALDSON: It must be exercised in accordance with uniform rules.

Mr. STIKEMAN: But you say today that the average assessor exercises it in only one way.

Mr. THORVALDSON: Yes, I do say that.

Mr. STIKEMAN: Is that not in effect a uniform rule?

Mr. THORVALDSON: Of course, but I am speaking more of the hundreds and thousands of small disputes between the taxpayers and the officials which never come near a law office or an accountant.

Mr. STIKEMAN: Then if we go higher and come to the senior officials we find the Deputy Minister putting into his evidence a memorandum which was written to all inspectors laying down a rule for the exercise of discretion as drawn from the decisions of the courts.

Mr. THORVALDSON: Yes.

Mr. STIKEMAN: Do you believe those rules are not uniformly followed?

Mr. THORVALDSON: Yes, I believe those rules are followed. We have no objection to that. Our complaint is not that the Minister follows the law. The Minister has to follow the law, and he has to exercise discretion in these cases, because the law gives him that right and opportunity. Again I say we maintain that it is the law that ought to be changed.

Mr. STIKEMAN: My question is, if you say we should maintain discretion under a uniform set of rules, do you not believe that is actually practised today?

Mr. THORVALDSON: It is impossible to answer the question, "Are you in favour of maintaining discretion?" What we have said and what we continue to repeat, is that there must naturally be a discretion in respect to administrative duties, but that discretion should not go to the point of giving quasi judicial or judicial powers which should be the functions of the courts.

Mr. STIKEMAN: For the purposes of the committee, perhaps you could outline a practical example of how, in your mind, a system of appeals should operate. Let us take the case of an individual who seeks to charge depreciation at the rate of ten per cent on a piece of machinery, but because he has only charged five per cent up to 1940, discretion is exercised and he is refused permission to exceed five per cent. Under the present system he launches an appeal from that assessment to the Minister who details his Deputy Minister and his officials. What variation would you suggest, assuming those facts, in that hypothetical case?

Mr. THORVALDSON: I can not answer your question without making reference to that particular section dealing with depreciation. I should like to read it to the committee.

Mr. STIKEMAN: It is section 6 (1) (n).

Mr. THORVALDSON: We maintain that this is one of the worst features of the Income Tax Act. Paragraph 6 (1) reads as follows:

> In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of (n) depreciation, except such amount as the minister in his discretion may allow.

Hon. Mr. CAMPBELL: That was amended after the Pioneer Laundry case.

Mr. THORVALDSON: After the Pioneer Laundry case it was amended to read this way because the judicial committee held against the Minister's power under the former section. We maintain that this is perhaps the most outstanding example of discretionary power, and it really is the power of life and death over business. If the Minister is able to say to you, to me or anyone else, that no depreciation shall be allowed on certain property whether it be worth a dime or a million dollars over certain years, we maintain that nothing like it can be found in law anywhere.

The CHAIRMAN: Your contention is that it should be left to the courts to decide?

Mr. THORVALDSON: Not to the courts, but parliament should lay down a rule governing the matter of depreciation, and state what depreciation is allowed.

Hon. Mr. HUGESSEN: The exact percentage of the depreciation on every kind of property should be known to the public either from orders in council or from legislation.

Mr. THORVALDSON: Yes, and parliament should not delegate the power to the Minister to say what depreciation should be allowed.

Hon. Mr. HUGESSEN: That is admitted. But what remedy do you suggest?

Mr. THORVALDSON: There should be rules established.

Hon. Mr. HUGESSEN: I know, but do you say they should be in the legislation?

Mr. THORVALDSON: I would not say that, necessarily. Under any income tax act you must have regulations, but they need not be in the act unless you are going to have a tremendously long statute. I admit that you might require a regulation to cover the percentage of depreciation to be allowed on various properties, for instance.

Hon. Mr. HUGESSEN: That would be passed by order in council?

Mr. THORVALDSON: Yes; and in our brief we say that the orders in council should not be effective until reviewed by Parliament. To get back to section 6 (1) (n), we maintain that this should be amended and that power such as this should not be granted to one individual.

Hon. Mr. CRERAR: What is the practice now as to depreciation? Take as an example the depreciation allowed to printing shops. Would the rate applicable to them be uniform?

Mr. STIKEMAN: Not exactly. It would depend on the rates charged before the war. There was a ruling that no depreciation might be increased after 1940 over that which had been charged prior to 1940.

Hon. Mr. CRERAR: But the rates are uniform are they?

Mr. STIKEMAN: The rates are uniform, but the application of those rates is limited according to whether the maximum had been already taken in prior years. In other words, if the printing shop took 10 per cent on its machinery in 1939, it could continue to take that rate from 1940 to the present day. If it had taken 3 or 4 or 5 per cent on its machinery in 1939, it was not permitted to increase to 10 per cent in the war years.

Hon. Mr. CRERAR: Suppose one printing shop worked eight hours a day, does all its work in that time, but another printing shop, a very popular one, has to keep going twenty-four hours a day, what then?

Mr. STIKEMAN: There was a special provision that depreciation could be increased up to, I think, double the normal rate taken, if the time worked was twenty-four hours a day; and it could be increased 50 per cent over the normal rate if the time worked was eighteen hours a day.

Hon. Mr. CRERAR: Is that a matter within the minister's discretion?

Mr. STIKEMAN: Entirely; and he made that ruling.

The CHAIRMAN: Would there not also be a variation as to different types of machines within one printing shop? And the matter of obsolescence might come in also?

Mr. STIKEMAN: There is no allowance for obsolescence, but in effect that plays a certain part in calculating the asset value against which depreciation is charged. The ruling of the minister is that the taxpayer owner of machinery which depreciates in his business can only recoup from his profits the cost of the machinery to him.

The CHAIRMAN: Some printing shops have very complicated presses, and these might depreciate more rapidly than type-setting machines. In one case the depreciation might be 10 or 15 per cent, and in another case only 5 per cent. Is there no provision to cover a variation like that?

Mr. STIKEMAN: No.

Hon. Mr. MCRAE: I do not see how there very well could be.

The CHAIRMAN: It could not be put in the rules, I suppose.

Hon. Mr. MCRAE: And I do not see how it could be put in legislation either. As I understand the regulation, it is pretty uniform for different lines across the country.

Mr. STIKEMAN: Mr. Thorvaldson, I did not mean to get off the subject that we were dealing with, and I apologize for taking up your time on depreciation. The point of my original question was whether you could give an example which wolud explain to the committee your suggestion for a board of tax appeals as opposed to the present appeal procedure. Let us take the case of a taxpayer, a limited company, which has charged as a deduction a salary that the minister deems excessive and disallows in part. The taxpayer appeals from the assessment effecting that disallowance, and under the present statute the appeal goes to the minister, who feels that he was right and confirms the assessment. Then an appeal is made to the Exchequer Court, and the judge says: "The minister is the man appointed by Parliament to exercise his discretion. I cannot substitute my opinion for his, and the assessment is confirmed." As I understand it, you are suggesting a different procedure, and I would like you to explain it for our benefit.

Mr. THORVALDSON: In paragraph 40, on page 16 of our brief, we say: "We recommend that an inexpensive method of appeal be provided. In the first instance it"—that is the appeal from the assessment—"should be to the Commissioners of Income Tax previously referred to." You will recall that we proposed that a board be established, to be known as the Commissioners of Income Tax, consisting of a lawyer or a judge, as chairman, and an accountant and a business man, a board of three—two boards, if necessary—and that all appeals from assessments in the first instance go to this board. Then our brief goes on: "This Board would sit for the hearing of appeals both in Ottawa and on circuit throughout Canada. No security for costs should be required on the taking of an appeal to this Board and no costs should be assessed either against the Crown or taxpayer."

I think that conforms both to the English system of original appeal—that is, appeal to the Commissioners—and also to the United States system. That is, I do not think that any costs are assessed against either party in the United Kingdom or the United States.

Then paragraph 41 of our brief says: "Thereafter both the Crown and the taxpayer should have a further right of appeal to the ordinary civil courts." Of course we realize that we are recommending something quite new here. We suggest that income tax appeals should be to the civil courts and not necessarily

to the Exchequer Court as they are now. We see no reason why the civil courts should not handle appeals from income tax assessments just as they handle numerous other matters of federal law. For instance, the Criminal Code is a federal law, but it is not administered by a federal court; it is administered by the provincial courts. We know, of course, that the civil courts are partly federal: their judges are appointed and paid by the Dominion; it is only the administration of those courts which is provincial. We say there is no reason why appeals from the Commissioners should not go through the civil courts, as I believe they do in England. Mr. Stikeman can confirm that. My understanding is that in England appeals from the original board go to the civil courts—to the county courts, in some cases, and to the high court, in other cases. I believe that in the United States they have appeal tribunals and that appeals from them go to certain courts of law established as federal courts.

The CHAIRMAN: You say that appeals might go to the county courts?

Mr. THORVALDSON: I think that in England some appeals go to the county courts, but I am not quite sure of that.

The CHAIRMAN: There would probably be a limit to the amounts involved which they could consider.

Mr. THORVALDSON: I think perhaps that is so.

Mr. STIKEMAN: The committee will find the English procedure is set out on large sheets in this document that I distributed this morning.

Mr. THORVALDSON: Perhaps I might read into the record the remainder of paragraph 41 of our brief. I had got to the end of the first sentence. The paragraph continues: "Then a final writ of appeal from the ordinary civil courts should be given to the Supreme Court of Canada. No security for costs should at any time be required from the taxpayer." Briefly, those are our proposals in respect of appeals.

Hon. Mr. HUGESSEN: What positive objection have you to the present procedure of appeal to the Exchequer Court in the first instance?

Mr. THORVALDSON: The Exchequer Court is so overburdened with litigation that the department itself is right now waiting for decisions. I do not know how many cases are not dealt with, but I argued a case before the Exchequer Court a year ago last September, that is, September, 1944, and judgment has not been handed down yet. The reason I took the case to the court was that it involved, as I thought, an important principle. The income tax branch itself has been waiting for a decision in that case for a year and a half now. I am told by other solicitors that they are in a similar position; in fact, some decisions have been delayed for a longer period than that.

The CHAIRMAN: Delays sometimes occur in civil courts too.

Mr. THORVALDSON: Yes, that kind of thing happens from time to time, but I think it is a pretty general thing in the Exchequer Court and that it is serious.

Hon. Mr. HUGESSEN: Was there not a third judge appointed to the Exchequer Court within the last year or so, in order to deal with the arrears?

Mr. THORVALDSON: Yes, that is right.

Hon. Mr. HUGESSEN: I was trying to find out what fundamental objection you had to appeals to the Exchequer Court as such.

Mr. THORVALDSON: We have no objection to the Exchequer Court as such. The only thing we say is that there is no reason why the income tax law should not be dealt with by the civil courts, just as cases under the Excise Act are, and cases under innumerable other federal acts.

Hon. Mr. HUGESSEN: That is hardly a reason why appeals should not be made to a special court which is competent to deal with them.

Hon. Mr. ASELTINE: The court is too far away from most taxpayers.

Hon. Mr. HUGESSEN: I was trying to find out what the objections are.

Hon. Mr. HAIG: One of the main functions of the court is to deal with matters in which the Government itself is involved. Therefore the court is unconsciously prejudiced in favour of the Government.

Mr. THORVALDSON: There would be ample scope for the Exchequer Court in handling arbitration cases, and patent, trade-mark and copyright cases.

Hon. Mr. HUGESSEN: Why should the Exchequer Court deal with patent law any more than with income tax law?

Mr. THORVALDSON: I think one good reason is that patent law is an entirely separate branch of law. The average judge and lawyer probably knows nothing about patent and trade-mark law.

Hon. Mr. HAIG: And these things are administered exclusively in Ottawa.

Hon. Mr. HUGESSEN: I should think there is some advantage in having the income tax act interpreted by one court rather than having a variety of interpretations by provincial courts.

Mr. THORVALDSON: The answer to that is simple, senator. The Criminal Code and other federal statutes are interpreted now by the provincial courts and principles laid down in one province are followed in another. A judge in New Brunswick, let us say, will base his judgment upon a decision by a British Columbia court. A body of Canadian income tax laws could easily be built up if appeals under the act were taken to the ordinary civil courts.

Hon. Mr. CAMPBELL: You are discussing appeals on points of law now?

Mr. THORVALDSON: Yes.

Hon. Mr. HUGESSEN: Is it not a matter of fact that taxpayers in the middle west find it difficult since the Exchequer Court does not go out often enough to hear appeals in that part of the country? That is what I was trying to get at.

Mr. THORVALDSON: I would not say that is our main consideration; it is part of it. The Exchequer Court comes to the west probably only once a year, twice sometimes.

Mr. STIKEMAN: What would you do with your appeals, would you stop them at your Board of Tax Commissioners or permit them to go further?

Mr. THORVALDSON: That of course is a matter of opinion, and my opinion is no better than anybody else's. I think that on questions of fact you would stop at the Board of Tax Commissioners, because they are practical men. You have one judge and two business men.

Mr. STIKEMAN: For all purposes you would permit the substitution of the board's mind for the minister's mind in the exercise of discretion?

Mr. THORVALDSON: Yes, on the understanding of course that the discretionary powers would be greatly cut down.

Mr. STIKEMAN: Would you leave them cut down if that were the fact?

Mr. THORVALDSON: Yes. I think it is fundamental that parliament should refrain from granting to anybody powers such as are contained in the present act, no matter what particular appeal procedure you have.

Mr. STIKEMAN: What powers should be eliminated in your opinion?

Mr. THORVALDSON: I think such powers as in section 6, (1), (*m*), should certainly be changed. The power, for instance, under which the minister acted in the Wright's Canadian Ropes case.

Mr. STIKEMAN: Section 6, (2)?

Mr. THORVALDSON: I think that is a wholly unreasonable grant of discretionary power. That discretion ought to be cut down.

Mr. STIKEMAN: What would you do with that discretion? That gentleman has the power which the minister has. He may think an expenditure is unduly high, say 100 per cent too high, for the purpose of improperly reducing the tax. How would you regulate undue expenses?

Mr. THORVALDSON: I am not prepared to say what the section ought to be.

Hon. Mr. CAMPBELL: Would the provision in the British Act be satisfactory?

Mr. THORVALDSON: I do not know what the provisions in the British Act are on that, Mr. Campbell, but I do not think the particular provision is as wide as it is in our act. I do not think it would be difficult to study the English and American acts and arrive at general principles which would be satisfactory, after which we could develop a body of civil law on the subject both as to depreciation and expenditure.

Hon. Mr. HAIG: You have no specific suggestions to offer now?

Mr. THORVALDSON: No.

Mr. STIKEMAN: Are those the only two, 6 (m) and 6 (2)?

Mr. THORVALDSON: No.

Mr. STIKEMAN: What are they?

Mr. THORVALDSON: No. I must refer you to the discretionary powers in the present act. There is no purpose in committing them to memory; you have them before you.

Mr. STIKEMAN: You have not said which you would leave out and which you would leave in.

Mr. THORVALDSON: No. We do not think this is the place to come down to details as to which kind of the hundred discretionary powers should be cut and which of the hundred should be left there.

Mr. STIKEMAN: But I do think it is important, Mr. Thorvaldson, to let the committee have your opinion as to the kinds of discretion you would leave in the act and what you would eliminate.

Hon. Mr. HAIG: Why not leave them all out?

Mr. THORVALDSON: I will answer that question. We agree that any taxation statute must contain discretion as to certain functions, that is purely administrative functions such as the preparation of forms and what forms shall be used. In the administration of the department itself there must be a great deal of discretion as to that. But when it comes to granting discretion as to matters affecting the amount of tax to be paid by an individual or company, that discretion should be eliminated.

Hon. Mr. HAIG: You think that should be put in the statute?

Mr. THORVALDSON: Yes.

Hon Mr. HAIG: And if it does not work it can be amended?

Mr. THORVALDSON: Yes.

Hon. Mr. HAIG: I agree with that.

Mr. STIKEMAN: Therefore instead of having section 6 (2) empower the minister to disallow abnormal expenses which he considered unduly large, would you put in the statute a list of ratios of expenses to profits?

Mr. THORVALDSON: No, I do not think that would be practicable.

Hon. Mr. HAIG: May I interrupt Mr. Stikeman just there? In a recent decision did not the Supreme Court decide the minister must give his reasons for disallowing certain charges?

Mr. THORVALDSON: That was the Wright's Canadian Ropes case.

Mr. STIKEMAN: The court said the minister must give all his reasons to the taxpayer. He did not do so, and the court declared he was wrong.

Hon. Mr. ASELTINE: If he had given his reasons would there have been any possibility of winning an appeal?

Mr. STIKEMAN: No.

As I understood Mr. Thorvaldson's objection to discretionary powers, he would take section 6 (2) out of the act, and I was endeavouring to ascertain how he would put section 6 (2) in legislative form other than by means of granting discretion. That in my opinion is a very important question.

The CHAIRMAN: That is the most important thing you have brought out, is it not, this matter of discretion?

Mr. THORVALDSON: Yes, I think it is the most important thing in this whole business. In other words, under section 6 (2), the minister can, after the returns are in from my business, come along and say that my expenses of doing business should be cut down from $20,000 to $5,000. Hence, I am going to be taxed on the other $15,000. That is exactly the Wright's Canadian Ropes case.

Hon. Mr. CRERAR: Would that in your opinion go to the extent of leaving with the minister the power to determine the amount of expenses which should be charged against a given amount of business?

The CHAIRMAN: That is what he is objecting to.

Hon. Mr. CRERAR: That is, would it go to this extent, that the directors of the company may say, "We want a good general manager and are willing to pay him $20,000." That goes in as an expense. Could the minister in his discretion review the business and say, "for the character of the business you are doing and the amount you have done $12,000 is sufficient?

Mr. THORVALDSON: Yes, he has that power.

Hon. Mr. CRERAR: You say he has all that power, Mr. Stikeman?

Mr. STIKEMAN: Yes.

Hon. Mr. MCRAE: That has been done.

Mr. STIKEMAN: Mr. Thorvaldson, you say you would remove that power and put something in its place in legislative form. I say we would be interested in knowing how that would be done from a practical point of view. Or if you cannot put it in legislative form, it seems to me somebody must have power to scrutinize abnormal expenditures.

Mr. THORVALDSON: Yes.

The CHAIRMAN: Would you put it up to that same commission you are suggesting?

Mr. THORVALDSON: No. There is no doubt there must be a review. A company can very easily try to be dishonest and say in regard to an employee who should only be paid $10,000, "We are going to pay him a quarter of a million dollars". That of course is an extreme case. I admit there must be a review by someone but that review should not be by one person.

Hon. Mr. HAIG: It should be a board independent of the government?

Mr. THORVALDSON: Yes, namely, this board of appeal commissioners that we propose.

Mr. STIKEMAN: You suggest that the discretion in section 6 (2) should be reviewable by the courts?

Mr. THORVALDSON: No, by the board of tax commissioners. That would be one way.

Mr. STIKEMAN: Would you not necessarily take section 6 (2) out of the statute?

Mr. THORVALDSON: No, it could be done by establishing a system of review. Then that would be all right.

Hon. Mr. CAMPBELL: Do you suggest a change of language to express that the expenses to be allowed shall be more in accordance with general commercial standards?

Mr. THORVALDSON: I think that is approaching what we should have. Then this board of commissioners, which would be composed of two business men and a judge, would have a fairly good knowledge as to what was the general practice and in course of time that board would build up a body both of law and fact as to how they should approach these problems.

Hon. Mr. CAMPBELL: For the information of the committee, can you briefly state the difference between our section and the English section dealing with expenses?

Mr. STIKEMAN: As I understand it, sir, the English act contains no exact counterpart of our section 6 (2), but it does contain a section similar to our section 6 (*a*) that expenses not allowed are those expenses which are not wholly and exclusively laid out or expended for the purposes of trade. The English taxing authorities use that power to look at an expense and say, "This is perhaps abnormal, but it is also abnormal because not laid out for the purposes of trade, and therefore we will exclude it." Our section which goes closely parallel to the English is section 6 1 (*a*), which says that in determining taxable income there shall not be allowed expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income. Our act is narrower. We add the words "necessarily" and use the phrase "for the purpose of earning the income": whereas the English statute says "wholly and exclusively" and uses the phrase "for the purpose of trade". Therefore we have not perhaps the same latitude in applying section (1 (*a*) that the English have in applying their section of the act. Accordingly the tendency in the Canadian administration is more often to fall back on section 6 (2), which is very wide and purely discretionary. But to answer Senator Campbell's question, the English administration seems to get along very well without any such section in their law to my knowledge, speaking from memory, as our section 6 (2).

Hon. Mr. HUGESSEN: But they reach the same result.

Mr. STIKEMAN: Yes.

Mr. THORVALDSON: I think that answer is not complete without saying also that the appeal there goes to the special or general commissioners, which is an independent body.

Mr. STIKEMAN: Insofar as the statutory requirements are concerned, the effect achieved is the same. Then your immediate recourse from the application of the statute is different and it is with that I understand you take issue.

Dealing with your board of tax commissioners, Mr. Thorvaldson, do you feel that it would be necessary to make public the rulings of the departmental officials? Do you not feel that if a board was formed precedents would rapidly be built up from decisions of the board of tax commissioners, and departmental rulings would become anachronisms and unused?

Mr. THORVALDSON: Yes, I will agree with that.

Mr. STIKEMAN: Do you also not agree that regulations of the department are now wholly published in the *Canada Gazette*?

Mr. THORVALDSON: Yes, I think the publications are published to a large extent. I have not stated at any time that they were not. If you know that to be a fact I will agree.

Mr. STIKEMAN: I wondered whether you were drawing a distinction between rulings and regulations, and requiring that the present rulings be published as are the present regulations.

Mr. THORVALDSON: No, but if we had an independent appeal board there would not be the same need for publishing departmental rulings.

Mr. STIKEMAN: You state in your brief that certain of the departmental rulings are now made public to the Chartered Accountants' Association.

Mr. THORVALDSON: Yes.

Mr. STIKEMAN: I have had no personal experience with the association, and I am interested to know whether you have any authority for that statement.

Mr. THORVALDSON: Yes, I have a letter here from a chartered accountant, and I wrote back to him asking him to explain further. I have here the second letter from the firm of chartered accountants and I will read it to you. It states as follows:—

> We have your letter of November 30th in connection with our letter written to Mr. Atkinson on November 9.
>
> We believe our letter stated quite clearly that we have always been able to obtain from the local officers of the department particulars of any ruling requested. On many instances, we have seen an Inspector of the Department and have obtained from him, if available, all the information requested. Our objection on this matter is not that they are not available to us on request, but we feel that rulings of general application should be made available to interested parties such as public accountants without request.

In other words, they should be published and given to the association.

Mr. STIKEMAN: Your statement on page 18 of your brief is that a certain number of rulings are issued and made available to the Institute of Chartered Accountants.

Mr. THORVALDSON: Yes, that is our information.

Mr. STIKEMAN: The letter you have just read indicates that accountants merely have the ruling explained to them by going to the inspector when such rulings come to their knowledge.

Mr. THORVALDSON: Yes.

Mr. STIKEMAN: That is hardly the issuing of rulings to the Institute of Chartered Accountants. The reason I raise the question is that I do not believe any official of the department has formal authority to give out a ruling, and if rulings do come to the notice of the public they come as applications of the general law to the specific case.

Hon. Mr. HAIG: Why should not those rulings be handed out?

Mr. STIKEMAN: I can hardly give an opinion as to why they are not. The reason given is that it is a principle af administration, and the interpretation of the law changes from time to time with considerable rapidity; therefore, to issue a large number of opinions as to the stand the department takes today might cause the taxpayers to take certain action, and because of a change in ruling it would be rendered ineffectual two weeks hence.

Hon. Mr. HAIG: That is exactly what we are complaining about.

Mr. STIKEMAN: That is the reason the rulings are not made public. The taxpayers should rely on the principles of law rather than on departmental attitude of the law.

Hon. Mr. HAIG: You have hit the nail right on the head.

Mr. STIKEMAN: The department does not want to prejudice the taxpayer by reason of any change in rulings.

The CHAIRMAN: Does the department make the rulings retroactive if they are to the benefit of the taxpayer?

Mr. STIKEMAN: They will—

Hon. Mr. CAMPBELL: Rulings have no effect on the taxpayer, legal or otherwise. The public might confuse them with their legal rights.

Mr. STIKEMAN: To publish them would be to rely entirely on the department's view of the law, and it might be wrong.

Hon. Mr. HAIG: There might be an appeal, but the fellow who is affected by it is gone.

Mr. STIKEMAN: The average taxpayer who does not know the rulings does not act upon them; he acts upon what he thinks is the law, and he is usually right.

Hon. Mr. LAMBERT: Mr. Chairman, in using the term "the law" do you use it in the light of these fortnightly changes in rulings?

Mr. STIKEMAN: No, the law is in the statutes—the Income War Tax Act—and the cases decided on the statutes in the Canadian courts. The rulings have no official force at all; they are internal directions from the Deputy Minister to his local inspector as to the department's version of the law in certain cases.

Hon. Mr. HAIG: May I follow that subject up? The local inspector makes an inspection by reason of that direction, and unless a fellow appeals he is stuck even if they were wrong in law.

Mr. STIKEMAN: Yes. Even if he knew the ruling I doubt if he would be in any stronger position to appeal. All the inspector does is apply the rule when it is directed to him.

Hon. Mr. HAIG: Yes, but the direction may be wrong in law.

Mr. STIKEMAN: Yes.

Hon. Mr. LAMBERT: Is it not true that in the whole situation it is difficult to really identify what the law is?

Mr. STIKEMAN: That is perfectly true; and as Mr. Thorvaldson has said if the board was established and gave reasons for its decisions it would quickly build up precedents that would clarify the law and make rulings unnecessary. I should add, except for the always necessary administrative rulings as to how the department is to operate.

Mr. THORVALDSON: I have here the letter to which I was referring. This is a letter from a firm of chartered accountants and reads in part as follows:—

> The two sorest points in the income tax laws, apart from rate, are first, the number of discretionary powers given the Minister under the Act, and secondly, the large number of rulings issued to their assessors which are not made available to the public.
>
> The first point you are aware of and all companies including your own, are concerned with it. When making ordinary business decisions, you must at all times keep in the back of your mind the discretionary powers given the Minister to disallow some expense, either in part or wholly.
>
> The second point concerns all companies also, in that rulings or directives which have a general application over all business, are given to their assessors without being made available to the public. It is true that you may obtain information on a specific ruling by calling the income tax office and giving the specific circumstances. This is, however, not entirely satisfactory as it is not always convenient to call the income tax department before decisions on any matters are made.
>
> This latter point has been a sore spot with the chartered accountants for a great number of years. A certain number of rulings are issued and made available to the Institute of Chartered Accountants. We are, however, satisfied that for every ruling made available through the Institute there are at least ten which are not made available, and which are applicable to business generally. The whole thing boils down to the fact that income tax laws are being administered by a bureau who do not make public their method of administration.

I read that just as an example of a letter from a firm of chartered accountants.

Mr. STIKEMAN: I had Mr. Wood of the income tax division, and who is here to-day, request from the inspector at Montreal information as to how many rulings he issued in a year, and the number of other rulings that were purely

administrative. He replied as follows: "I have gone through the rulings of the past few years in order to give you an estimate of those issued to the assessors of this office. I find that these have been as follows:

| | *Income Tax* | *E.P. Tax* |
|---|---|---|
| *Year 1945/46 (Incomplete)* | | |
| Rulings | 31 | 14 |
| Letters | 9 | 5 |
| | 40 | 19 |
| *1944/45* | | |
| Rulings | 64 | 17 |
| Letters | 14 | 1 |
| | 78 | 18 |
| *1943/44* | | |
| Rulings | 73 | 33 |
| Letters | 11 | .. |
| | 84 | 33 |
| *1942/43* | | |
| Rulings | 68 | 30 |
| Letters | 8 | 3 |
| | 76 | 33 |

From the above there has been eliminated all rulings which are purely administrative and only those dealing with tax assessments have been included.

In view of the above it would seem to be fair to state that an average of 100 rulings a year are issued to the district offices.

The CHAIRMAN: Mr. Stikeman, I wish to refer again to the question I asked you a few moments ago. A ruling is made, and under that ruling a taxpayer pays a certain amount of tax. Then perhaps within a fortnight another ruling is made, and if it had been made in the first place it would have considerably reduced the amount of tax the taxpayer would have paid; he may even have been paying that amount of income tax for years. Does the department as a matter of actual practice, when it finds it has made a wrong ruling which results in excessive tax being paid by a taxpayer, go back and reimburse the taxpayer for what he has overpaid?

Mr. STIKEMAN: In my experience in all cases where the department has felt that a taxpayer has been caused to pay an excessive amount of tax because of a ruling of the department and not because of the law itself, it has, wherever it has come to their knowledge, corrected that ruling sooner or later. If the taxpayer finds that he is due for a refund—

The CHAIRMAN: He does not find that out; the department finds that he is due for a refund.

Mr. STIKEMAN: When the department finds that a taxpayer is due for a refund as a result of action by the department itself it always makes the refund.

The CHAIRMAN: Are you quite sure of that?

Mr. STIKEMAN: I cannot think of any instances in my personal experience where it has not been done. It is possible that there have been exceptions to that practice.

Hon. Mr. ASELTINE: Supposing he did not pay enough tax?

The CHAIRMAN: They make him pay.

Hon. Mr. ASELTINE: They assess him, and ask him to pay the balance.

Mr. STIKEMAN: Yes. The difficulty in that question is that the department may not be aware of all the taxpayers who have suffered from that ruling until some time later, but when they do become aware of it, in the instances that have come before me in my personal experience, I think in every case refund was made.

The CHAIRMAN: In some cases I suppose it would be quite possible to never discover that certain taxpayers have been unjustly charged.

Mr. STIKEMAN: Yes, there is, of course, the question of statute bar which may operate to preclude the department acting. Mr. Thorvaldson, I am almost through. At page 23 of your brief you state, "The apparent breakdown in the application of the provisions of the Act to the income of farmers as disclosed by statistics published by authority of the Minister of National Revenue is another case of inequality." What do you mean by the words "apparent breakdown?"

Mr. THORVALDSON: I really mean the breakdown; the word "apparent" is not necessary there.

Mr. STIKEMAN: You mean that the act has not been applied to farmers?

Mr. THORVALDSON: We maintain that if the statistics which were published by the government all over Canada are correct, then in the years 1936 to 1943 the act certainly was not applied to farmers. We are not blaming the farmers, but simply pointing out this feature. So many people speak of income tax as the most equitable tax in the world because it is based on the ability to pay. The fact is that when people's ability to pay is hard to discover, such as farmers, truckers and other workers on their own, how are you going to get income tax from them? Whereas, income tax bears heavily on wage earners, salaried people and people in receipt of dividends and interest whose income is easily computable. We are not blaming the Canadian tax laws for that; we simply cite that as an example of the fact that it is not true to say that income tax is the perfect tax system.

Mr. STIKEMAN: Have you any suggestions as to how we might be taxed in a perfect system?

Mr. THORVALDSON: No. The reason we refer to this subject is that there are so many people in this country who have desires to eliminate all other taxation, and make income tax the sole tax. We do think the facts of the situation ought to be placed before the people so that they may know that income tax is not the perfect tax system.

Mr. STIKEMAN: What is the perfect tax system?

Mr. THORVALDSON: I do not think there is any.

Mr. STIKEMAN: Would you say that the income tax system is the least imperfect of any?

Mr. THORVALDSON: I would not want to express an opinion on that. On that point, however, I would like to read to the committee the opinion of a Massey-Harris implement agent in Crystal City, Manitoba. I have never seen the situation resulting from this particular phase of the problem dealt with so well as it is in his letter. The situation which he sets out is one that I think ought to be made known, and if the committee can spare the time I will read the letter. It is dated November 7, 1945, and says:—

> In reply to your letter of Nov. 2, I thought I would drop you a line to let you know the attitude the people of the district in general are taking toward the income tax. The majority of people here consider it an unfair tax. They are laying down on the job so they won't have to pay so much income tax. I believe it is one reason we are short of butter and meat. Some farmers sold off the bulk of their milk cows, and

went out of hogs. They won't put in the extra hours milking cows and feeding pigs to pay an extra income tax. A lot of people figure they are penalizing the man who works to pay his way, and make something out of the country.

It also keeps capital out of the country, and causes unemployment. It is hard to get merchandise now and has been. I believe the manufacturers, and wholesalers will only put out so much. If they put out more they get into a higher income tax bracket. So the only thing I can see for prosperity is to change the income tax or abolish it, and get a fairer tax set up.

I should add that Crystal City is a rural district in Manitoba.

Mr. STIKEMAN: That completes my general questions, Mr. Thorvaldson.

Hon. Mr. CRERAR: When the income tax system was first proposed, none of those who advocated it held that it should be applied to corporate income.

The CHAIRMAN: Are there any further questions?

Hon Mr. HAIG: We should express to Mr. Thorvaldson the thanks of the committee for his coming here.

The CHAIRMAN: Yes. We thank you most cordially, Mr. Thorvaldson, for your excellent presentation. I think all members of the committee will agree that it has been a great help to us.

Some Hon. SENATORS: Hear, hear.

Hon. Mr. CAMPBELL: In answer to a question Mr. Thorvaldson said he thought the act should be amended with respect to certain discretionary powers. I wonder if he would care to submit a list of those discretionary powers in writing? It is very difficult for a witness to answer a question like that categorically without going through the act. I feel that the sections he has referred to require some study and possibly some change. I know that other sections vesting discretionary powers in the minister are of vital concern to taxpayers, and if Mr. Thorvaldson would submit us a memorandum I think it would be proper for us to have it placed in the record.

Hon. Mr. HUGESSEN: I am disposed to agree. Perhaps Mr. Thorvaldson would include in his memorandum his suggested amendment of section 6 (1) (*n*), which deals with depreciation.

Mr. THORVALDSON: I would have had a list of discretionary powers in my submission but for the fact that there is already an easily available list, to which I referred. Mr. Stikeman will be able to get it for the committee. It is contained in Mr. Ladner's article in The Canadian Bar Review. They are all set out there, more than a hundred of them, with their respective sections and subsections. I expected that this list would be brought before the committee and perhaps put on the record.

Mr. STIKEMAN: That has been done. In his testimony before the committee the Deputy Minister put in a list of the discretionary powers, with a breakdown as to their nature.

Mr. THORVALDSON: To carry out the suggestion that you make, Senator Campbell, would be a big job. That is the main job which will face the government officials when they come to redraft the income tax act. Certain prominent members of the taxation committee of The Candian Bar Association have suggested to me that the redrafting of the income tax act is a job requiring years. I do not agree with that, but I think it might require weeks and months. The task which you have suggested I might do, or even start on, is really the kernel of the whole problem. It is a task of draftsmanship which is far beyond the ability of one man to do or even to attempt.

Hon. Mr. CAMPBELL: I had no thought of suggesting that you undertake a task of that kind. What I had in mind was perhaps you would list a dozen or so discretionary powers and set out the changes you suggest should be made.

Mr. THORVALDSON: Much would depend upon whether the act was to be amended to provide for the appeal board that we proposed. Many of these discretionary powers would be all right if they were to be exercised, not by the minister, but by an independent tribunal. The whole thing is tied in and it is a huge problem.

Hon. Mr. CAMPBELL: You feel you have completed your submission?

Mr. THORVALDSON: Yes. We feel that in presenting the general principles we have gone as far as we can go, as a private association.

The Committee adjourned until Tuesday, April 2, at 10.30 a.m.

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

## SPECIAL COMMITTEE

Appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon.

No. 3

TUESDAY, APRIL 2, 1946

CHAIRMAN

The Honourable W. D. Euler, P.C.

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OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1946

## ORDER OF APPOINTMENT

*(Extracts from the Minutes of Proceedings of the Senate for 19th March, 1946)*

Resolved,—That a Special Committee of the Senate be appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon;

(2) That the said Committee be composed of the Honourable Senators Aseltine, Beauregard, Bench, Buchanan, Campbell, Crerar, Euler, Farris, Haig, Hayden, Hugessen, Lambert, Léger, McRae, Moraud, Robertson, Sinclair and Vien;

(3) That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. MOYER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

TUESDAY, 2nd April, 1946.

Pursuant to adjournment and notice the Special Committee appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, met this day at 10.30 a.m.

*Present*: The Honourable W. D. Euler, P.C., Chairman, The Honourable Senators Campbell, Crerar, Haig, Hayden, Lambert, Léger, McCrae, Robertson and Sinclair—10.

*In attendance*: The Official Reporters of the Senate. Mr. H. H. Stikeman, Counsel to the Committee.

Mr. H. H. Stikeman, Counsel to the Committee submitted the following as an Appendix to the Proceedings of the Committee, namely, "Income and Excess Profits Tax Cases, 1917, to March 1946, arranged alphabetically and arranged according to subject matter."

Mr. H. W. Macdonnell, Legal Secretary, Canadian Manufacturers' Association, read a brief submitted by the Canadian Manufacturers' Association, and was questioned by counsel.

Mr. K. L. Carter, Toronto, Ontario, was heard and was questioned by counsel.

Mr. A. C. Thompson, Legal Department, Canadian Manufacturers' Association, was heard and was questioned by counsel.

Mr. Basil Wood, Chief Examiner of Income Tax, Taxation Division, Department of National Revenue, was heard.

At 12.30 p.m., the Committee adjourned until 10.30 a.m., Wednesday, April 3rd, instant.

ATTEST:

R. LAROSE,
*Clerk of the Committee.*



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# MINUTES OF EVIDENCE

THE SENATE

TUESDAY, April 2, 1946.

The Special Committee of the Senate to consider the provisions and workings of the Income War Tax Act, etc., resumed this day at 10.30 a.m.

Hon. Mr. EULER in the chair.

The CHAIRMAN: Gentlemen, we have present this morning representatives of the Canadian Manufacturers' Association: Mr. H. W. Macdonnell and Mr. A. C. Thompson, both of the Legal Division of the Association; Mr. John Whitelaw, K.C., of the Quebec Division and Mr. K. L. Carter, the fourth member of the Association's committee. I will call first on Mr. Macdonnell to present the brief. I believe it is understood that when questions are asked afterwards by Mr. Stikeman, they will be answered by Mr. Whitelaw and Mr. Carter in most cases.

Mr. H. W. MACDONNELL, Legal Division, Canadian Manufacturers' Association: Mr. Chairman, honourable members of the Committee:

The Canadian Manufacturers' Association welcomes the opportunity provided by the setting up of this Special Committee of the Senate to present its views on the provisions and working of the Income War Tax Act and the Excess Profits Tax Act. There is no group in the nation that is more vitally interested than the 5,500 members of this Association (who represent some 80 per cent of the industrial production of the country), in seeing these two major taxing instruments overhauled in the light of an experience that now extends over nearly thirty years and of the present-day revenue needs of the nation. The first objective, it is assumed, is a maximum of "efficiency" in the broad sense of "skill in collecting a given amount of revenue with the least possible burden on the national income." But there is a secondary objective whose importance must not be overlooked, viz. that the methods of assessment and collection of taxes under these two Acts should be clarified and simplified, and speeded up to the greatest extent possible. When the amount of taxation was small, its "efficiency" and the mechanics of assessing and collecting it were not matters of major importance. Now, however, that so large a part of the gross earnings of industry is taken in taxes, it is most desirable that taxpayers should have every assurance that the taxes themselves are equitable and "efficient" and that the taking is done in the most efficient and equitable manner possible. The criticisms and proposals for amendment which follow should not be taken as implying that the Association is without appreciation of the way in which the Department has discharged a task which, never a light one, assumed during the war years an unprecedented magnitude and complexity.

## THE EXCESS PROFITS TAX ACT

In view of the fact that the Excess Profits Tax Act was definitely a war measure and that the announced policy of the present Government is to repeal it at an early date, it does not appear necessary to offer detailed criticisms of either its incidence or the mechanics of assessing and collecting it. Suffice it to

say that the 5,500 members of the Association are unanimously of the opinion that it encourages wastefulness, and puts a premium on inefficiency, and while justifiable as a war measure, is a serious obstacle in the way of reconversion to peace-time production and industrial expansion.

## Income War Tax Act

*(1) Elimination of Double Taxation of Corporate Earnings*

It is submitted that the double taxation of corporate earnings is unsound and should be eliminated. The Rowell-Sirois Royal Commission pointed out that as corporation net income belongs to the shareholders, a flat-rate tax on such income (which is not permitted as a deduction from the income tax of the individual shareholders) is both discriminatory between different classes of assets (e.g. as between bonds and stocks) and according to progressive income tax principles (i.e. taking a larger percentage of a high income than of a low income), inequitable as between different levels of income. The special taxation on corporate profits, the Commission goes on to point out, may have a significant effect on investment, and from the point of view of the individual investor may be sufficient to tilt the balance in favour of hoarding or of bond investment as compared with the investment in equities, or to influence a company promoter to bond his company to the limit rather than to finance by common stock. It is submitted that the Commission was right in holding that the bonded debt type of capital structure is hardly deserving of the encouragement which the Canadian taxation system extends to it, among other reasons because "the heavy fixed charges which it involves imports a rigidity into the national economy which may be dangerous in times of depression." A further marked anomaly is the penalizing (by reason of the double taxation of corporate earnings) of corporate organizations as contrasted with partnerships and individual enterprises on the one hand, and publicly-owned enterprises and such organizations as co-operatives on the other hand.

It is submitted that instead of discouraging and penalizing corporate organization, taxation policy should be directed to encouraging it at a time like the present when it is essential that there should be the greatest possible expansion of enterprise and employment. While it may not be wise to abolish entirely the taxation of corporation net earnings, among other reasons because it ensures that non-residents of Canada do not escape a rate of tax appropriate to direct investment, both equity and sound public policy require that a credit should be allowed to the individual shareholder of the tax paid by the corporation. This, as is well-known, is the law in Great Britain. It is further submitted that such a credit would not reduce the revenue by nearly as much as the yield of the present Canadian corporation tax, by reason of the fact that the profits not paid out in dividends would still be subject to corporation tax, and the fact that the dividends paid to shareholders would be deemed to include the tax paid by the corporation and thus would be higher than they are under the present system, which would mean that there would be an increase in the total amount of personal income tax.

*(2) Discretionary Powers of the Minister*

One of the most striking features of the Income War Tax Act is the number of cases in which, in the determination of income taxes on corporation profits, the decision on vital points is left to the Minister. In the sections of the Income War Tax Act and the Excess Profits Tax Act with the accompanying schedules, relating to corporations, there are some 60 references to the Minister's discretion or opinion. The Minister delegates his authority to the Commissioner. The

Commissioner then advises the various income tax inspectors throughout the country how he proposes to exercise the discretion given under the various provisions. This advice to the local inspectors is not available to the taxpayer.

In discussing this question before this Committee, the Commissioner referred to the rules laid down by the Courts for the exercise of discretionary powers and pointed out that one of them is that "the discretion must actually be exercised in every individual case—and it cannot be exercised by merely making a general ruling which would be applicable in all cases, although that may be used up to the point of confirmation in the particular case in active dispute." The Commissioner went on to cite as an example of compliance with this principle the practice of the Department in laying down "such general rules as that 10 per cent depreciation will be allowed on machinery or that a certain maximum depreciation will be allowed on automobiles, but reserving the right to fix different rates if the particular circumstances warrant it". It is our submission that if such general rules or guides can be laid down and made known to the taxpayer in some cases, they should be laid down and made known to the taxpayer in all cases, unless some very good reason can be shown for not doing so. It is to be noted that in the case of the Excess Profits Tax Act, the Department has recognized the taxpayers' need for some official interpretation of the Act and for enlightenment as to how the Minister proposes to exercise his discretion in certain cases, for an explanatory brochure was issued at the inception of the Act and later brought up-to-date. If an explanatory brochure on the Excess Profits Tax Act, why not on the Income War Tax Act! While it may be unreasonable to suggest that the Commissioner should be required to interpret the law for the benefit of taxpayers, a taxpayer should be entitled to information as to how discretionary powers are to be exercised. There are many points on which no such information has been given taxpayers, including the following:—

Sections of the Income War Tax Act—

Section 5 (*b*) Reasonable rate of interest on borrowed capital.

Section 6 (*d*) Amounts transferred to reserve for bad debts.

Section 6 (2) Reasonable or normal expenses of a business.

Section 6 (4) and (5) Apportionment of expense between earned and investment income and between taxable and non-taxable income.

Section 6 (3) How will salaries, wages, etc., be examined as to whether or not they are commensurate with the services rendered?

Section 13 Accumulation of company's profits in excess of what is reasonably required for purposes of the business.

While the adoption of the above proposal would in our view markedly improve the administration of the Act, from the point of view of taxpayers, it is submitted that what is really required is a much more drastic amendment. It is admitted that in the interests of speedy and efficient administration, it is essential that the decision of many points should be left to someone's discretion. It is submitted, however, that the discretion should be vested not in an individual official, least of all a member of the administrative staff, but in an independent tribunal. Such a tribunal would stand in the same relation to the Minister as the Board of Referees which functions in connection with the Excess Profits Tax Act. It remains to add that, as has been urged above in connection with the discretion at present exercised by the Commissioner of Income Tax, information should be made available by such tribunal to taxpayers as to the way in which it proposes to exercise its discretion.

*(3) Publication of Orders and Rulings*

Following upon what has been said about informing taxpayers as to how discretionary powers are to be exercised, it is submitted that the practice should be adopted of publishing all orders, regulations and rulings, made under authority

of the Act, as is done in the United Kingdom and the United States. It is interesting in this connection to note that an American authority in commenting on the administration of the Canadian Income Tax Act, expressed the view that "the Canadian system of unpublished special rulings is not as satisfactory as the system of published regulations and rulings in the United States". There is the best of authority for the principle that it is just as important that the law should be known as that the law should be just, and if the many orders, regulations and rulings which are inevitably made in administering such a statute, are not disclosed to the taxpayer, he cannot know fully what the law is nor can he have any assurance that the same treatment is being meted out to him as to other taxpayers. Such a situation inevitably gives rise to uneasiness and suspicion, which it should be one of the first pre-occupations of the draftsmen and administrators of a taxing statute at all costs to avoid.

*(4) Amendment of Existing Appeal Provisions*

Under the present appeal provisions, the taxpayer's initial appeal from the assessment is dealt with by the same official who is responsible for the assessment itself, namely, the Commissioner. If the taxpayer is dissatisfied and files a "Notice of Dissatisfaction" the "Reply of the Minister" which he receives is presumably prepared by the same official, namely, the Commissioner. If the taxpayer is still dissatisfied, he must appeal to the Exchequer Court and provide security of $400; and from the Exchequer Court, appeals may be taken to the Supreme Court of Canada, and from there to the Judicial Committee of the Privy Council. It is not too much to say that the prospect is not a very encouraging one for a taxpayer who is dissatisfied with the interpretation which is put on the law by the Department. If the amount involved is not very great, the taxpayer is apt to feel that having regard to the expense involved, the length of purse of the Crown, and the uncertainty of the outcome, "the game is not worth the candle". Further, there is reason to believe that the policy of the Department over the years has been, as far as possible, definitely to discourage appeals. In these circumstances, Canadian taxpayers find themselves obliged in many cases to turn for interpretations of Canadian law to cases decided by the Courts of other countries under their Statutes where these bear a resemblance to the Canadian legislation.

Unsatisfactory as this situation was at a time when the rates of tax were low, it is infinitely more undesirable with rates of tax at their present high level. There is reason to believe that increasingly, because of the large amounts involved, taxpayers will not be satisfied to accept the decision of a single individual, and there will be a growing disposition on the part of large corporations to appeal to the Courts. It is unsatisfactory, however, it is submitted, that taxpayers should be driven to litigate, among other reasons, because litigation is a luxury which the small man or the small company cannot afford.

It is respectfully suggested that there should be set up Regional Boards or a Travelling Board, say, of three persons, to receive "Notices of Dissatisfaction", as provided for in Section 60 of the Act, and to hold hearings and rule on the facts set before them. Their jurisdiction would include authority to review any direction or decision of the Minister or of the tribunal to which it has been proposed above should be delegated the authority to exercise the discretions which at present are exercised by the Minister. The members of the Board or Boards should be persons skilled in the law and in accounts, who are entirely independent of the Income Tax Department. They should operate without cost to taxpayers, and without the taxpayer being required to give security. From the rulings of the Board or Boards, there should, it is submitted, be the usual right of appeal and in the event of an appeal being taken by the Department to the Privy Council, the entire costs should be paid by the Department, regardless of the result of the appeal.

In view of the long English experience in Income Tax administration, the appeal procedure under the United Kingdom Act is of interest. It may be summarized as follows:—

Appeals against assessments are normally heard by bodies known as General Commissioners which are appointed for different Divisions covering the whole of England, Scotland and Wales. They are local men of standing in the District, and they are unpaid; their justice has been described as "both rough and ready", but taken as a whole, it is said to be justice with a common-sense basis. There are, however, certain cases where persons assessed may elect to have their appeal brought before the Special Commissioners, a small body of whole-time officials, usually barristers, whose functions extend over the whole country; they have an office in London but they also sit elsewhere, as occasion demands.

When either of the above appellate bodies has given a decision in a particular appeal, it can only be challenged on a point of law, in which case it goes forward to the Court of King's Bench, Court of Appeal, and finally to the House of Lords.

It is to be noted that the Board of Inland Revenue which is the administrative body, provides what might be called real specialists among the experts. They are said to be very approachable and it is sometimes possible to get a favourable decision from them against their own inspectors of taxes without the necessity of going to the General or Special Commissioners for a final hearing of the appeal.

Finally, it is to be noted that there are no costs on an appeal to the Commissioners unless the appellant cares to incur them by being represented as he may be by a barrister, solicitor or accountant.

(5) *Accepted Accounting Practice Should be Followed*

It is submitted that in the determination of taxable income and deductible profits, accepted accounting practice should be followed. The present situation is that while accounting practice has developed and changed to a considerable extent over the years, the provisions of the Act (which, be it noted, is patterned after the British Act which goes back 150 years) have remained for the most part unchanged, and therefore are out of line with present-day practices. An example of what is meant is the recent decision in Trapp v. Minister of National Revenue (1946) Canada Tax Cases, 30. In this case, mortgage interest not paid during the taxation year was deducted as an expense on an accrual basis, but the Court disallowed it because under the relevant provisions of the Act, the taxpayer had no right to claim a deduction unless the money had actually been paid out. If the regular accounting practice of determining profits, where income and/or expenses have been on an accrual basis, is not to be allowed, it would mean chaos in business accounting.

It is submitted that there is pressing need for provisions of the Statute which like those on the basis of which the Trapp decision was made, run counter to modern accepted accounting practice, to be amended in order to bring them in line with such practice.

(6) *Additional Recommendations*

(1) *Limitation of interest charged on underpayment of tax.* It is submitted that it is inequitable to charge interest on underpayments of tax during the whole period between the filing of the return and the making of the assessment, regardless of its length, in view of the fact that the making of the assessment is entirely in the hands of the Department. It is respectfully proposed that interest should not be charged for more than one year from the filing of the return or until the making of the assessments whichever date is the earlier.

(2) *Re-opening of Assessments.* It is submitted that the taxpayer is entitled to have some protection against the re-opening of assessments. It is therefore proposed that the Act should contain a provision that assessments are not to be re-opened, after 3 years from the due date of filing the return, cases of fraud only excepted.

(3) *Decentralization of Administration.* It is submitted that in the interests of giving better service to taxpayers living at great distances from Ottawa, and more speedy administration generally, it is desirable that local income tax officers should be given greater power than at present. This might be more practicable if effect were given to some of the foregoing recommendations with respect to the exercise of the many discretions given by the Act and the publication of rulings.

(4) *Income Tax Department Personnel.* The Association has taken note of the evidence of the Deputy Minister of National Revenue on the difficulty of retaining senior personnel such as lawyers and chartered accountants by reason of the higher remuneration offered by private business, and urges that the Department should be given a sufficient budget to enable it to secure the kind of staff needed for this all-important national work.

The CHAIRMAN: Mr. Macdonnell, towards the end of your brief you speak of the Deputy Minister of National Revenue, although throughout the other part of it you speak of the Commissioner. They are one and the same person.

Mr. MACDONNELL: Quite so.

The CHAIRMAN: Mr. Stikeman, would you proceed with the questions as they may occur to you?

Mr. STIKEMAN: I should like to ask the witness whether the majority of the members of his association, which he says number 5,500, have seen or approved this brief.

Mr. MACDONNELL: Mr. Chairman, this is the way the association functions in matters of this kind. There are five divisions, in the west with British Columbia, then the prairie division, the Ontario division, the Quebec division and finally the maritimes division. A question of this kind is referred to the various divisions for their views, then those views are digested and classified by our central legislative committee, which delegates to a sub-committee the preparation of the brief. That roughly is the way it is done.

Mr. STIKEMAN: It can be said then that the ideas in the brief are approved generally by all the members of the association?

Mr. MACDONNELL: Yes.

Mr. STIKEMAN: Under the Excess Profits Tax Act section on the first page you pass over the subject rather rapidly, but towards the end you make one statement: "That the 5,500 members of the association are unanimously of the opinion that it encourages wastefulness, and puts a premium on inefficiency." Why are they of that opinion? Have you any particular instances that you can give us?

Mr. MACDONNELL: No, I do not know that I can give you any particular instances. The general idea is that whereas ordinarily you try to keep down expenses because you want to get your net income up, now, because you know the greater part of your profit is going to be taken in taxation, you are becoming careless about expenses.

Hon. Mr. HAYDEN: You mean if you are contemplating expenses that are somewhat out of line, and you realize that they are not coming out of your pocket, you may have a different idea in regard to them?

Mr. MACDONNELL: Yes.

The CHAIRMAN: Your ordinary expenditure on advertising, let us say, might be $10,000, but with the excess profits tax in your mind, you would feel that you might as well spend $15,000 or $20,000?

Mr. MACDONNELL: Yes.

Mr. STIKEMAN: There is no significance in the statement that the administration of the Act tends to inefficiency?

Mr. MACDONNELL: No.

Hon. Mr. HAIG: Take General Motors, about three years ago they ran four-page advertisements in the magazines, and those advertisements cost them something more than fifty cents apiece, yet at that time they had no cars or trucks to sell. All the other motor companies followed the same practice.

The CHAIRMAN: Take another example, the breweries and distilleries. They cannot advertise their wares, but they take full-page space to advertise something which is not at all related to their activities. At the end you find the announcement, "This advertisement is sponsored by so-and-so."

Hon. Mr. HAIG: The O'Keefe Company, for instance.

The CHAIRMAN: Yes. I suppose they can charge that against their profits.

Hon. Mr. HAYDEN: That is a sure sign that they are in the excess profits class.

Mr. STIKEMAN: Speaking from memory, I believe some limitation was put on advertising expenditures.

Hon. Mr. HAIG: Compared with what they expended before the war; that is all. But before the war the advertising was justified because the motor companies had cars and trucks to sell.

Mr. STIKEMAN: Mr. Macdonnell, you state under your income war tax section in the first paragraph in the left-hand column of page 1 that the present method of taxing the incomes of corporations and individual shareholders is "both discriminatory between different classes of assets (e.g. as between bonds and stocks) and according to progressive income tax principles." Do I gather from that that you mean because bond interest is deductable there is a tendency to finance by borrowed money, a tendency which is increasing?

Mr. MACDONNELL: Yes.

Mr. STIKEMAN: When you use the word "discriminatory" you mean really that there is a premium placed upon the financing by borrowed money rather than by invested capital?

Mr. MACDONNELL: Yes.

The CHAIRMAN: You mean, for example, that bond interest can be charged against expenses and not be taxable, whereas dividends on capital stock would be taxable?

Mr. MACDONNELL: Yes.

Mr. STIKEMAN: As an association have you found much evidence of that tendency increasing?

Mr. MACDONNELL: I think so, yes.

Hon. Mr. CAMPBELL: Mr. Macdonnell, is it not reasonable to suggest that that tendency is increasing because the borrowing rate on debentures and bonds is lower than the rate on deferred shares, rather than because of any attempt by the taxpayer to get the benefit of a reduction in taxation?

The CHAIRMAN: There is something in that.

Mr. MACDONNELL: I would like to ask Mr. Carter to answer that question, Mr. Chairman.

Mr. CARTER: Mr. Chairman, I think there are different forces that operate when a company comes to consider which way it should finance. All we can say

in this submission is that there is a considerable premium placed upon financing by bonds, in that the net amount of taxes borne by the shareholders or the owners of the company would be less in these circumstances and that it might be taken into consideration. It is quite true there are other forces which offset that.

Mr. STIKEMAN: Such as excess profits tax.

Mr. CARTER: Yes, and many other forces.

Mr. STIKEMAN: But in the majority of cases where companies finance by bonds you find by and large that the desire to deduct bond interest outweighs any fear of losing the capital employed?

Mr. CARTER: It comes under the Income War Tax Act. We are not concerned with standard profits.

Mr. STIKEMAN: But it would be subject to the same statute, because it would appear their bonded financing might deprive them of some future benefit under the statute.

Mr. CARTER: I think that under war conditions one might offset the other.

Mr. STIKEMAN: So you would say that there is an increase despite the limiting factors?

Mr. CARTER: Yes. And as to the progressive income tax principles, I think we might refer to a section of the Rowell-Sirois Report which points out that the defective corporation tax tends to level out the tax on all the shareholders, so that the poor man is taxed as well as the rich man.

Mr. STIKEMAN: I wish you would explain to the committee how a corporation shareholder is penalized by reason of double taxation as compared with a partner in an individual enterprise.

Mr. CARTER: In the case of partnerships, the profits are taxed as though they are all received by the owners of the business; so leaving out of consideration the excess profits tax, if any, there is only one tax, namely, that on the income of the individual. In the case of the corporation there is first of all the corporation tax levied, and then when the profits are distributed, either that year or later on or upon the ultimate liquidation of the company, they are again taxed as income of the individual shareholders. I think this shows a serious discrimination against the owner of the corporatin shares.

Hon. Mr. CAMPBELL: May I ask you a question there? Is it not true that people who set out to develop a business to-day can do it much better under a corporation than under a partnership, by reason of the fact that the taxes imposed on individual partners are so great as almost to amount to confiscation of their earnings after they reach a certain point, whereas a corporation, aside from the excess profits tax, is taxed at a much lower rate?

Mr. CARTER: Yes, Senator, in that a corporation is often able to create what is called a tax pocket, in the hope that the tax will be lower later on. Of course, that may prove to be a delusion.

Hon. Mr. HAYDEN: We hope not.

Hon. Mr. CAMPBELL: To-day a person whose business is expanding and who formerly would have set out to develop it under a partnership, is almost forced to develop it through a corporation, in order to have his surplus funds available fr expansion?

Mr. CARTER: That is right. But I think in doing that he hopes for another bit of legislation, perhaps ten years hence, which will help him out of his troubles.

Hon. Mr. CAMPBELL: The point you make is that if this double taxation continues he may some day reach the position where his business is in jeopardy on account of it?

Mr. CARTER: That is it.

Mr. STIKEMAN: Are you advocating that the corporation be taxed in the same manner as the partnership and the individual?

Mr. CARTER: No, not at all. I think that would be quite impossible. If one did that, it seems to me shareholders would be required to pay taxes on income they did not receive, and that would be so destructive that a corporation could not expand. The Association's opinion is that the proper principle is to tax corporations and then to gross up the shareholders' income and to allow shareholders credit for the corporation tax.

The CHAIRMAN: That used to be the practice some twenty years ago. Is that not so, Mr. Stikeman?

Mr. STIKEMAN: Yes.

Mr. CARTER: I think it was changed in 1926.

Mr. STIKEMAN: Coming to that section of your brief headed "Discretionary Powers of the Minister", I see that you say, on the second page, that an explanatory brochure was issued at the inception of the Excess Profits Tax Act and later brought up to date. Is it not a fact that that explanatory brochure was dropped some few years after it had been brought out and that it caused considerable embarrassment to taxpayers and the department?

Mr. THOMPSON: They brought out the original brochure, then brought it up to date a year or so later, and afterwards dropped it.

Hon. Mr. HAIG: Why did they drop it?

Mr. CARTER: Because the Act was continually being changed. The department will have to answer any question as to why the Act was changed.

Mr. STIKEMAN: Do you consider that the brochure should have been revised each time the Act was revised?

Mr. CARTER: Most certainly. That is one of our submissions.

Hon. Mr. HAIG: I suggest that the Act was changed because the Department was caught in its own rulings. Every time that happens to the department it comes around with an amendment to the Act in order to beat the court.

Hon. Mr. CAMPBELL: Would you not suggest that instead of having a brochure to interpret the Act, that the statute itself should contain the interpretations?

Mr. THOMPSON: I think that would not be possible. The Act could not be made so clear that no instructions would be needed. There was no reason why the brochure in regard to The Excess Profits Act should not have been continued and revised to conform with decisions handed down by the courts.

Hon. Mr. HAIG: Every law on the Statute Book is subject to interpretation. The law on any subject is the relevant statute plus judicial decisions. Why should the income tax law be different from any other in that respect?

Mr. THOMPSON: There have not been enough cases before the courts.

Mr. MACDONNELL: Our feeling is, gentlemen, that that is due to the nature of the appeal provisions and the way they have been discouraged; and the fact is that there have been very few of them and that a body of case law has not been built up.

Hon. Mr. HAIG: But if the appeal procedure was made simple and fair and inexpensive, would there not be appeals then?

Mr. MACDONNELL: Quite so. I think I am right in saying that it was one of the boasts of Mr. Breadner, the famous Commissioner of some years ago, that there never had been an appeal, and that was a record that he was concerned to preserve. He did not like appeals. I suggest that that tradition has rather been adhered to.

Hon. Mr. HAYDEN: The law is much more flexible without appeals, of course.

Hon. Mr. HAIG: It is all in the hands of the officials.

Mr. STIKEMAN: Could you tell us how many cases have been taken to court since 1917, Mr. Macdonnell?

Hon. Mr. HAYDEN: I do not think the number would be in the hundreds, would it?

Mr. MACDONNELL: We had some figures on that. You mean appeals by corporations?

Mr. STIKEMAN: No; all appeals.

Mr. MACDONNELL: I am sorry, I have not got that figure.

Mr. STIKEMAN: We have put before the committee this morning a list of all the income tax appeals before the courts in Canada and the Privy Council since 1917. I think there are about 121.. We have two lists here, one arranged by subject matter and the other arranged alphabetically. There are not enough copies to be distributed among all members of the committee, so the lists are being placed in the record. (*See* appendix.)

Then on page 2 of your brief, Mr. Macdonnell, you say:—

> It is submitted, however, that the discretion should be vested not in an individual official, least of all a member of the administrative staff, but in an independent tribunal. Such a tribunal would stand in the same relation to the Minister as the Board of Referees which functions in connection with the Excess Profits Tax Act.

When you say the tribunal should be independent, how independent do you mean it should be?

Mr. CARTER: We believe that it should not come under the surveillance of the Deputy Minister for Taxation. The board might be appointed by the Minister and be responsible to the Minister.

Mr. STIKEMAN: You feel that it should be similar to the Board of Referees as an advisory body to the Minister?

Mr. CARTER: Yes, I think that states it fairly well. We feel that it should be a board to which both the assessor and the taxpayer should go in all matters of discretion.

Mr. STIKEMAN: Without having to go through the taxing department in order to get through?

Mr. CARTER: Yes, we do not think the discretion should be exercisable by the taxation department without reference to an independent board.

Hon. Mr. HAYDEN: Is that clear? You would go to the board in order to deal with some exercise of discretion. First of all there has got to be an exercise of discretion leading to an assessment. When an assessment has been made involving an exercise of discretion, you want a board to which the taxpayer can appeal, a board with some independence?

Mr. CARTER: No, that is not correct. We feel that there should be regional boards, and that whenever a matter of discretion arises, even in the simplest assessments, that before an assessor can say that bad debts or this and that will be disallowed he must go to the board, which would be a very informal body. We do not wish it to be a court whose findings are published.

Hon. Mr. HAYDEN: After the assessor makes a ruling, that should be subject to review by this board, is that it?

Mr. CARTER: No. It is our view that if the assessor wishes to exercise his discretion he must go to the board; and at the same time the taxpayer should appear before the board. The whole thing could be very informal. We submit that it is no more the right of the assessor to exercise discretion than it is the right of the taxpayer.

The CHAIRMAN: Somebody would have to appoint the board, so it could not be entirely independent. In your opinion, who should appoint the board?

Mr. CARTER: It should be independent of the Deputy Minister. We think the Minister should make the appointment.

The CHAIRMAN: If you leave it to the Minister, that in fact means the Deputy Minister.

Mr. CARTER: No, no more than in the case of the Board of Referees. That board is independent of the Deputy Minister.

The CHAIRMAN: Who appoints it?

Mr. CARTER: It is appointed by Order in Council.

The CHAIRMAN: The Order in Council is passed on the recommendation of the Minister, who is advised by his Deputy.

Hon. Mr. CAMPBELL: Not necessarily.

The CHAIRMAN: Not necessarily, but practically. I have been there.

Hon, Mr. HAYDEN: Even though the Deputy Minister suggests persons for appointment, those persons could be independent.

The CHAIRMAN: I agree with that, but I am saying that no board could be entirely independent, because its members will have to be appointed by some one in the department, through Order in Council.

Mr. CARTER: We believe that the principle behind the appointment of a Board of Referees in connection with the Excess Profits Tax Act is a sound one, and that a similar board should be appointed to review the exercise of discretion under the Income War Tax Act.

Mr. STIKEMAN: May I suggest that in exercising his discretion under the Excess Profits Tax Act the Deputy Minister determines in the first instance who shall go before the Board of Referees?

Mr. CARTER: He does in the case of depressed businesses, but not in the case of new businesses.

Mr. STIKEMAN: Do you consider that he should retain a similar power to exercise discretion under the Income War Tax Act, if the board that you suggest is appointed?

Mr. CARTER: No; we suggest that he should have no right to exercise discretion at all. The Act should be changed, we think, to give the discretion to a board.

Mr. STIKEMAN: So by an independent tribunal you mean a tribunal independent in every sense, administratively and otherwise, of the Deputy Minister of National Revenue for Taxation?

Mr. CARTER: Yes. We believe that in exercising discretion he takes unto himself the functions of a judge, and that he should not be both an assessor and a judge.

Hon. Mr. HAIG: May I ask a question there, Mr. Carter? Why would it not be better to have the assessor, say in Winnipeg, make the assessment? I take this as an example because I know Winnipeg. Suppose I am dissatisfied with his assessment, I can appeal to this independent board. The board would then render judgement on the assessment that would throw it out, endorse it or cut it down. From then on, as I follow your brief, there would be an appeal. You are simply putting in three men in twenty offices in Canada to take the place of the Deputy Minister.

Mr. CARTER: Yes.

Hon. Mr. HAIG: They would be right in the office there and operate all the machinery. It seems to me the tendency would be just exactly the same there, as it is with the Deputy Minister today. Let me give you an illustration. Under the Mobilization Act the government during the war set up in each military district a tribunal consisting of a judge and two or three advisers, independent

persons. A man could accept his call at once or apply to this board for adjudication as to whether or not he came within the act. Then there was an appeal from the decision of that tribunal to the board at Ottawa. Very few appeals were ever taken to Ottawa. But when the military district decided to call, say John Smith, and he was dissatisfied with that call, he went to that board. It seems to me that would be better than the way you suggest.

Mr. CARTER: I think your illustration is not altogether analogous. You are referring to a wartime measure.

Hon. Mr. HAIG: Yes.

Mr. CARTER: It would seem to us that the primary job of the Income Tax Department should be the assessing and collecting of taxes. But when there is a matter such as that of determining whether the return is properly made out, our association believes that that should not be the function of the man whom you are dealing with as your opposite number in your return; that should be somebody else outside the department who is in a more judicial relationship with the taxpayer. I do not know that we feel very strongly on that point. Probably the appeal provisions might operate satisfactorily.

Hon. Mr. HAIG: You are the first people to suggest that, and that is why I put the question.

Mr. CARTER: Yes.

Mr. THOMPSON: Might I add a word? The Deputy Minister now has to instruct, and does instruct, the assessors as to how they shall exercise the Minister's discretion. We would have this board instruct the assessors and inform the taxpayers how these discretions shall be exercised.

The CHAIRMAN: But if you had different boards throughout the country how could you be certain that they would issue similar instructions?

Mr. THOMPSON: They would have to be co-ordinated, to be really one board delegating their powers as the Minister now does. They could in fact delegate their powers to the assessors, but I do not know that we would want this. If it was laid down as a guide how the discretion should be exercised, the assessor could in many cases satisfy the taxpayer. They would get together and the taxpayer would not have to go to the board, because he would know that the board would do exactly as the assessor had done.

Hon. Mr. HAYDEN: Why should not the assessors make the assessment? Then if in arriving at an assessment, an assesor has exercised any discretion against a taxpayer, which the taxpayer thinks unfair to him, let the board review the matter instead of having the taxpayer go to the Minister? The complaint of many who come here is that in these appeals it is the Deputy Minister speaking again.

Mr. THOMPSON: We feel that where the assessor has to exercise discretion he does so under instructions from the Deputy Minister.

Hon. Mr. HAYDEN: As long as the taxpayer has an independent place where he can have that discretion reviewed he is protected. He has no independent place to go to now.

Mr. THOMPSON: No.

Mr. MACDONNELL: Would there not be an advantage, as Mr. Thompson says, in having some information given the taxpayer as to how this discretion is going to be exercised? Our submission is that the person who should decide how it should be exercised, and give this information to the taxpayer, should not be an administrative official, but an independent tribunal which would be judicial in character.

Hon. Mr. HAYDEN: I think your board would be more independent if it functions after the assessment is made. In arriving at the assessment they would get wrapped up in the administrative machinery and would be dealing too much with the assessors before the assessment is made. I would rather have the board deal with the problem after the assessor has exhausted his authority.

Mr. CARTER: The exercise of discretion is something which should be properly handled without publicity; only in the cases appealed should there be publicity. Furthermore, we find that different skills are required in dealing with the exercise of discretion. We feel that the discretionary board should be more readily get-at-able and informal than an appeal board. The findings of any appeal board should be published, and in this way case law could be developed.

Hon. Mr. HAYDEN: I do not know why one board could not deal with all those functions.

Hon. Mr. CAMPBELL: In your view the taxpayer in making his return exercises a discretion, which he says is in accordance with good accounting practice. Now, if that return is to be questioned, a board whose members were skilled in such matters as assessment and discretionary powers and so forth, could hear any complaints and would probably have a more scientific approach to the exercise of discretionary power than the Minister or the Deputy Minister has, they being interested primarily in collecting the maximum tax. Therefore you suggest that some procedure should be set up whereby the taxpayer would get notice of any change in the exercise of discretionary powers, and could appear informally before a board to make his explanations. In a word, you would have that discretion exercised by the board, or have that board advise the Minister as to the discretion he should exercise?

Mr. CARTER: Yes. The department is now sending out notices on some matters of discretion, advising the taxpayers how that discretion is going to be exercised; and taxpayers may go down and see the taxing department.

The CHAIRMAN: In this brief, and in some other briefs we have had, complaint is made that the taxpayer is obliged to put up a deposit of $400 when he goes to the Exchequer Court and that discourages the taxpayer, especially the small taxpayer in cases where perhaps the amount at stake is not very large. You suggest that in seeking an appeal the taxpayer should be put to no expense whatever, except for his own lawyer or accountant. There being no restraint placed upon the taxpayer, might not this result in encouraging appeals trivial in their nature, and might you not clog the whole machinery with a multiplicity of appeals?

Mr. CARTER: What is trivial to one man is very important to another, and it is very hard to decide where triviality starts. I think there is too much involved for people to make mischievous appeals.

Hon. Mr. HAYDEN: It might be a good thing to have a lot of appeals, for it might lead to some pronouncement on the law.

Mr. STIKEMAN: Would you still require to publish rulings if you do publish decisions; or do you think the latter would supplant the need for administrative rulings?

Mr. CARTER: We would still wish to have both; one as an indication as to how assessments were going to be carried out, and the other as a statement on the law. We should like to keep within the act a certain number of discretionary clauses. We do not welcome a particularly rigid act which would attempt to codify the whole matter, and beyond which there would be appeals to the courts.

Mr. STIKEMAN: If your proposals were adopted, it would rob the department of many grounds for issuing rulings except with respect to efficient administration. But nevertheless you would require all the rulings, administrative or otherwise, made public?

Mr. CARTER: I will ask Mr. Thompson to answer that.

Mr. THOMPSON: Where it is an exercise of discretion in an individual case you would not need publication except as an indication of how it might be exercised in another case, no two cases being on all fours. That makes for flexibility. You do not want hard case law in that sort of thing. For that reason it might be unwise to publish rulings.

Mr. STIKEMAN: You mean to publish decisions?

Mr. THOMPSON: Decisions, yes; the rulings are pretty well published now to some extent. If all our proposals go through we may not, as you say, need it, but if only some are accepted we may.

Mr. STIKEMAN: Mr. Carter said he would like to have all administrative rulings published nevertheless.

Mr. THOMPSON: Yes, but people would have to realize that they are individual decisions.

Mr. STIKEMAN: There are three kinds of rulings issued by the department now. There is the ruling in the individual case by letter exercising discretion—that would be your preliminary board; there is the regulation published in the *Canada Gazette* which actually varies the terms of particular sections of the act and is virtually an order in council; the third kind is directed to the explanation of various techniques, such as how to send in reports, how to manage the staff, and how to promote greater efficiency. I do not assume you would require that third class.

Mr. THOMPSON: Yes, I think we would. If we had this board we would ask them to issue their instructions and make them public. If we did not get the board we would like to see what instructions the Deputy Minister was giving to his officials. I do not mean confidential instructions, but general ones as to the exercise of discretion in making assessments.

Mr. STIKEMAN: Let me come back to your top board, the one whose rulings would be published. Would the published rulings be binding upon the Minister of National Revenue or still be subject to his approval?

Mr. THOMPSON: We propose that the board would be something like the Division Court is in Ontario, in that it would be a very inexpensive appeal board. The appeal to that board would replace the appeal that now goes to the Minister. Maybe small fees would have to be paid on the Division Court scale. Take a person who is billed by the department for $250 more tax than he thinks he should pay. If he is a man with a moderate income, that is quite an important amount to him; yet he does not like to take the chance of going through the expensive procedure of appealing to the Exchequer Court. It would be a big advantage to him if he could appeal to a board.

Hon. Mr. HAYDEN: Your argument, carried further, would support the contention I make, that there should be one board to which the taxpayer could appeal, whether he was dissatisfied with the discretion or the accounting or anything else. If there was one board, the taxpayer could have his whole case reviewed in the one instance, and in general the taxpayer would likely be satisfied with the ruling because he would know the board was independent. Your idea, though, is to have two boards—one board to deal with the proposed exercise of discretion, and another board to deal with appeals from assessments. It still seems to me that the same object could be achieved and the whole thing done at once by one board with independent powers.

Mr. THOMPSON: We think there is too much there for one board.

Hon. Mr. HAYDEN: I mean one board in the sense of one body. Whether the board should travel to different parts of the country or be divided up into regional sections, is a matter for some discussion. I think such a board should be brought as close as possible to the taxpayer.

Mr. MACDONNELL: May I ask, Senator Hayden, whether with your proposal it would be desirable and possible to give the taxpayer in advance some idea of how the discretion was going to be exercised by the board? First of all, do you think it is desirable in the interests of the taxpayer that he should have some advance information? And, secondly, under your scheme it would be possible to give him advance information?

Hon. Mr. HAYDEN: I think that in preparing his return the taxpayer must follow good accounting practice, and then I think that when appearing before the board he should attempt to assert that good accounting practice and, if necessary, support it by expert opinion. I do not know how you could write definitions of what discretion is, and full instructions as to the manner in which it should be exercised, and so on. First of all, your definitions would be interminably long; and secondly, they would be a contradiction of the word "discretion".

Mr. THOMPSON: We agree with that entirely. The instructions would be merely guides, similar to those given in the excess profits tax brochure. But the second board, the appeal board, would be over the other one. Questions of law might go to this second board. The board would also have power to review the exercise of the discretionary power.

Hon. Mr. HAYDEN: It would have two bites.

Mr. THOMPSON: Yes.

Mr. STIKEMAN: Under the heading of "Publication of Orders and Rulings," on page 2, the brief says:—

> It is interesting in this connection to note that an American authority in commenting on the administration of the Canadian Income Tax Act, expressed the view that "the Canadian system of unpublished special rulings is not as satisfactory as the system of publishing the regulations and rulings in the United States".

As a matter of interest, can you give the reference to that authority, Mr. Macdonnell?.

Mr. MACDONNELL: I am sorry, I have not got that with me. I could get it for you.

Mr. STIKEMAN: I would like to have it.

Mr. CARTER: I have seen that kind of thing in more than one article by Americans on the Canadian system. They feel that because of the large number of cases they have and the fact that their regulations are published, they have more certainty.

Mr. STIKEMAN: Have you not seen a large number of criticisms of the American system to the effect that each individual ruling becomes part of the law and tends to make the law so unwieldly that no practitioner can find his way through?

Mr. CARTER: We wish to retain the flexibility of the Canadian statute, and at the same time have more certainty.

Mr. STIKEMAN: I was simply curious, because it is the first time I have heard of an American saying that our system was not as satisfactory as theirs.

On the same page of the brief, under the heading "Amendment of Existing Appeal Provisions," you state:

> Further, there is reason to believe that the policy of the Department over the years has been, as far as possible, definitely to discourage appeals.

Apart from the earlier reference to Commissioner Breadner's attitude, do you feel that that is still persisting in the department?

Mr. MACDONNELL: Our opinion is that it is.

Mr. STIKEMAN: In what way?

Mr. MACDONNELL: Our opinion is that the department does definitely discourage taxpayers from appealing to the Exchequer Court.

Hon. Mr. HAYDEN: The time that elapses between the date you serve a notice of dissatisfaction and the date you get any action from departmental officials would in itself act as a discouragement in many cases. A year or so may elapse sometimes.

Mr. CARTER: From the small number of cases that have been taken to court since 1917, I think it is evident that there has been compromise somewhere along the line. The total mentioned by Mr. Stikeman was 121, of which perhaps one in every four concerned corporations. That is a very small number and, as I say, it indicates that there has been compromise. And certainly the department must have been a party to what has occurred.

Mr. STIKEMAN: Do you think the department compromised simply with a view to preventing appeals or because it thought there was some right on both sides?

Mr. CARTER: I have no opinion.

Mr. STIKEMAN: My point in asking the question was to find out whether you thought that if such a board as you suggest were set up the department would still attempt to prevent appeals.

Mr. CARTER: I think there undoubtedly would be more appeals from such a board. Litigation now is discouraged not only by the department but also by taxpayers, on account of the trouble and expense to which a taxpayer is put in appearing under the present system.

Mr. STIKEMAN: Then there are two factors which discourage appeals at present—certain provisions in the statute, and the administrative attitude towards appeals. If by setting up your board you cured the statutory factor of discouragement, would you automatically cure the administrative factor?

Mr. THOMPSON: You would in this way. Going to the court must mean a great deal of bother for the department, and a lot of that would be avoided if they could appear before an informal board. Also, in taking appeals before the board, the department would not require lawyers of as high calibre as are needed for appearance before the court.

Mr. STIKEMAN: The inference is that it is rather because of the state of the law than because of any desire not to have a body of law built up that the department seeks to present appeals?

Mr. THOMPSON: Quite right.

Mr. STIKEMAN: On the last page of the brief, where you refer to procedure in the United Kingdom, you say that the Board of Inland Revenue which is the administrative body, provides what might be called real specialists among the experts. Then you go on:

> They are said to be very approachable and it is sometimes possible to get a favourable decision from them against their own inspectors of taxes. . . . .

Do you suggest that the present Income Tax Department will not reverse district inspectors or junior officers?

Mr. CARTER: I think we suggest that it is unusual.

Mr. STIKEMAN: The reason for that may be, may it not, that so little latitude is given under the statute in certain cases that, unless there is a direction by the court, the Department feels it has not the authority to reverse the officials, whereas your board would be directed to overrule officials where deemed desirable?

Mr. CARTER: I think so.

Hon. Mr. HAYDEN: There is another possible interpretation. In view of the information we have had about the discretionary rulings sent out to district inspectors, is it not felt that when the district inspector speaks, although the voice is the voice of the district inspector, the decision is the decision of the Deputy Minister?

Mr. STIKEMAN: The last paragraph of the brief urges that the department should be given a sufficient budget to enable it to secure the kind of staff needed. In your organization you must have very wide experience with rates of pay and quality of work performed for certain rates of pay. Have you any suggestion of a concrete nature that might help us in the future?

Mr. CARTER: We feel that the low rates apply to senior officers more than to the rank and file of assessors. Probably that may be said of all civil servants, but that is something of which we have no general knowledge. It seems to us that senior assessors make decisions of such wide significance—involving important issues, large amounts and so many people—that these officers should be highly skilled, and that they should be well paid.

Mr. STIKEMAN: In this respect would you make an exception of officers of the Department of National Revenue as compared with officers of other departments?

Mr. CARTER: Well, I think we are better qualified to make comparisons with rates of pay in industry, and I believe we can safely say that the senior officers of the department are not as well paid as people of similar ability making decisions of equally high importance in industry.

Mr. STIKEMAN: What do you think would be the average salary expectancy of a chartered accountant, say thirty-five years of age and with eight to ten years of experience, if he were practising as an accountant with an accounting firm?

Mr. CARTER: Somewhere in the neighbourhood of $5,000.

Mr. STIKEMAN: Do you think he could expect to get approximately the same salary from a large corporation that might require his services?

Mr. CARTER: He would expect to get a little more from a corporation than if he were in practice as an accountant.

Mr. STIKEMAN: Do you feel that the qualified professional accountants in the department are paid less than that after ten years service?

Mr. CARTER: I was speaking about the senior assessors, men usually with from five to seven or eight years' experience. I am not sure that that is sufficient experience for a top assessor in the department. I am speaking of an average man. The top assessor in the department would not be an average man, he would be beyond that, and accordingly I think he should get considerably beyond the figure I have mentioned.

Mr. STIKEMAN: I was attempting to get a basic norm beyond which a man might be paid.

Hon. Mr. McRAE: Take the Aluminium Company. With their scope of business what would they pay their tax expert, $10,000 a year?

Mr. CARTER: A tax expert is awfully hard to define. I would think the salary would range anywhere from $3,000 to $10,000 depending upon the work and responsibility.

Mr. STIKEMAN: I should like to ask Mr. Macdonnell the same question with respect to lawyers as you have answered with respect to accountants. What do you think might be the expectancy of a young lawyer in an average size law firm after ten years in practice?

Mr. MACDONNELL: I find that question very difficult to answer. I would think somewhere between $4,000 and $4,500; something like that.

Mr. STIKEMAN: That is very interesting. Is it your understanding that departmental lawyers are paid less than that?

Mr. MACDONNELL: Departmental lawyers of comparable experience?

Mr. STIKEMAN: Yes.

Mr. MACDONNELL: I do not know.

Mr. STIKEMAN: I think they are paid approximately the same. My recollection is that the figure is almost identical with the one mentioned after eight or ten years' experience.

The CHAIRMAN: I think Mr. Stikeman is best qualified to answer the question.

Hon. Mr. HAYDEN: I think so. Do you know where you might find a lawyer of the type, Mr. Stikeman, who would take $350 or $400 a month? There might be a lot of people interested in finding one with those qualifications who would accept that salary.

Hon. Mr. CRERAR: Would he have the qualifications?

Hon. Mr. HAYDEN: You would want an active, alert, energetic young lawyer about 35 years old, which would mean he has been practising at the bar for at least ten years. I suggest to you that there are not many such lawyers available at $350 or $400 a month.

The CHAIRMAN: What is Mr. Stikeman's experience so far as lawyers in the department are concerned? Does he find that usually they are so poorly paid—put it that way if you like—that they go out into private practice or take a position with a corporation? Is that the general experience?

Mr. STIKEMAN: No. Since 1917 only three lawyers have left the department for private practice, one in 1921 and two in 1945.

I was attempting to establish some basic norm of average expectancy on the part of a moderately successful professional man, in order to get behind the last paragraph of the brief that the higher officials should be given better treatment from a salary point of view, because it is only when we determine—if we can—that certain norms of pay should operate for men of normal average working ability that we can determine what experts or super-normal men should get. Have you any idea what the assistant deputy minister of the Department of National Revenue should be paid, Mr. Carter?

Mr. CARTER: I have my own opinion.

Mr. STIKEMAN: What is your opinion?

Mr. CARTER: I would say no less than $25,000; maybe a good deal more.

Mr. STIKEMAN: That is not the opinion of your association?

Mr. CARTER: No; you asked me for mine.

Mr. STIKEMAN: I wanted to make it clear.

The CHAIRMAN: What is the salary paid assessors in the district offices? They have very heavy responsibilities.

Mr. STIKEMAN: I will ask Mr. Wood to give that information, Mr. Chairman.

Mr. WOOD: This is the list of the salary ranges of the inspectors in our various district offices:

| *District* | *Salary Range* |
|---|---|
| Montreal<br>Toronto | $ 5,820—$ 6,600 |
| Ottawa<br>Hamilton<br>London<br>Vancouver | 4,920— 5,820 |
| Winnipeg | 4,620— 5,340 |

| *District* | *Salary Range* |
|---|---|
| Halifax, Saint John, Quebec, Calgary, Edmonton | $4020 - 4620 |
| Kingston, Belleville, Fort William, Regina | $3600 - 4320 |
| Charlottetown, Saskatoon | $3360 - 3960 |

The CHAIRMAN: That is certainly not extravagant.

Hon. Mr. CAMPBELL: Would there be superannuation benefits, Mr. Wood?

Mr. WOOD: It is based on 2 per cent of the salary for each year of service, with a maximum of thirty-five years.

Hon. Mr. HAYDEN: It is pretty hard to give an average figure.

Mr. WOOD: Yes.

Hon. Mr. MCRAE: What is the assistant deputy minister paid?

Mr. WOOD: The salary ranges from $6600 to $6900.

Hon. Mr. MCRAE: That is against your personal view of $25,000.

Mr. CARTER: That was for the deputy minister.

Mr. STIKEMAN: I asked what you thought the salary of the assistant deputy should be.

Mr. CARTER: I was thinking of the deputy minister. That is too high for the assistant deputy minister. I would revise it down to about half.

The CHAIRMAN: Even that would be more than a deputy minister receives in nearly all departments.

Mr. STIKEMAN: The deputy minister of National Revenue receives $10,000.

That is all, Mr. Chairman.

Hon. Mr. LEGER: Mr. Chairman, I should like some information on the reopening of assessments. The brief proposes that assessments should be reopened within three years from the due date of filing the return. It seems to me that when the assessment is made it should be final, except in the case of fraud. When an individual or a corporation pays the assessment, why should it not be final?

Mr. MACDONNELL: I suppose, Mr. Chairman, it is always possible that a mistake may be discovered and new evidence may come to light, and so on. I think it is the practice in most countries to allow assessments to be reopened either by the taxing authorities or by the taxpayer.

The CHAIRMAN: There need not necessarily be fraud, but new information might come out to affect the assessment.

Mr. MACDONNELL: It is a common practice.

Hon. Mr. CAMPBELL: A taxpayer has no right to reopen an assessment when the period for appeal has expired.

Hon. Mr. CRERAR: There is a point, Mr. Macdonnell, I should like to clear up. About halfway down the first page I find this sentence, "Now, however, that so large a part of the gross earnings of industry is taken in taxes, it is most desirable that taxpayers should have every assurance that the taxes themselves are equitable and 'efficient'." What do you mean by the word "efficient"?

Mr. MACDONNELL: That is just a reference to the definition of "efficiency" as used above in the broad sense of "skill in collecting a given amount of revenue with the least possible burden on the national income".

Hon. Mr. CRERAR: Does it mean that the machinery should be as inexpensive as possible?

Mr. MACDONNELL: No, it is used in the broader sense, that the tax shall be so imposed that it will put the least possible burden on the economy of the country.

Hon. Mr. LAMBERT: Mr. Macdonnell, in the second paragraph of your brief you deal with the Excess Profits Tax Act. Can you say offhand what percentage of your 5,500 members were exclusively engaged in manufacturing war supplies?

Mr. MACDONNELL: I find it very difficult to say definitely, sir. It comes back to me that something like 3,000 of our members were engaged wholly or partly in war work, but I cannot say what number were so engaged exclusively.

Hon. Mr. LAMBERT: That would make roughly a little more than half.

Mr. MACDONNELL: Yes, who were to a greater or less extent engaged in war work.

Hon. Mr. LAMBERT: Mr. Howe and others well qualified to speak have praised the war effort of our manufacturers. The impression is general that those who engaged in the manufacture of war supplies did a very efficient job. Would you say so?

Mr. MACDONNELL: Quite so, sir.

Hon. Mr. LAMBERT: In view of that I find it a little difficult to reconcile the claims regarding inefficiency and waste induced by that tax.

Mr. MACDONNELL: I would say, sir, that I quite agree with you. I think on the whole the war effort of Canadian industry was efficient. But it stands to reason that a tax like the Excess Profits Tax does tend to tempt people to forget the need for economy.

Hon. Mr. LAMBERT: It is a sort of natural dislike to paying taxes.

Mr. MACDONNELL: While the desire of the people to do an efficient job during the war acted against the tendency to disregard the need for economy, I think the feeling of the association is that in peacetime that same restraining influence would not be present, with the result that it would have the effect of putting a premium on waste and inefficiency.

Hon. Mr. KING: Because of the tax they would not insist upon the same efficiency from their employees. There is no doubt of that.

Hon. Mr. HAYDEN: I think two things are being confused. You might have an efficient manufacturing operation which produces a good result, a good flow of manufactured articles, and your costs may be low, so that you have a substantial profit. But the purpose to which you devote some of those moneys, before you come to the net taxable income, is another question entirely. A company might be very lavish in its advertising expenses.

Hon. Mr. LAMBERT: As a means of evading taxation?

Hon. Mr. HAYDEN: No; but it is only natural not to be so careful when you are not bearing all the load.

The CHAIRMAN: In cases of that kind the companies are getting bargain rates in advertising; that is what it amounts to.

Hon. Mr. LAMBERT: On the question of efficiency, I was wondering whether in the long run it makes any difference to a manufacturing plant when its business comes from the Government rather than private sources. Will the operations of a steel plant at Hamilton, for instance, be more efficient if goods

are being made for a car company than if shells are being made for the Government? In one instance the company has to go out and acquire business through its own selling efforts, but in the other the business comes from the acceptance of a tender.

Mr. MACDONNELL: Yes, that is true.

Hon. Mr. LAMBERT: The question occurred to me whether what we have been discussing here is due rather to the original character of the business than to any system of taxation.

Hon. Mr. CAMPBELL: Mr. Macdonnell, is not the great fear of members of your Association that continuance of excess profits taxes during the peacetime period will discourage production and expansion and development of business generally?

Mr. MACDONNELL: Yes, quite so.

Hon. Mr. LAMBERT: That depends on the rate of tax, does it not?

Hon. Mr. CAMPBELL: The excess profits taxation that has been in force.

Hon. Mr. HAYDEN: Any rate of excess profits tax.

Hon. Mr. LAMBERT: I would not say that.

The CHAIRMAN: With a 40 per cent income tax, I should think that would be the effect.

Hon. Mr. HAYDEN: Any excess tax that is piled on top of the regular rates would certainly have that effect.

Mr. CARTER: Might it not be put that the excess profits tax relates wartime to peacetime conditions and is a restriction on expansion? The excess profits tax is a bar to the expansion of business and a harm to the general economy.

Hon. Mr. CAMPBELL: We are now taxing on the increase over the average earnings of 1936-39.

Mr. CARTER: Yes.

Hon. Mr. LAMBERT: A good deal depends, does it not, upon the capital set-up, and also the capital expansion that an industry has received as a result of experience in the war?

Hon. Mr. HAYDEN: I do not think so.

Hon. Mr. CAMPBELL: Do you not find the members of your Association complaining that the excess profits tax amounts to discrimination, in that it penalizes the efficient producer by making him pay a higher tax than the inefficient producer?

Mr. MACDONNELL: Quite definitely, sir.

The CHAIRMAN: That is always the case.

Hon. Mr. HAYDEN: It is only in times like these when there is an excess demand for certain articles that inefficient producers can exist. When ordinary competition comes into play the efficient operator gets all the business, or at least to the extent of his capacity.

Mr. THOMPSON: The man who has been in business for some years has a standard profit, but the man who starts to-day has to get it fixed.

Hon. Mr. HAYDEN: The man who starts in business to-day will pay no excess profits tax this year.

Mr. THOMPSON: No, but he will next year.

Hon. Mr. HAYDEN: We hope the tax will not be in effect then.

Hon. Mr. CRERAR: Mr. Chairman, I quite agree with the opinion expressed in this brief that the excess profits tax does encourage wastefulness and put a premium on inefficiency. When the manager of a company knows that they are well into the excess profits tax class, there is not the same incentive to be

careful. In those circumstances a company may say, as the brewers did, "If we can get away with it, we will spend a good deal of this money in goodwill advertising," or they might decide to spend freely on decorating their premises, and so on.

Hon. Mr. CAMPBELL: I would like to ask Mr. Stikeman a question about the case referred to on page 4 of the brief, Trapp. v. Minister of National Revenue (1946) Canada Tax Cases, 30. Was that a case concerning the Minister's discretion?

Mr. STIKEMAN: No, I do not believe you could say it was brought directly as a result of ministerial discretion. It was a result of the department's interpretation of the Income War Tax Act, which led officials to feel that deduction of mortgage interest on an accrual basis was contrary to the terms of the section which permits deduction of interest on borrowed capital used in the business. It was a straight case of interpreting the statutory language.

Hon. Mr. CAMPBELL: Surely that was a change from past practice, was it not?

Mr. STIKEMAN: Yes, it was, but it was a change which the department based upon a more correct reading of the language of the act, and it did not purport to be the exercise of discretion.

Hon. Mr. CAMPBELL: I was wondering if there were any special circumstances in that case. Take the case of a company that has a large bonded indebtedness, on account of money which is used in the business, and in a certain year the earnings are not enough to pay the interest in full. The company charges the interest in that year, even though it is not paid until a subsequent year. Is the meaning of this case that in future such interest charges which have not actually been paid will not be allowed?

Mr. STIKEMAN: Technically, I think that until the Supreme Court has passed on it, that would be the ruling. I had the privilege of arguing that case before the Exchequer Court and took the purely legal view that the statute was set up in such a fashion that the accruing of expenses unpaid was an exception to the general rule for deduction of expenses actually paid out on a cash basis. I did not expect that the court would find there was no right at all in the statute for the accrual basis. I urged that it was an exception to the general rule, and that this particular taxpayer had commenced his business on a cash basis and had changed over to doing his business on an accrual basis but had never in fact paid the expenses which had accrued. But the court took the argument that we advanced one step further.

Hon. Mr. CAMPBELL: I can understand that it should not be allowed in certain circumstances, but it seems to me a very dangerous rule to be applied generally, in the light of our financing in this country.

Mr. STIKEMAN: I think we shall have to wait for the Supreme Court's decision in this case to find out whether it will be a rule of law or not. I understand that until the department have that decision they are carrying on as before.

Hon. Mr. CAMPBELL: It is so absolutely contrary to sound accounting practice that it would be very dangerous to the economy of this country.

Hon. Mr. HAYDEN: An amendment may be required.

Mr. MACDONNELL: Mr. Chairman, may I say a word more about the Excess Profits Tax Act. I would like to call attention to the fact that while we have said rude things about it, we do state in the brief that we regard it as absolutely justified as a war measure.

The CHAIRMAN: Are there any other questions? If not, I want to take this opportunity, on behalf of the committee, to thank you, Mr. Macdonnell, and your associates for coming here and presenting this informative brief and taking part in the discussion. Your brief was really a brief.

Hon. Mr. HAYDEN: And right on the point.

The CHAIRMAN: Yes, right on the point. Furthermore, unlike some of the other briefs that we have heard, it does not go beyond the limits of the reference by the Senate to this committee. I want to assure you that your recommendations will receive the careful consideration of the committee.

Mr. MACDONNELL: Thank you very much, Mr. Chairman and honourable gentlemen, for hearing us.

The Committee adjourned until to-morrow at ten thirty a.m.

# APPENDIX

## INCOME AND EXCESS PROFITS TAX CASES

### 1917 to March 1946

ARRANGED ALPHABETICALLY

| | | |
|---|---|---|
| | Anderson Logging Co. *v.* The King | 1925 S.C.R. 45<br>1925 2 D.L.R. 143<br>1926 1 D.L.R. 785 (P.C.) |
| | **Re* W. E. Applegate, C. E. Snyder—*see* Sterling Royalties. | |
| Sec. 3. | *B. & B.Royalties Ltd. *v.* M.N.R. | 1940 Ex. C.R. 90<br>1940 4 D.L.R. 369 |
| | Bahamas General Trust Co. *v.* Prov. Treas. ALBERTA | 1942 1 D.L.R. (Alta. page 169 Sup. Crt.) |
| | Rex *v.* Batters 1925 1 D.L.R. 726 (MANITOBA) PROSECUTION | |
| Sec. 5 | *Baymond Corp. Ltd. *v.* M.N.R. | 1945 Ex. C.R. 11<br>1945 C.T.C. 4 |
| Secs. 3, 9, 33, 35, 48 and 55 | Beaver Lumber Co. Ltd. | 1943 Can. T.C. 210 (K.B. SASK.)<br>1944 1 D.L.R. 334 |
| (now see 79) | Rex *v.* Bell (ALBERTA CASE) | 1925 S.C.R. 59 |
| (Sec. 11 ss. 2) Sec. 66 | *Birtwhistle, Peter Trust *v.* M.N.R.<br>M.N.R. *v.* Trust and Guarantee Co. Ltd. | 1938 Ex. C.R. 95<br>1939 S.C.R. 125<br>1939 4 A.C.R. 149<br>1940 A C 138<br>1939 4 A11 B.R. 149 |
| | *Black *v.* M.N.R. | 1932 Ex. C.R. 8<br>1932 D.L.R. |
| | Bouscadillac Gold Mines Ltd. *v.* Toronto | 1939 MUNICIPAL CASE TORONTO.<br>1939 4 D.L.R. 537 |
| | *Burns & Jackson Logging Co. *v.* M.N.R. | 1945 C.T.C. |
| Sec. 9B (2) *(a)* Sec. 9B (4) | *King *v.* B.C. Electric | 1945 Ex. C.R. 82<br>1945 C.T.C. 162 |
| Sec. 84 | A. G. *v.* B.C. Sugar Refining Co. | 1932 1 D.L.R. 626 B.C. CASE |
| Sec. 3 | *B.C. Fir & Cedar Lbr. Co. Ltd. *v.* M.N.R.<br>For same problem *see* P.C. 1932, A.C. 441. | 1930 3 D.L.R. 608 |
| | Burns *v.* M.N.R. | 1946 C.T.C. 13 |
| | *C.F.L. Engineering Co. and Geo. Duclos (Bankrupt) | 1944 C.T.C. 62 (MACKENZIE ESTATE) |
| Sec. 3. | *Capital Trust Corp. *et al v.* M.N.R. | 1936 Ex. C.R. 163<br>1937 1 D.L.R. 617<br>1937 S.C.R. 192 |
| (Constitutionality) | *Caron *v.* King | 68 D.L.R. 185<br>21 Can. Ex. 119<br>1923 1 D.L.R. 1173<br>1924 4 D.L.R. 105<br>1924 A.C. 999 |
| | Rex *v.* Centner—31 O.W.M. 101 | |

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| Sec. 11 (2) | *Cosman, James Estate *v.* M.N.R. (1941) | Ex. C.R. 33 (1941)<br>2 D.L.R. 218 |
| | *Curry, John—*See* McLeod (Estate) | |
| Sec. 5 (1) (a)<br>Sec. 33, 53, 58, 69 | *Davidson *v.* The King | 1945 Ex. C.R.<br>Petition of Right to reopen assessment 1917–1934<br>1945 C.T.C. 189 |
| Secs. 6 (a)<br>6 (b) | *Dominion Natural Gas Co. *v.* M.N.R. | 1940 4 D.L.R. 657<br>1940 Ex. C.R. 9<br>1941 S.C.R. 19 |
| | Dominion Telegraph Securities *v.* M.N.R. | 1946 C.T.C. 1 |
| B.P.T. | *Dominion Textile Co. Ltd. *v.* M.N.R. | 1940 Ex. C.R. 130<br>1941 1 D.L.R. 377 |
| | Donen *v.* Rex | 1925 1 D.L.R. 1141<br>PROSECUTION MANITOBA |
| Sec. 5 (1) (b) | *Dupuis Freres Ltd. *v.* M. C. & E.<br>Rex *v.* Ed.<br>Elwood (Ont. Ass't Act) | 1927 Ex. C.R. 207<br>1927 3 D.L.R. 836<br>41 O.W.N. 186 |
| | *Elliott, Dame Grace *et al* Executors of the Will of Joseph Charles Emile Trudeau *v.* M.N.R. | See Trudeau *v.* M.N.R. |
| | Esquimalt Water Works Co. *v.* Leeming | 1930 2 D.L.R. 37<br>B.C. INCOME TAX CASE |
| | Euler *v.* Elzear Bertrand, Que. | Not reported 1928 |
| Sec. 50 | *Re:* Excelsior Electric Dairy Machinery Ltd. 1922 | 52 O.L.R. 22 5 |
| | Atty Gen'l of Can. *v.* C. C. Fields & Co. | 1943 1 D.L.R. 434<br>1944 D.L.R. 305 |
| | Firestone Co. *v.* Comm'r. Inc. Tax (*B.C.*) | Crt. of Appeal 1941 W.W.R. 635 Fortnightly L.J. Feb. 2, 1942<br>1942 4 D.L.R. 433 |
| | Forbes *v.* A.G. for *Manitoba*<br>*see* Worthington *v.* A.G. for Man. | 1936 S.C.R. 40<br>1937 A.C. 260 |
| | *The Fraser Valley Milk Producers Assn.<br>*v.* The M.N.R. | 1928 Ex. Ct. R. 215<br>1929 S.C.R. 435 |
| | Fraser, D. R. & Co. Ltd. *v.* M.N.R. | 1945 C.T.C. 429 |
| | *Fullerton *v.* M.N.R. Ex. Ct.<br>(Judg't. rendered Nov. 2/38) | 1939 Ex. C. R. 13 |
| | *Gagne *v.* Min. of Finance | 1925 Ex. C.R. 19 |
| | Crown's Claim in Bankruptcy<br>*Re:* General Fireproofing Co. | 1937 2 D.L.R. 30<br>(S.C. of Can. 50) |
| Sec. 80 | *H.M. The King *v.* Frank | 1945 C.T.C. 11<br>PROSECUTION |
| Sec. 5(1) (a) | *Gilhooly *v.* M.N.R. | 1945 Ex. C.R. |
| Sec. 3 | *Re:* Gillespie (Alta. App. Div.) | 1943 1 D.L.R. 202<br>Can. T.C. 127 |
| | *Ernest Gilman, Inc. *v.* M.N.R. | 1937 Ex. C.R. 98<br>1937 4 D.L.R. 17 |

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| Sec. 80 | *H.M. The King *v.* Aaron and Max Goldman | 1945 C.T.C. 1<br>PROSECUTION |
| | A.G. Canada *v.* Goldberg | 1929 1 D.L.R. 711<br>Ont. Supreme Crt. Wright J. (Special War Rev. Act) |
| | *Re:* General Fireproofing Co | 1937 2 D.L.R. 30 |
| | *Harrison *v.* Rex | 1924 3 D.L.R. 312<br>PROSECUTION |
| | *Re:* Hastings Street Properties Ltd | 1931 1 D.L.R. 604<br>B.C., C.A. |
| | *Harry C. Hatch *v.* M.N.R | 1938 Ex. C.R. 208 |
| Sec. 6 (a) | *Highwood-Scarce Oils Ltd. *v.* M.N.R | 1942 Ex. C.R. 56-3<br>D.L.R. 38<br>1944 S.C.R. 92;<br>2 D.L.R. 1 |
| | *Hodgins *v.* M.N.R | (Ex. Crt. Judgt. rendered Nov. 21, 1929)<br>(not reported) |
| | *Holden *v.* M.N.R | 1931 Ex. C.R. 215<br>1932 4 D.L.R. 60<br>1932 S.C.R. 655 |
| | *Geo. S. Holmstead *v.* M., C. and E | 1927 Ex. C.R. 68 |
| | Humberstone Coal Co. Ltd. (In Bankruptcy) | 1925 D.L.R. 154 |
| | *George Hope *v.* The M.N.R. Ex. Ct | 1929 Ex. C.R. 158 |
| | In the matter of the Inc. Tax Act (Man.) and C.B. Murphy 1936 | Unreported. |
| | In *re* Income Tax Act (Man.) *re* Judges Salaries | 41 Man. L.R. 621<br>(1933) |
| | *Re:* International Harvester Co. Ltd | 1940 2 D.L.R. 646<br>(Sask. Crt. of Appeal 1941 3 D.L.R.<br>65 (Superior Crt.) |
| | Thos. Jackson & Sons Ltd. *v.* Municipal Commr | Man. (1936) S.C.R. 616 |
| | *King *v.* Johnson Matthey & Co. (Canada) Ltd | 1938 Ex. C.R. 141<br>1938 3 D.L.R. 15 |
| | *In *re* Judges' Salaries | 1924 Ex. C.R. 151 |
| | Kaufman *v.* McMillan | (1939) O.W.N. 415 |
| | Jackson J. D.—see Royal Trust Co. *v.* M.N.R | |
| | *Jones Sir Lyman — see Royal Trust Co. *v.* M.N.R | |
| | *Julius Kayser & Co. Ltd. *v.* M.N.R | Ex. Ct. 1940, 66<br>1940 3 D.L.R. 146 |

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| Sec. 6 (a) 6 (b) | *Kellogg Co. of Can. Ltd. *v.* M.N.R. | 1942 Ex. Crt. 33 2 D.L.R. 337 1943 S.C.R. 58 2 D.L.R. 62 |
| | *Re:* Kemp | 1940 2 D.L.R. 209 S.C.R. 353 1939 2 D.L.R. 338 |
| | *Kenedy, William *v.* The Min. N.R. | 1929 Ex. C.R. 36 |
| | Kent *v.* The King | 1924 S.C.R. 388 |
| | Kerr *v.* Supt. Ins. and A.G. Alta | 1938 3 D.L.R. 23 reversed by 1939 1 D.L.R. 149 1942 S.C.R. 435; 4 D.L.R. 289 1943 Can. T.C. 97 |
| | King *v.* Kussner | 1936 Ex. C.R. 206 215 and 216 (Excise Case) |
| | Leeming *v.* Esquimalt Waterworks Co | 1931 1 D.L.R. 615 |
| | *Lemay *v.* M.N.R. | 1939 Ex. C.R. 248 1940 1 D.L.R. 93 |
| | *In *re* Salary of Lieutenant-Governors | 1931 Ex. C.R. 232 |
| | Liquid Carbonic Can. Corp. Ltd. *v.* Provincial Treasurer of Alberta. | 1942 1 D.L.R. 443 |
| | *The King *v.* Max Lithwick (Lithwick & Cole) | 1921 20 Ex. C.R. 293 57 D.L.R. 1 |
| | In *re* London & Brown | (1931) 45 B.C.R. 92 B.C. Court of Appeal Provincial Income Tax |
| Sec. 5 ss. (1) *(k)* | *Lumbers *v.* M.N.R. | 1943 Ex. C.R. 202 4 D.L.R. 216 1944 S.C.R. 2 D.L.R. 545 |
| | *Hilliard C. McConkey *v.* M.N.R. | 1937 Ex. C.R. 209 |
| | *Mackenzie Sir W. *see* Capital Trust and Coffee *v.* M.N.R. | |
| Sec. 19 | *Emma MacLaren *v.* M.N.R. | 1934 Ex. C.R. 13 1934 D.L.R. |
| | *James B. McLeod *v.* Minister of C. and E. | 1935 Ex. Ct. 104 1926 S.C.R. 457 |
| | *James Barber McLeod *v.* M.N.R. | Ex. Crt. 1932 1 1932 D.L.R. |
| | *McMartin Duncan—*See* Holden | |
| Sec. 3(e) | *W. H. Malkin *v.* M.N.R. | 1938 Ex. C.R. 225 1942 Ex. C.R. 113; 3 D.L.R. 272 |
| Secs. 33 and 80 | *The King *v.* Maloney—The King *v.* Standish Hall Ltd | 1942 C.T.C. 77 Prosecution |
| | *Massey *v.* M.N.R. (Judg't. rendered Dec. 6, 1938 Maclean, J.) | 1939 Ex. C.R. 41 |
| | Meehan *v.* Rex | 1924 2 W.W.R. 1231-3 W.W.R. 395 |
| | *Merritt *v.* M.N.R. | 1941 Ex. C.R. 175 1941 3 D.L.R. 115 1942 S.C.R. 269 2 D.L.R. 465 (B.C.) |

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| Sec. 19 | *Merritt Realty Co. Ltd. *v.* Brown | 1932 1 D.L.R. 795<br>1932 2 D.L.R. 465<br>1932 S.C.R. 187<br>B.C. INCOME TAX CASE |
| | King *v.* The Mexican Light & Power Co. Ltd | Not reported |
| | *Minister of N.R. *v.* Estate K. Molson | 1937 Ex. C.R. 55<br>1938 S.C.R. 213<br>1938 2 D.L.R. 481 |
| Sec. 6(a) 6(b) | *Montreal Light Heat & Power Cons. *v.* M.N.R.<br>*Montreal Coke & Mfg. Co. *v.* M.N.R. | 1941 2 D.L.R. 97 (Exchange.)<br>1941 Ex. C.R. 21-30 |
| | Montreal Trust Co. *v.* The King | 1924 1 D.L.R. 1030 |
| | *King *v.* Montreal Telegraph Co. et al | 1925 Ex. C.R. 79 |
| | City of Montreal *v.* Caverhill | 1937 63 Q.B.B. 85 |
| | *Allan Morrison *v.* The Min. of N.R | 1928 Ex. C.R. 75 |
| | Murphy—case (Man.)<br>*See* in *re* Income Tax Act (Man.) | 41 Man. L.R. 621 |
| | *Mother Clement P. *v.* M.N.R.—*See* O'Connor Wm. and Helen | |
| E.P. Act Sec. 5, 13, 14 | *Nanaimo Community Hotel Co. Ltd. *v.* Board of Referees | 1945 3 D.L.R. 225<br>1944 C.T.C. p. 102<br>1945 C.T.C. 125 |
| | In *re* Nanton | 1934 42 Man. R. 461 |
| | *National Petroleum Corp. Ltd. *v.* M.N.R. | 1924 Ex. C.R. 102<br>3 D.L.R. 109 |
| | *National Trust Co. Ltd. *v.* Min. N.R.<br>Exr's. Sir L. M. Jones | 1935 Ex. C.R. 167<br>1936 1 D.L.R. 129 |
| | *Nicholson Ltd. *v.* M.N.R. | 1945 C.T.C. 263 |
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| | *The North Pacific Lumber Co. Ltd *v.* The M.N.R. | 1928 Ex. C.R. 68 |
| | The King *v.* Noxzema Chemical Co. of Can. Ltd | 1942 S.C.R. 178<br>1942 2 D.L.R. 51 |
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| | O'Kelly *v.* Rex | 1924 3 D.L.R. 312 |
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| | Panton *v.* Spencer | 57 D.L.R. 447<br>14 Sask. L.R. 161 |
| | *Omer H. Patrick *v.* M.N.R. | 1936 2 D.L.R. 274<br>1936 Ex. C.R. 38 |
| | *The King *v.* Donat Paquin Ltée | 1942 C.T.C. 153-164<br>PROSECUTION |

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| Sec. 5 (1) (a) | *Pioneer Laundry & Dry Cleaners Ltd. *v.* The M.N.R. | 1938 Ex. C.R. 18<br>1939 S.C.R. 1<br>1939 4 All E.R. 254<br>1939 4 D.L.R. 48 |
| | *Re.* Pettigrew & Plamadon (Bankruptcy) | 1943 C.T.C. 196 |
| Sec. 5 (1) (a) | *Pioneer Laundry Co. *v.* M.N.R. | 1942 Ex. C.R. 179<br>1942 4 D.L.R.<br>1940 A.C. 127 |
| | *The Pope Appliances Corp. Ltd. *v.* Min. Customs & Excise. | 1927 Ex. C.R. 17 |
| | *Port Credit Realty Ltd. *v.* M.N.R. | 1937 Ex. C.R. 88<br>1937 4 D.L.R. 17 |
| | Proctor & Gamble Co. *re* Income Tax Act 1932 | 1938 SASK.<br>1938 2 D.L.R. 597 |
| Sec. 2 (i) | *Wm. Ramsay Estate, *see* King *v.* Toronto General Trusts Corp. | |
| | Ramsay *v.* Prov. Treas. of Alberta | 1939 2 D.L.R. 707<br>ALTA. Supr. Crt. |
| | *Richardson (Muriel) *v.* M.N.R. | 1941 Ex. C.R. 136<br>1941 D.L.R. 249 |
| | *Mary M. Riddell *v.* Min. N.R. | 1938 Ex. C.R. 135 |
| | *Riedle Brewery Ltd. *v.* M.N.R. | 1939 Ex. Crt. R. 314<br>1939 S.C.R. 253 |
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| | Robins *v.* Forbes | 1921 56 D.L.R. 496<br>1921 1 W.W.R. 438 |
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| | Roseberry-Surprise Mining Co. *v.* The King | 1924 S.C.R. 445 |
| | *Royal Trust Co. *v.* Min. N.R. | RE: (J. D. JACKSON TRUST)<br>1931 3 D.L.R. 474<br>1931 S.C.R. 485<br>1930 Ex. C.R. 172 |
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| | *Bessie L. Shaw *v.* Min. N.R. | 1939 Ex. C.R. 35<br>1939 4 D.L.R. 81<br>1939 S.C.R. 338 |
| | *Siscoe Gold Mines Ltd. *v.* M.N.R. | 1945 C.T.C. |
| | Smith *v.* Rex | 1923 1 D. L.R. 820<br>56 *N.S.R.* 72 |

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| | *Clarence E. Snyder *v.* M.N.R. | Reversed by Sup. Crt. |
| | Wm. R. Applegate | 1939 Ex. C.R. 235 |
| | *Spooner *v.* M.N.R. | 1930 Ex. C.R. 229<br>1931 3 D.L.R. 136<br>1931 S.C.R. 399<br>1933 3 D.L.R. 497 |
| | *Sterling Royalties Ltd. *v.* M.N.R. | 1942 3 D.L.R. 109 |
| Sec. 3 | *St. John Drydock and Shipbuilding Co. Ltd. *v.* M.N.R. | 1944 Ex. C.R. 186<br>4 D.L.R. 81 |
| | *Re* Stout and City of Toronto | 1927 60 O.L.R. 313 |
| | Swift Canadian *v.* City of Edmonton | 62 D.L.R. 175<br>Alta. Sup. Crt. 1921 |
| | *Snyder C. E. *v.* M.N.R.—*See* Sterling Royalties | |
| | Thompson, P. W. *v.* M.N.R. | 1946 C.T.C. 51 |
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| Sec. 9 (1) *(b)* | *The Toronto Gen. Trusts Corp. *v.* M.N.R. | (Estate of Sarah Whitney)<br>1936 Ex. C.R. 172 |
| | *The King *v.* Toronto General Trusts Corp. | (Ramsay Estate)<br>1942 Ex. Crt. R. 46<br>2 D.L.R. 529 |
| | Trapp, T. D. *v.* M.N.R. | 1946 C.T.C. 30 |
| | *Trudeau *v.* M.N.R. | 1940 Ex. C.R. 171 |
| | *Trusts & Guarantee Co. *v.* M.N.R.—*See* Birthwhistle Case. | 47 O.L.R. 1 |
| | Union Natural Gas Co. *v.* Dover | 1920 60 S.C.R. 640 |
| | Walkerville Brewery Ltd. *v.* The King | 1938 3 D.L.R. 525 |
| | Walkerville Brewery Ltd. *v.* M.N.R. | 1942 Ex. C.R. 124<br>3 D.L.R. 542 |
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| | *Waterous *v.* Min. N.R. | 1933 S.C.R. 408<br>1933 3 D.L.R. 502<br>1931 Ex. Crt. 108 |
| | *Western Vinegars Ltd. *v.* Min. N.R. | 1938 Ex. C.R. 39 |
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| | Forbes *v.* Atty. Gen. Man. | 1936 | S.C.R. 40 |
| Sec. 6(2) | *Wright's Canadian Ropes Ltd. *v.* M.N.R. | 1945 | Ex. C.R. |
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(Worthington *v.* Atty. G. of Man.)
(Forbes *v.* Atty. G. of Man.)

1946

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

## SPECIAL COMMITTEE

Appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon.

No. 4

WEDNESDAY, APRIL 3, 1946

CHAIRMAN

The Honourable W. D. Euler, P.C.

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Brief submitted by the Dominion Association of Chartered Accountants.

OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1946

## ORDER OF APPOINTMENT

*(Extracts from the Minutes of Proceedings of the Senate for 19th March, 1946)*

Resolved,—That a Special Committee of the Senate be appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon;

(2) That the said Committee be composed of the Honourable Senators Aseltine, Beauregard, Bench, Buchanan, Campbell, Crerar, Euler, Farris, Haig, Hayden, Hugessen, Lambert, Léger, McRae, Moraud, Robertson, Sinclair and Vien;

(3) That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. MOYER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

WEDNESDAY, 3RD APRIL, 1946.

Pursuant to adjournment and notice the Special Committee appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, met this day at 10.30 a.m.

*Present:*—The Honourable W. D. Euler, P.C., Chairman; The Honourable Senators Aseltine, Beauregard, Crerar, Haig, Hugessen, Lambert, Léger, McRae, Moraud and Sinclair—11.

*In attendance:*

The Official Reporters of the Senate.
Mr. H. H. Stikeman, Counsel to the Committee.

Mr. J. Grant Glassco, F.C.A., submitted a brief on behalf of the Dominion Association of Chartered Accountants, and was questioned by counsel.

At 12.30 p.m., the Committee adjourned until Tuesday, 9th April, instant, at 10.30 a.m.

Attest.—

R. LAROSE,
*Clerk of the Committee.*

# MINUTES OF EVIDENCE

THE SENATE

WEDNESDAY, APRIL 3, 1946.

The Special Committee of the Senate to consider the provisions and workings of the Income Tax Act, etc., resumed this day at 10.30 a.m.

Hon. Mr. Euler in the Chair.

The CHAIRMAN: Gentlemen, we have before us Mr. J. Grant Glassco, Mr. H. P. Herington, Mr. H. C. Hayes and Mr. H. G. Norman from the Dominion Association of Chartered Accountants Their brief is to be presented by Mr. Glassco. We will proceed in the usual way: we will hear Mr. Glassco without interruption, I hope, then Mr. Stikeman will put his questions, after which we ourselves may desire some further information from the witness.

Mr. GLASSCO: Mr. Chairman and honourable senators—

Hon. Mr. HAIG: Would Mr. Glassco kindly tell us who he is?

Mr. GLASSCO: I am a member, sir, of the Legislation Committee and of the sub-committee of that committee which was given the task of preparing this brief.

Hon. Mr. HAIG: Thank you.

Mr. GLASSCO: Mr. Chairman and honourable senators:

The following submission is made on behalf of The Dominion Association of Chartered Accountants which is a body incorporated by act of the Parliament of Canada. Our membership comprises some 2,700 members of the institutes or societies of chartered accountants of the nine provinces of Canada. Approximately 60% of our members are engaged in auditing and other phases of public accounting, and the remaining 40% occupy positions in governmental, industrial or financial organizations, usually in some capacity identified with accounting, finance or taxation. The members of our profession are, therefore, in a position to observe the practical workings of the Canadian tax system.

This brief has been prepared by a special committee appointed for the purpose, and has been approved by the Legislation Committee of the Association.

Having regard to the terms of reference, we understand that your Committee is concerned primarily with the administrative aspects of the income and excess profits taxes and that questions bearing upon the fiscal policy underlying the enactment of such taxes are beyond the scope of your inquiry. But the work of administration is affected by the actual taxes imposed, and is further governed by certain specific provisions of the acts, so that some consideration is necessarily given to the tax acts as a whole. On this ground we have prepared our submission under the following main headings:—

Legislation
Assessments
Discretionary Powers
Appeal Procedures
Summary

As a preliminary, however, may we remind ourselves that problems of taxes and tax administration are not new, and that for hundreds of years there has been consideration of public requirements and how to meet them. In a study of this problem Adam Smith laid down four maxims of taxation, three of which

relate basically to the qualities which make up sound administrative policy. These are as follows:—

> The tax which each individual is bound to pay, ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person . . .
>
> Every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay it. . .
>
> Every tax ought to be so contrived, as both to take out and to keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the state. . .

While these principles were enunciated many years ago, they are, in our opinion, fully applicable and sound under present-day conditions. If we apply them in more direct language to the two tax laws which are under discussion, the following specific objectives can be drawn up as representing a desirable goal in our tax administrative policy:—

> (2) Every taxpayer should be able to determine his tax liability with certainty.
>
> Every taxpayer should be able to determine his tax liability filing of returns and payment of tax, and the manner in which payment must be made.
>
> (3) All taxpayers should receive equal treatment and no grounds should be given upon which the suspicion of discrimination can be founded.
>
> (4) The methods under which the taxes are assessed and collected should be as convenient as possible to taxpayers generally.
>
> (5) The total costs involved in assessing and collecting the taxes should be minimized through efficient administrative organization. The costs (in time and money) to the taxpayer in meeting the requirements of the administration should also be minimized by efficient and reasonable procedures.
>
> (6) Taxpayers should have means readily available for obtaining prompt and final settlement of grievances, and for appeals at reasonable cost.
>
> (7) The tax laws and their administration must be kept in good repute through obvious consistency of treatment and by vigorous prosecution of all cases of evasion.
>
> Certain of these objectives already have been attained. In others, much remains to be done, and the following observations are put forward in the hope that they may assist your Committee in its task.

## LEGISLATION

As public accountants we feel that we are in a position to appreciate the many and varied problems involved in the determination of income, and our first comment, on the matter of legislation itself, is that much of the criticism so often directed at the administration is really due to the provisions of the acts themselves. In our opinion no one, however able and however ably supported, should be expected satisfactorily to administer the tax statutes in their present form.

It is particularly difficult to reconcile the determination of income under the tax acts and the various interpretations, regulations and exercises of discretion thereunder, with the meaning of income as ordinarily understood in business and determined through recognized accounting practices. In support

of this point we quote the following words of the president of the Exchequer Court of Canada in the judgment in the case of Thomas D. Trapp and the Minister of National Revenue:—

> It is generally conceded that in many cases, if not in most, the true net profit or gain position of a taxpayer, particularly if he is in business, cannot be ascertained otherwise than by an accounting method on the accrual basis. A person who has accounts receivable at the end of the year and owes accounts payable for debts relating to the earnings of such year but keeps his accounts only on a basis of cash received and cash expended will frequently arrive at an amount of income "received" during the year that is not a reflection of his true net profit or gain for such year. But under the Income War Tax Act, as it stands there is no place, as a matter of right, for the accounting method on an accrual basis, even if it does not reflect the true net profit or gain of the taxpayer, and it must give way to the express provisions of the act. Income tax law in Canada in this respect lags far behind that of the United Kingdom and the United States and runs counter to well recognized principles of sound business and accountancy practice.

The Income War Tax Act was enacted in 1917 and has been amended every year with the exception of the years 1921 and 1929. The Excess Profits Tax Act, first enacted in 1939, and repealed and re-enacted in substantially different form in 1940, has been amended in each of the subsequent years.

This pattern of annual amendments has persisted for nearly thirty years without a revision of the statute, and it is not surprising that the cumulative effect has been to render the law, in its present form, extremely difficult to understand. Some of the most important of the amendments have been designed to frustrate tax evasion and in that field the points of difference between our tax laws and the British and United States systems have required legislation of a type not found in the laws of those countries. In addition, there has been a mass of legislation concerned with various special taxes, exemptions and allowances, introduced in such a manner as to do great damage to the coherence and clarity of the statute. In our view a complete revision of the statute is urgently required if taxpayers generally are to be expected to understand the law.

We feel that another of the major contributory causes for the unsatisfactory state of the present legislation has been the hasty manner in which much of the amending legislation has been enacted by parliament, and we are strongly of the view that it is in the public interest that future legislation should be subjected to careful scrutiny and criticism in advance of enactment. Attached thereto, as exhibit A, is a schedule showing for the past eight years the dates when the Minister of Finance has made his budget speech, when the tax legislation first appeared in the House of Commons and when the parliamentary session ended. The frequency with which such legislation was introduced in the dying days of the session is striking, and in many instances there has been no time for any effective criticism of the proposed tax measures before they actually became law. These conditions are, in part, responsible for the fact that certain sections of the acts are almost completely unintelligible to the layman. In other cases, hasty drafting and the lack of opportunity for criticism have resulted in legislation different from the budget proposals which the amendments were supposed to implement.

It is our view that tax legislation should go to a committee of one or both houses of parliament after it has received first reading in the House of Commons, and that the public should be given an opportunity of being heard before such committee. Even if changes in the rates of taxation to be levied cannot properly be debated in such a committee, there would still be considerable value in receiving the views of the public at large upon the other amendments.

We refer later to the wide discretion which is granted to the Minister under the existing acts, and we would observe here only that clarity and certainty are desirable objectives and in order to achieve them it is essential that the granting of discretionary powers should be kept to a minimum in future legislation.

Many legal and administrative decisions disallowing expenses on the grounds that they were not necessary for the purpose of earning the income have been based on legislation and jurisprudence of a period when business was carried on in a manner entirely different than at present. As an example, it is difficult to understand why, under the conditions of modern financing, the discount and expenses relative to a bond issue cannot be amortized as part of the effective interest expense over the life of the bond. It is our view that provisions should be made in the act so that taxable income would be determined only after making deductions in accordance with recognized sound business principles currently applicable to the business of the taxpayer.

We have one further observation to make concerning the complexity of our income tax legislation. Taxpayers are constantly complaining that the forms and returns which are required are complex and difficult to understand.

As Mr. Elliott has properly pointed out to you, most of these difficulties stem directly from the legislation. It is our view that simplification of the law could be achieved without any important loss of revenue.

**EXHIBIT A**

DATES RESPECTING THE BUDGET AND BILL TO AMEND THE INCOME WAR TAX ACT

| | Date of budget | 1st reading of bill to amend Income War Tax Act | 3rd reading of bill to amend Income War Tax Act | Date of prorogation, dissolution or adjournment |
|---|---|---|---|---|
| 1938 ..... | 16th June | 24th June | 29th June | 1st July |
| 1939 (1st session).. | 25th April | 22nd May | 24th May | 3rd June |
| 1939 (2nd session).. | 12th Sept. | 12th Sept. | 12th Sept. | 12th September |
| 1940 ..... | 24th June | 18th July | 23rd July | 7th August (adjourned until 5th November, 1940) |
| 1941 ..... | 29th April | 13th May | 5th June | 14th June |
| 1942 ..... | 23rd June | 22nd July | 31st July | 1st August |
| 1943 ..... | 2nd March | 20th April | 21st April | 24th July (adjourned until 24th January, 1944) |
| 1944 ..... | 26th June | 1st August | 9th August | 14th August (adjourned until 31st January, 1945) |
| 1945 ..... | 12th Oct. | 8th Dec. | 13th Dec. | 18th December |

## ASSESSMENTS

One of the essentials of an efficient tax administration is the prompt and definite determination of the taxpayer's liability.

During the war years, having regard to the administrative problems resulting from the enormous increase in number of taxpayers, the introduction of the excess profits tax, as well as staff difficulties, little, if any, improvement could have been expected in so far as the promptness of assessment was concerned. However, it is submitted that never since the introduction of the income tax act have all the taxpayers returns been assessed within what could be considered as a reasonable delay.

In his evidence before your committee Mr. Fraser Elliott said: "We have assessed during the past five fiscal years ended March 1941 to 1945 inclusive, 6,880,424 individual returns, which is 82 per cent of all the returns received in the same periods; while for corporations in the same five year period, we have assessed 126,039 returns, which is 86 per cent of the total returns received in the same period." Our experience leads us to believe that many corporate taxpayers are still encountering serious delays in obtaining assessments. The position of 595 corporate taxpayers taken at random in the cities of Montreal and Toronto was examined in December, 1945 on our behalf in order to determine in each case the last fiscal year which had been assessed. The following is the result of this survey:—

| Number of Taxpayers | Percentage of Total | Last Taxation Year Assessed |
|---|---|---|
| 129 | 22 | 1939 and prior |
| 85 | 14½ | 1940 |
| 150 | 25 | 1941 |
| 131 | 21½ | 1942 |
| 88 | 16½ | 1943 |
| 2 | ½ | 1944 |
| 595 | 100 | |

With the relatively low tax rates in effect prior to the war, lengthy delays in obtaining an assessment, while annoying to the taxpayer, were perhaps not of great importance financially. With the increases in rates during the war and the probable maintenance of rates substantially above pre-war levels, assessment delay has worked and will continue to work a very serious hardship on the taxpayer as, in view of the ambiguities and uncertainties arising from the legislation, the amounts involved are often such that it is impossible to prepare accurate financial statements upon which to base future plans.

Based on experience gained in the practice of our profession, we offer the following comments and suggestions in connection with assessment delays and interest charges which we believe are the points which come in for criticism generally by the public in so far as assessment practices are concerned.

Except in cases of fraud, the act provides that the Minister may not re-open an assessment after the lapse of six years from the date of the original assessment. There would appear to be no good reason why any right of re-assessment should be vested in the Minister, except in cases of fraud, or why the administration should not be required to assess a taxpayer within a relatively short time from the date on which the returns are filed. Other government departments and private business are required to do a year's work in one year and we see no reason why the department should not be organized in the future so that under normal conditions one year's tax returns may be assessed in the year following their receipt.

Interest paid to the Crown on assessments is not allowed as an expense in computing the taxable income; furthermore, the Crown does not pay interest on amounts of income and excess profits taxes overpaid by the taxpayer. When tax rates were low, the amounts involved were not, as a rule, of great consequence. The existing tax rates coupled with the constantly increasing difficulty of the taxpayer of determining his tax liability as a result of ambiguities and unpublished rulings, have materially altered this situation. This treatment of interest by the department is a constant source of annoyance and loss to the taxpayer, particularly as regards the disallowance of interest as an expense, because in many cases the interest liability is increased substantially through no fault of his own but as a result of the lengthy delays before the determination of his liability by the department.

In order to remedy the existing situation discussed briefly in the foregoing, the following is suggested:—

(*a*) That the right of the Crown to vary the tax liability as calculated by the taxpayer should expire within two years from the date prescribed for the filing of the taxpayer's return, or the date of filing, whichever is the later, except in cases of fraud. It may be that this should be extended to three years until the existing backlog has been disposed of.

(*b*) That the interest due the Crown on a taxpayer's assessment for the period from the day prescribed for the filing of the return to a date one month after the date of assessment or in the case of an appeal, until the date the taxpayer's liability is finally determined, be allowed taxpayers as an expense in determining taxable income in the same manner and on the same basis that bank interest is allowed.

(*c*) That interest be allowed at 2%, or some other appropriate rate depending on current interest rates, on refunds due the taxpayer. In making this recommendation, the administrative difficulties arising out of the multiplicity of small refunds being made are recognized. If the calculation of interest on small balances represents too great an administrative task, we suggest that some level be struck below which interest be neither credited nor charged.

## DISCRETIONARY POWERS

At the present time there are ninety-five sections or sub-sections of the Income War Tax Act wherein the Minister is empowered to exercise discretion; in addition, The Excess Profits Tax Act, 1940, contains twenty-eight similar sections or sub-sections. Apart from the discretionary powers granted the Minister, section 32(A) of the Income War Tax Act and section 15 of the Excess Profits Tax Act grant important powers of a discretionary nature to the Treasury Board.

These discretionary powers deal with a wide range of subjects, from purely administrative matters of a totally unobjectionable nature to major matters profoundly affecting the quantum of taxation, where the granting of discretion may represent almost a delegation of taxing powers to the administration. For the purpose of this submission we have prepared (exhibit B) a list of the principal matters covered by these discretionary powers. In preparing this analysis we have adopted an arbitrary grouping which we believe follows the practical operation of the various sections. The main divisions are as follows:—

A. Administrative and punitive powers
B. Powers which make the minister the judge of reasonableness or equity
C. Powers which constitute the minister the judge of the facts
D. Powers to grant or refuse exemptions and allowances
E. Power to approve a pension fund or plan

Before proceeding to a discussion of the several groups we should express our general view that the granting of discretionary power in a wholesale manner has brought about a highly unsatisfactory state of affairs. Specifically, the present situation is open to the following criticism:—

(*a*) The liability of taxpayers in many cases cannot be ascertained with certainty when the tax is due to be paid.

(*b*) Where prospective transactions may result in taxation, the amount of which depends on the exercise of discretion, application for a ruling must be made before the tax can be ascertained. This involves expense and delay and in some cases the taxpayer is unable to obtain a ruling on the point at issue.

(*c*) In the absence of any public knowledge of the principles which govern the exercise of discretion there may be inconsistency and involuntary discrimination in the application of the tax to the taxpayer.

(*d*) The deputy minister is required to accept an unfair degree of responsibility and is entrusted with more power and authority than should be entrusted to a single individual.

The foregoing criticisms do not arise from any particular changes which have been made in the legislation in the last few years, although we believe there has been a tendency in wartime amendments to grant discretionary power rather than grapple with the difficulties of drafting explicit legislation. With the great rise in rates of taxation, however, this whole subject has acquired a new importance, and the amounts involved may be so great that the exercise of discretion may vitally affect the taxpayer. In these circumstances we believe it is of paramount importance to reduce the range of discretionary power to the minimum and to provide the taxpayer with access to the courts whenever he considers that his assessment is inequitable or arbitrary.

A. Administrative and Punitive Powers. In the attached schedule items 1 to 18 are referred to as matters of administrative routine and it is recognized that in a number of cases the powers granted the Minister are merely enabling powers, and proper and necessary for purposes of administration. Items 19 to

24 fall into a slightly different category and in several cases vest almost absolute power in the Minister.

B. Powers which make the Minister the Judge of Reasonableness or Equity. In general the powers which are described under this heading are subject to criticism on the grounds that the taxpayer is denied the right to appeal from the minister's determination. Many of the matters covered are complicated and difficult, but are susceptible of support and proof by presentation of proper evidence. We make the general submission that each of these powers should be qualified so as to permit a complete review of all the aspects of the case by the courts, or, alternatively, the enactment of a general section similar to that contained in legislation of other countries that where an appeal is taken to the courts from the exercise of discretion by an administrative official, the court will have the right to regard the discretion as not having been exercised and to substitute its own discretion for that of the administrative official. Most of the matters referred to under this heading bring into play principles of justice and equity and, regardless of the administrative procedure adopted in the exercise of discretion, the finality of the administrative decision, particularly when no publicity is given thereto, may often lead disappointed taxpayers to the opinion that their case has not been fairly dealt with.

In particular we refer to item 29 which is the power contained in section 6 (2)—to disallow any expense which the minister in his discretion may determine to be in excess of what is reasonable or normal for the business carried on by the taxpayer, etc. In another part of this submission we express the view that the definition of income should be changed to accord with the ordinary and accepted commercial and industrial concept. If this is done there is no occasion to grant a specific power to the minister to disallow any expense which he thinks is unreasonable and if there is to be a difference of opinion as to what the true income of the taxpayer has been, surely that is a question which can best be left to the courts to settle. We point out in passing the enlargement in the terms of section 6 (2) which took place in 1940 and the much more restrictive language which it replaced.

Item 47 referring to the power of the minister to appeal decisions of the Board of Referees to the Treasury Board is, in our opinion, contrary to principles of justice in that there is no notice to the taxpayer of the taking of such appeal and he is not given an opportunity to appear before the Treasury Board. In the ordinary course the Board of Referees receives a written submission from the taxpayer and has a hearing at which the circumstances are discussed at considerable length. No verbatim record is made of the proceedings but, based on all the evidence, the board makes a finding which it submits to the minister for approval. The act provides that the minister may, without even advising the Board of Referees and without having heard any of the evidence at the hearing, appeal the decision to the Treasury Board; thus the latter body has before it merely the opinion of the minister which, at best, has been formed with a limited knowledge of the facts of the case. It is submitted that such a provision is entirely unjustifiable.

C. Powers which constitute the Minister the Judge of the Facts. Under this heading are 26 items which give the minister power to determine a set of facts which, in many cases, are demonstrable by the simple production of evidence. Our general submission on this group is that the reference of so many matters of fact to the discretion of the minister is unsatisfactory in that it impairs the certainty of the legislation, gives rise to delay and expense in determining whether the minister is, or is not, satisfied and may deny the taxpayer the right to a judicial interpretation of the facts. In our view most of the discretions granted under this heading should be stricken out of the act.

D. Powers to Grant or Refuse Exemptions and Allowances. These powers are extremely important to taxpayers engaged in business, particularly those relating to the authority of the minister to fix the amount of allowance for depreciation and a reserve for bad debts. In general, most of these powers are unnecessary and inappropriate if the legislation is made specific, and we consider it desirable that to the fullest possible extent the statute itself should say who and what is to be taxed.

The question of a reserve for bad debts is one in respect of which it is, admittedly, difficult to legislate specifically, and we recommend that the basis of the reserve should be the subject of regulations prescribed by the minister.

Depreciation is one of the most important matters involving the use of discretion. The statutory provision as to depreciation was originally similar to that governing depletion and was found in section 5 of the act headed "Deductions and exemptions allowed". Shortly after the decision of the Privy Council in the Pioneer Laundry case, the depreciation provision was removed from section 5, and section 6 (n) was enacted under the heading "Deductions From Income not Allowed". The apparent intention of this change was to deny to any taxpayer what the courts in the Pioneer Laundry case had expressed as being the legal entitlement of the taxpayer under the then provisions of the law to a reasonable allowance for depreciation and we can see no grounds which justify such a manoeuvre on the part of the administration.

Under the U.S. Revenue Law a taxpayer is entitled to a deduction in respect of the loss sustained by him as a result of depreciation and obsolescence and we believe that our law should be changed to re-establish the legal entitlement of the taxpayer. The tax procedure in connection with depreciation is of the greatest importance to business and in the light of experience gained in this country, the United States and England, we believe that the following principles are fundamental to proper tax administration of depreciation accounting:

(a) The allowances made for depreciation should be regarded as the recovery of capital moneys by charges to operations over the useful life of the asset acquired, thus losses in service value arising from ordinary wear and tear and from obsolescence should be equally admissable as income deductions for tax purposes. Only with a policy under which losses from obsolescence are clearly allowable can business be expected to take prompt advantage of technological improvements which may require the retirement of fixed assets before they are physically exhausted.

(b) While the allowances made to the taxpayer should be limited to his total cost regardless of replacement values, he should be permitted to recover the whole of his cost by charges to operations and no losses or gains on asset retirements should be treated as capital losses or gains unless they arise from transactions which are clearly extraneous to the ordinary business of the taxpayer.

(c) In determining the rate of amortization of capital costs the taxpayer should be permitted within the limits of generally accepted accounting practice the widest possible latitude, as in the long run business is the best judge as to an appropriate rate. Moreover, over a period of years its makes little difference to the revenue at what rates depreciation is applied. The purpose of this recommendation is not to grant any special advantage to the taxpayer but merely to relieve business generally and the administration from the difficulties and vexations involved in imposing any fixed pattern of rates upon the taxpaying community.

E. Power to approve a pension fund or plan. This power is of an extraordinary nature because judging from the manner in which it is exercised the purpose is apparently social rather than fiscal. If the government wishes to use tax exemptions as a means of promoting certain social developments it will find many precedents for its action. It may be that the Tax Department is the one best suited to the task of passing upon the acceptability of a pension plan in the

light of the government's aim in the matter, but we suggest that it be frankly recognized that such powers are of a special nature and totally foreign to the tax-gathering functions of the Minister.

GENERAL. The attached schedule does not include section 32A of the Income War Tax and section 15 of The Excess Profits Tax Act, 1940. The powers and discretion in these sections are granted to the Treasury Board rather than to the minister. These sections by their very nature tend to create doubt as to the entire tax situation of taxpayers, and their introduction during the war was excused by the Minister of Finance on the grounds of the national emergency then existing. It was freely conceded that there is no place in normal times for such broad and arbitrary powers. We recommend, therefore, that these sections be repealed. The traditional attitude of the courts has been that parliament in its tax legislation must bring the subject clearly within the letter of the law, and that the subject has every right to examine the legislation and so order his affairs as to pay as little tax as possible. At the height of our national peril many took the view that such a proposition could not hold in wartime and that manoeuvres designed to reduce or avoid taxation were immoral and should be prevented at all costs. The parliament of Great Britain was the first to enact the legislation upon which section 32A is patterned and it appears to us that the main value of such legislation lay not in the penalties which were exacted under it but in its effect as a deterrent to those contemplating ways and means to reduce their taxes. However, to lay down the principle that it is wrongful to minimize liability to taxation in normal times comes perilously close to saying that the taxpayer must conduct his affairs so as to expose himself to the maximum of taxation. With taxes at their present and probable future levels it is impossible for the average business man not to allow tax considerations to affect his judgment and course of action, and it is fatuous to assume that under a system of private enterprise business men are going to select the course which leads to maximum taxation. For these reasons we consider it important to revert as quickly as possible to a rule of law and until we do so there will be no certainty or finality in our tax system.

We refer elsewhere in this submission to the desirability of publicity in connection with the assessment principles and practices adopted by the administration. We submit that many of the disputes and complaints which arise under those sections which now grant discretion to the minister could be avoided entirely if the taxpayer was advised in advance of the requirements of the administration.

There are several recent decisions of the Exchequer Court which seem to clarify to a considerable extent the taxpayer's position on an appeal from an assessment which embodies an exercise of discretion. We would refer the Committee to an article entitled "Ministerial and Administrative Discretion" dated 20th December 1945 which appears at page 6001 to 6026 of the Dominion of Canada Taxation Service (De Boo). It may be of interest to quote the following conclusions as to the legal situation, which are to be found at pages 6025-6026:

"The exercise of ministerial discretion may come before the courts as a facet, or one of the elements, in the making of an assessment upon a taxpayer, by way of an appeal from such assessment.

"The court will consider the assessment to see that it has been properly made on all counts.

"If the element of discretionary exercise in the assessment satisfies all the tests of legal propriety as earlier set out, then, assuming the assessment to be otherwise in order, the court will not interfere in any way with the conclusions of the discretion or the issue of the assessment.

"If, however, the discretion has been improperly exercised in the light of the established legal principles, all that the court may do is to refer the assessment back to the minister to be made correctly.

"It does not appear that there can ever be a case where the court can review the actual substance of the minister's discretion, even if improperly made, and substitute its opinion for the minister's."

The conclusions above set out appear to support our view that under present conditions the right of the taxpayer to appeal an assessment where discretion has been exercised by the minister is of very limited value.

## EXHIBIT B

### ANALYSIS OF DISCRETIONARY POWERS
### INCOME WAR TAX ACT AND EXCESS PROFITS TAX ACT

A. Administrative and Punitive Powers

(a) Administrative Routine:

1. Power to disallow change in fiscal period of taxpayer.
   Sec. 2(1) (s) (ii)—("the minister may, in his discretion, disallow")
2. Power to prescribe by regulation method of determination of present value of annuities and approval of mortality tables.
   Sec. 3(1) (b) and 9A (1) (b)—("as the minister may by regulation prescribe"; "approved by the minister")
3. Power to determine, in the case of multiple trusts, the trustee in whose hands the income of all the trusts will be taxed.
   Sec. 11(2)—("as the minister may determine")
4. Right to nominate person who shall make return on behalf of corporation, etc.
   Sec. 35(1) and 36(3)—("as the minister may require")
5. General power to enlarge the time for making returns.
   Sec. 40—("The minister may")
6. Exercise of power and authority of a commissioner under The Inquiries Act.
   Sec. 45—("may make such inquiry as he may deem necessary")
7. Right to specify records to be kept by taxpayer.
   Sec. 46—("may require . . . as he may prescribe")
8. Power to designate where books and records to be kept.
   Sec. 46A(1)—("as the minister may designate")
9. Control over disposal of records by taxpayers.
   Sec. 46A(2)—("until written permission . . . is obtained")
10. Right to assess and re-assess.
    Sec. 55—("The minister may")
11. Right to make refunds without application from taxpayer.
    Sec. 56—("The minister may")
12. Power to extend time for making appeals re taxpayers in Armed Forces.
    Sec. 58(1) (a)—("with the consent of the minister")
13. General power to make regulations deemed necessary to carry Act into effect.
    Sec. 75(2)—("The minister may")
14. Power to make regulations deemed necessary to carry into effect Dominion-Provincial agreements with respect to income taxes.
    Sec. 76A(2)—("The minister may")
15. Power to reduce or waive penalty for failure to file returns in certain cases.
    Sec. 77(3)(b) and 77(4)—("the minister may")
16. Power to authorize person to lay information or complaint.
    Sec. 82(1)—("authorized . . . . by the minister")
17. Right to limit allowable costs for purposes of tax credit re capital expenditures.
    Sec. 90(3), (4) (x), (5) and (6)—("as the minister may determine"; "the minister shall have power to determine")
18. Tax deductions at the source—regulations, etc.
    Sec. 92(2), (3) and (4)—("may by regulation prescribe")

(b) Special Administrative Matters:

19. Power to decide whether taxation treatment by other countries of ships and aircraft qualifies for reciprocal exemption.
    Sec. 4(m)—("in the opinion of the minister")
20. Power to decide which of two taxpayers is entitled to benefit of depletion allowance.
    Sec. 5(1) (a)—("the minister shall have full power")
21. Power to pass on acceptability of evidence as to tax paid and income derived by non-resident subsidiaries, etc.
    Sec. 8(3) and XP 9(3)—("evidence satisfactory to the minister")
22. Where tax avoidance feared, a dividend may be deemed to have been distributed and the shareholders taxed accordingly.
    Sec. 13(2)—("Where the minister is of the opinion . . . . power to determine")
23. Where husband and wife are partners, the whole business income can be attributed to husband or wife.
    Sec. 31(1)—("in the discretion of the minister")
24. Notwithstanding return made by taxpayer or in absence of return, minister may determine amount of tax.
    Sec. 47—("the minister may determine")

B. Powers which Make the Minister the Judge of Reasonableness or Equity

25. Power to determine whether 4(k) (Companies) who fail to file returns within required time have reasonable cause for delay and may be excused from penalty.
Sec. 4(k)—("the minister shall be the judge")
26. Power to determine just and fair depletion allowance for mines, oil and gas wells and timber limits.
Sec. 5(1)(a)—("The minister . . . . may make")
27. Power to determine what is reasonable rate of interest on borrowed capital used in business.
Sec. 5(1) (b)—("as the minister in his discretion may allow")
28. Power to pass on reasonableness of charges made by controlling companies abroad.
Sec. 6(1) (i)—("if the minister is satisfied")
29. Power to decide that any expense is in excess of what is reasonable or normal.
Sec. 6(2) and XP 8(b)—("the minister may"; "in his discretion may determine")
30. In determining earned income, minister may reduce salaries, etc., to amount commensurate with services actually rendered.
Sec. 6(3)—("decision . . . shall be final and conclusive")
31. Determination of extent to which expenses may be applicable to earned income and investment income, respectively.
Sec. 6(4)—("determination . . . . shall be final and conclusive")
32. Similar power of apportionment of expense between taxable and non-taxable income.
Sec. 6(5)—("the minister shall have full power")
33. Power to determine what income is taxable in case of persons resident both in Canada and abroad.
Sec. 9B(7)—("the minister may determine")
34. Right to fix the income value of property, the upkeep of which is required under the terms of a will or trust.
Sec. 11(5)—("as the minister may prescribe")
35. Right to determine what accumulation of profits by corporation exceeds what is reasonably required for the purposes of business.
Sec. 13(1)—("if the minister is of the opinion")
36. Right to determine the fair price of commodities sold by one company to a related company.
Sec. 23—("the minister may determine")
37. Power to determine amount of interest deemed to be received by Canadian company on advances to non-resident company.
Sec. 23A—("the minister may . . . determine")
38. Right to decide whether transactions with non-resident affiliates conform to general business practice.
Sec. 23B—("unless the minister is satisfied")
39. Where creative operations are carried on in Canada by non-residents, the right to determine what proportion of the income therefrom shall be taxed in Canada.
Sec. 26—("the minister shall have full discretion")
40. Similar provision in the case of non-residents soliciting orders or offering for sale in Canada.
Sec. 27A—("the minister shall have full discretion")
41. Power to determine fair market price where assets are sold to shareholders of a corporation.
Sec. 32B—("the minister shall have full power to determine")
42. Right to decide which mines shall be entitled to the three-year exemption for new mines.
Sec. 89(2)—("the minister shall determine")
43. Where parents fail to agree as to deduction in respect of dependent child, minister may determine which taxpayer should have the deduction.
First Schedule, Sec. 1, Rule 6—("unless the minister otherwise determines")
44. Power to adjust standard profits of taxpayers in respect of changes in length of fiscal period, alterations in capital employed, and changes in volume of production of gold mines and oil wells.
Sec. XP 4(1)—("the minister may in his discretion")

(NOTE: The letters XP indicate The Excess Profits Tax Act.)

45. Power to direct that in fixing standard profits of new businesses, standard profit of predecessor may be taken into account.
Sec. XP 4(2)—("the minister is satisfied . . . he may")
46. Power to decide whether business of taxpayers in standard period was depressed.
Sec. XP 5(2), (3) and (4)—("if . . . the minister is satisfied"; "in the opinion of the minister")
47. Power to appeal decisions of the Board of Referees to the Treasury Board.
Sec XP 5(5)—("until approved by the minister")

48. Power to decide what is a reasonable provision as a reserve against inventory decline.
Sec XP 6(1) (b) and XP 6(2)(c)—("the minister, in his discretion, may")
49. Power to fix reasonable allowance in lieu of salary to proprietors of unincorporated businesses.
Sec. XP 6(2)(b)—("the minister, in his discretion, may")

C. Powers which Constitute the Minister the Judge of the Facts

50. Right to determine whether a company carries on an active financial, commercial or industrial business (re personal corporations).
Sec. 2(1)(i)—("in the opinion of the minister")
51. Right to determine the interest portion of a payment in which principal and interest are blended.
Sec. 3(2)—("the minister is of the opinion"; "the minister shall have the power to determine")
52. Right to determine whether a single payment made to an employee upon retirement is in recognition of long service.
Sec. 3(6)—("where the minister is satisfied")
53. Right to determine whether payments made to former employees are in respect of loss of office or employment.
Sec. 3(8)—("where the minister is satisfied")
54. Right to determine the extent to which the income of a non-resident company has been taxed in Canada.
Sec. 4(o)—("the minister's determination shall be final and conclusive")
55. Power to exempt dividends from non-resident subsidiaries under certain conditions.
Sec. 4(r)—("if the minister is satisfied")
56. General broad powers to settle any question arising under the sections dealing with charitable donations by individuals and annuity exemptions.
Sec. 5(1)(j) and (k)—("the decision of the minister . . . . shall be final and conclusive")
57. Right to determine whether in assessing mining corporations under the Assessment Act (Ontario), deductions have been allowed for income and excess profits taxes payable.
Sec. 5(1)(s)—("provided that the minister is satisfied")
58. Right to determine whether a re-financing under which income bonds or debentures are issued was occasioned by financial difficulties.
Sec. 6(1)(k)—("to the satisfaction of the minister")
59. Right to decide whether or not certain annuity contracts permit the postponing of premium payments without disadvantage to the taxpayer.
Sec. 7A(1)(b)(ii)—("in the opinion of the minister")
60. Right to determine whether a mortgage or agreement of sale was an enforceable obligation of the taxpayer.
Sec. 7A(1)(d)—("to the satisfaction of the minister")
61. Right to fix the amount of income of a non-resident subsidiary corporation.
Sec. 8(2B)—("the minister may")
62. Right to determine whether or not a corporation has been actively engaged in prospecting and has carried out the purpose for which it was formed.
Sec. 8(5) (Second Proviso), 8(9) and 8(9A)—("satisfies the minister")
63. Power to decide which municipal or public bodies perform a function of government.
Sec. 9B(1)—("in the opinion of the minister")
64. Right to determine what persons are deemed to be residents of Canada and what income is taxable.
Sec. 9B(7)—("the minister shall have full power to determine")
65. Right to determine whether or not a taxpayer corporation was incorporated for the purpose of evading the 15% tax on non-residents.
Sec. 9B(11)—("if the minister is satisfied")
66. Right to determine chief business or occupation of taxpayer.
Sec. 10(2)—("the minister shall have full power to determine")
67. Right to value property transferred by shareholders to personal corporations.
Sec. 21(3)—("the decision of the minister shall be final and conclusive")
68. Right to determine whether or not a transfer to a minor was made for the purpose of evading income tax.
Sec. 32(1)—("unless the minister is satisfied")
69. Right to determine whether transfer of property on the basis of quid pro quo is a gift.
Sec. 88(7)—("the minister shall have power to determine")
70. Right to determine whether taxes withheld at the source are in excess of the tax actually due.
Sec. 92(8)—("if the minister is of the opinion")
71. Right to fix the date of actual commencement of business operations.
Sec. XP 2(1)(h)—("if the minister is satisfied")

72. Right to decide whether a taxpayer has embarked upon a substantially different business from that formerly carried on.
Sec. XP 3(1) (Proviso), XP 4(2), XP 4A(1)(a) (i) and XP 5(4)—("in the opinion of the minister"; "if the minister is satisfied")
73. Power to decide whether or not little or no capital is employed in carrying on profesisonal activities.
Sec. XP 7(b)—("in the opinion of the minister")
74. Power to determine whether a substantial increase in capital employed has occurred upon the incorporation of a so-called "controlled company".
Sec. XP 15A—("in the opinion of the minister")
75. Power to determine whether advances from parent companies are in the nature of permanently invested capital.
Sec. XP, First Schedule, 3(c)—("which the minister, in his sole discretion, determines")

D. Powers to Grant or Refuse Exemptions and Allowances

76. Power to excuse from taxation a portion of certain living allowances.
Sec. 3(4)—("as may be determined by the minister in his discretion")
77. Power to approve certain farmers' associations for tax exemption.
Sec. 4(i)—("as are approved by the minister")
78. Power to specify amounts of depreciation and depletion for purposes of loss carry-over.
Sec. 5(1) (p)—("as the minister may allow")
79. Power to qualify donations to scientific research associations as deductions from taxable income of the donor by approving the recipient of the donation.
Sec. 5(1) (u)—("approved by the minister")
80. Right to determine the amount of a deduction in respect of a reserve for bad debts.
Sec. 6(1) (d)—("as the minister may allow")
81. Right to determine amount of depreciation.
Sec. 6(1) (n)—("in the opinion of the minister"; "as the minister in his discretion may allow")
82. Right to allow Provincial taxes as a deduction in determining taxable income.
Sec. 6(1) (o)—("as the minister in his discretion may allow")
83. Right to permit a taxpayer to bulk income and excess profits taxes paid abroad for purposes of allowable deductions against aggregate income and excess profits taxes in Canada.
Sec. 8(1) and XP 9(1)—("the minister may in his discretion allow")
84. Right to permit exploration expenses by other persons to be treated as deductions of the taxpayer.
Sec. 8(11)—("the minister may direct")

E. Power to Approve a Pension Fund or Plan

85. Miscellaneous provisions for allowances and deductions which require that the pension fund or plan shall be approved by the Minister.
Sec. 4 (z), 5(1) (ff), 5(1) (g), 5(1) (m) and 7A(1) (a)—("approved by the minister")

## APPEAL PROCEDURES

A question of interpretation of the act first arises in many cases when the assessor from the local tax office, during the course of his examination, discusses with the taxpayer certain methods of treatment by the taxpayer of either receipts, revenue, disbursements, or expenditure with which he, the assessor, is in disagreement. If the assessor and taxpayer cannot agree, or even if they do but the assessor feels such agreement is contrary to the interpretation of the act as laid down by departmental ruling or procedure, a meeting with officials of the local office is arranged and the matter fully discussed. This often brings to the taxpayer's notice for the first time the regulations issued by the Deputy Minister to his inspectors for guidance in the interpretation of the law. In other instances the taxpayer finds that these regulations have been changed without notice since they were first disclosed to him.

It is understood that these rulings are only regarded as the department's general interpretation of the law but they cover not only interpretation of the law but also the basis for exercising discretion which, under the present procedure, can be and are changed without notice to the taxpayer.

If, as a result of discussions with local officials and those at Ottawa, a mutually acceptable interpretation of the law or exercise of discretionary powers

cannot be arrived at, the taxpayer is assessed and he then has his rights of appeal. We are informed that the normal procedure is that all corporate returns and the larger individual returns are sent to the head office at Ottawa for review before assessments are issued from the local tax office, with the result that before assessment the facts and the application of the law have been under the scrutiny of a field assessor, the chief assessor at the local office, and the chief assessor's office at Ottawa.

The tax act should provide facilities for the prompt and final adjustment of complaints and disputes without undue expense to the taxpayer. Our present procedure involves a complex, expensive and usually lengthy method of dealing with tax disputes. If a taxpayer is dissatisfied with his assessment, he may within thirty days file an appeal. This appeal is considered by and in many instances is discussed with officials of the tax department and in due course either a settlement is reached or his appeal is rejected. There is no time specified in which this operation must take place. If the taxpayer is still dissatisfied, he has another thirty days in which to file a further document, called a "Notice of Dissatisfaction", and again the same officials in their own time, consider the submission of the taxpayer and again render a decision. Upon receipt of this decision, if unfavourable, the taxpayer, again within thirty days, must furnish a sum of money as security for costs and the case is set down for trial in the Exchequer Court. There is no guarantee that the case will come before the court promptly, and when it finally has been tried there may be a considerable further delay before judgment is rendered. From the Exchequer Court an appeal may be carried to the Supreme Court of Canada and thence to the Privy Council. It is fair to say that under present conditions a taxpayer may wait for a number of years and spend a very large sum of money before obtaining a final answer to his dispute. Under these conditions a taxpayer is reluctant to appeal to the court to obtain a decision on a matter which may involve an important question of principle and as an alternative he often agrees to a compromise settlement.

The first remedy is the elimination as far as possible of the discretionary provisions, and full publicity of the manner in which discretion is to be exercised under any remaining discretionary sections. If the law and administrative practices are clear, the taxpayer has a better opportunity of correctly calculating his tax and in such circumstances a large percentage of the disputes would disappear. There will always be, however, disputes which will have to be settled by a judicial or quasi-judicial tribunal and in our view a board of review to be presided over by a judge should be established to which taxpayers will have ready and inexpensive access and whose findings will be made public. If such board is to exercise functions of a semi-judicial nature, it should not be under the control of the officials who are parties to the dispute, as one cannot litigate successfully if one's opponent is also the judge of the issue.

While the delegation of authority to local inspectors and their staffs is not only proper but necessary, it does create certain difficulties in ensuring consistency of assessment treatment as between taxpayers. There are a number of contentious matters which arise in connection with the taxation of business, and the publication of decisions of a board of review on these vexed subjects should contribute materially to consistency of assessment treatment, and further, should develop principles which would simplify the correct computation of the tax liability and reduce the number of complaints and disputes.

The following procedure should provide workable facilities for the prompt and inexpensive settlement of disputes and appeals.

Where the taxpayer objects to the amount on which he is assessed, it is recommended that he be required to file an appeal within one month after the mailing of the notice of assessment. The officials of the tax department should then review the appeal and such appeal should be referred to the board of review within four months from the date of mailing the notice of assessment if

no agreement is arrived at with the taxpayer. The taxpayer should be notified in writing that the matter has been referred to the board of review and he should be given thirty days from the date of such notice in order to file any additional information which he may deem necessary to support his case. As outlined by Mr. Elliott, the appeal procedure in the department is relatively informal and much of the material upon which the taxpayer's appeal is based may not have been presented to the department in writing. On a reference to the board of review, additional data from the taxpayer might be required in many cases to support the taxpayer's claim. The board, in order to accommodate the taxpayer, should sit at various cities throughout Canada and the cost of appearing before it should be kept at a minimum.

If the board is to function effectively, it must have a large measure of independence, security of tenure of office for its members, and it must be free of any influence or control by those in charge of the income tax administration. Either the taxpayer or the Minister should have the right of appeal from the board's findings to the Exchequer Court. It is further recommended, when appeals have been filed, that this board be empowered to review the exercise of discretionary power and have the right to regard the discretion as not having been exercised and to substitute its own discretion for that of the administrative official.

Hon. Mr. HUGESSEN: Is there not a mistake there? Do you not mean to say the "courts"?

Mr. GLASSCO: No; we believe that if such a board were set up we would grant that power to the board, and we believe that it would clear most of these matters.

Hon. Mr. HUGESSEN: I thought you were dealing with a final appeal to the Exchequer Court.

Mr. GLASSCO: In dealing with matters of discretion we say that the taxpayer should have the right to have the court review the exercise of discretion; but when we make this suggestion of a board of review, which would be independent of the administration, we believe that would be a suitable alternative.

Hon. Mr. HAYDEN: The same results would flow. If there is a right of appeal from this board to the Exchequer Court it would involve any decisions of the board and those decisions would relate to the proper exercise of discretion in the first instance by the Minister.

Mr. GLASSCO: Yes.

Hon. Mr. HAYDEN: That would be part of the decision.

Hon. Mr. MORAUD: Except that you would have a decision by this new board and by the Exchequer Court also.

Hon. Mr. HUGESSEN: I think I was misled by your use of the word "appeal." You say. "Either the taxpayer or the Minister should have the right of appeal from the board's findings to the Exchequer Court. It is further recommended, when appeals have been filed, that this board be empowered—" First you talk of an appeal to the board, then you talk of appeal to the court.

The CHAIRMAN: As it stands there one would think that if an appeal goes to the Exchequer Court that court could exercise its own discretion respecting the appeal board.

Hon. Mr. HAYDEN: Is it not intended that every element that enters into the decision of the board shall be subject to review by the Exchequer Court?

Mr. GLASSCO: In answering that question I should like to say that we are not as familiar with the legal requirements as are lawyers. Our main concern is that the principles should be established, be it board of review or a court, who has no connection with the people who made the assessment, and who will review the whole matter and give a decision in equity.

Hon. Mr. HAYDEN: The board that you now propose is to do that.

Mr. GLASSCO: If such a board is set up I think it would satisfy us.

Hon. Mr. HAYDEN: But you suggest a right of appeal from the decision of board exists in the taxpayer and the crown to go to the Exchequer Court on appeal from a decision of the board?

Mr. GLASSCO: Yes.

Hon. Mr. HAYDEN: That would be on any findings of the board of review, and whatever was involved in the findings?

Mr. GLASSCO: Yes.

Hon. Mr. HUGESSEN: Including an appeal from the discretion which the board had reviewed?

Hon. Mr. HAYDEN: That is right.

The CHAIRMAN: Do you say that the Exchequer Court should take over the right of exercising its own discretionary powers? Should it be given discretionary power to decide whether or not the board had exercised its discretionary powers correctly or not?

Mr. GLASSCO: I prefer not to make any strong recommendation on that point I feel it is a matter in which the legal profession is much better able to express an opinion than are we. From a practical point of view we feel that if we do not have a board of review we would like to have the Exchequer Court empowered to review every aspect of matters in which discretion is exercised. From the practical standpoint, if such a board as we here recommend is established, and its functions are performed, it does not seem very important whether the Exchequer Court should then have the same power to review the same findings of the board of review.

Hon. Mr. HAYDEN: It might be important from the Crown's standpoint.

Hon. Mr. LEGER: Discretionary powers are exercised on facts and facts are taken notice of in all our courts, even in the Privy Council. I do not see why there should be any difference here.

Hon. Mr. HAIG: Mr. Glassco takes no side on that question.

Hon. Mr. HAYDEN: He is just throwing out the thought.

Mr. GLASSCO: Yes.

Hon. Mr. HAYDEN: I think it is important that the Exchequer Court have that power, even after the board has made its decision.

Mr. GLASSCO: Speaking from the point of view of the taxpayer, I think the more people one can appeal to the better, but it is a question of administrative policy.

Hon. Mr. HAYDEN: The more people he can appeal to the more it tends to give some continuity to the exercise of discretionary powers by the department.

Mr. HAYES: Mr. Chairman, I think the matter generally can be stated that the taxpayers have no objection to that feature, but in a large part they would be satisfied if there was a review of the exercise of the discretionary powers by an independent board.

The CHAIRMAN: I would suggest, gentlemen, that the witness be permitted to continue with his summary.

Mr. GLASSCO: For your convenience we summarize our conclusions and recommendations as follows:

> 1. Legislation. The task of tax administration is handicapped by the unsatisfactory character of the existing legislation, and especially its lack of certainty and clarity. Accordingly, the Income War Tax Act should be re-written at the earliest possible date. And in future, adequate

time should be allowed for careful preparation of amendments and for consideration of them by the public.

2. Assessments. Partly because of deficiencies in the legislation and partly because of administrative practices, assessments in recent years have been unduly delayed. They should now be brought up to a reasonably recent date, and attended to promptly in future; as a specific suggestion, no more than two years should be allowed to the tax department to vary the tax liability as calculated by the taxpayer. Any interest paid by the taxpayer on overdue taxes should be allowed as a deductible expense. Charging of interest to the taxpayer suggests that interest on overpayment should be credited to him. To avoid undue detail with small payments, some level might be set below which interest should be neither charged nor credited.

3. Discretionary Powers. We believe that the number and the range of discretionary powers are now excessive, and that they should be materially reduced and that those which may be continued should, as far as possible, be clarified by publication of regulations, interpretations and rulings.

4. Appeal Procedures. The present procedure for appeal form assessments is unfair to the taxpayer. Uncertainties in taxation itself should be removed as far as possible through improvement in the law and in its administration, and for those problems which remain there should be a board of review, independent of the actual tax administration, but conveniently accessible to the taxpayer and to the department, from which in turn there would be recourse to the Exchequer Court of Canada.

The CHAIRMAN: Mr. Stikeman, have you any questions?

Mr. STIKEMAN: Mr. Chairman, in view of the clarity of the witness' brief I have very few questions to put to him this morning. I think it would be of assistance, Mr. Glassco, if you told the committee what is constituted by the term "legislative committee" of your association.

Mr. GLASSCO: The Dominion Association of Chartered Accountants has a standing committee elected annually on legislation, and it is the practice each year for that committee to work with the taxation committees of each of the provincial institutes. Reports are received from all provinces, and usually recommendations are made to the Minister of Finance in connection with tax legislation.

Mr. STIKEMAN: On page 7 of your brief you say:—

> Some of the most important of the amendments have been designed to frustrate tax evasion and in that field the points of difference between our tax laws and the British and United States systems have required legislation of a type not found in the laws of those countries.

Why do you make that statement?

Mr. GLASSCO: Well, the two main points of difference between our law and that of those countries is that the United States taxes capital gains, which neither Canada nor Great Britain does; and Great Britain has a single taxation of corporate income, while Canada and the United States tax corporate income twice, once when earned by the corporation and once when distributed as dividends to the shareholders. Those differences have created the necessity in our act of preventing people getting around the matter largely by winding up or reorganizing companies. The most important sections of our act that I have in mind there are 13 to 19, inclusive.

Mr. STIKEMAN: There was no connection in your mind, then, between that statement and the statement in the last sentence of that paragraph on page 7, which states:—

> In our view a complete revision of the statute is urgently required if taxpayers generally are to be expected to understand the law.

They are two dissociated ideas?

Mr. GLASSCO: Yes.

Mr. STIKEMAN: You are not suggesting that any of our sections should be so amended as to make them similar or comparable to the United States or British law?

Mr. GLASSCO: No.

Mr. STIKEMAN: When you state that a complete revision of the statute is urgently required, do you feel that the revision should be one of substance, of language or merely of rearrangement, or all three?

Mr. GLASSCO: I think probably all three. It is a very large job, and I think there will have to be changes in substance, there will have to be inconsistencies ironed out; and there will have to be a great simplification in language and arrangement before it is clear.

Mr. STIKEMAN: Do you feel that a mere rearrangement of the sections in itself would be beneficial at this time?

Mr. GLASSCO: I think it would go some distance, but not all the way.

Hon. Mr. HAYDEN: I should think that from the point of view of what the public expect it would be like the mountain being in labour and bringing forth a mouse.

Mr. STIKEMAN: Towards the bottom of page 7 of your brief you make this statement:—

> Hasty drafting and the lack of opportunity for criticism have resulted in legislation different from the budget proposals which the amendments were supposed to implement.

Then in your Exhibit A, on page 9, you show the time between the introduction of the budget and the third reading of the bill to amend the Income War Tax Act. I note that the average time which elapsed was twenty-seven days.

Hon. Mr. HAIG: That is not the point. Take 1944, for instance. No matter when the budget was introduced, the bill did not come down until the first of August—that is when it was given first reading—and it was passed on the 9th.

Mr. STIKEMAN: That has to do with the second stage of my question. The first part of the question, which I am asking now, is whether Mr. Glassco considers that the hasty drafting is done in the department or in the house, because there is an average of twenty-seven days in which somebody can do something. The department cannot start to draft the bill until the budget is down. Mr. Glassco says there has been hasty drafting, and I want to ask him who has done the hasty drafting.

Hon. Mr. HAIG: Take the first year referred to in Exhibit A of the brief, 1938. I am one of those who are kicking severely about this. That year the budget was introduced on the 16th of June, 1938. The bill to amend the act was given first reading eight days later, on the 24th, and five days after that it was passed. What opportunity did the draftmen of the bill have to do a proper job, and what opportunity did the Senate have to consider that bill?

Hon. Mr. HAYDEN: Or what chance did the public have to make submissions based on the bill as drafted?

Mr. STIKEMAN: That is what I would like the witness to answer, whether he says the hasty drafting was done by the department or in the house.

Hon. Mr. HUGESSEN: The income tax department cannot start drafting legislation to implement the budget until the resolutions are adopted, and sometimes that is several weeks after the budget is introduced. The reason that the bill cannot be drafted earlier is that very often the resolutions are changed, in the house. We know that officials of the department sometimes have to work all night trying to get the bill ready for introduction into the house at the earliest possible date, which often is just a few days before prorogation. Now, the time allowed to the department for drafting the bill, and to the Senate and Commons for considering the bill, is ridiculously inadequate.

Mr. STIKEMAN: I am not attempting to justify the short time, because I suffered from it for some years. What I am attempting to determine is whether the charge of hasty drafting is directed at all who have anything to do with drafting the legislation, or whether it is directed at the department principally or at parliament. The department does draft the bill before the resolutions are passed.

The CHAIRMAN: The department cannot draft it before the introduction of the budget.

Hon. Mr. HAIG: We are keeping close watch on you, Mr. Stikeman. We think you still have a little touch of the department about you.

Mr. STIKEMAN: Anybody who had to stay up seven nights in a row working on the bill, as I have done, would not try to justify the system.

Hon. Mr. HUGESSEN: Then you agree that there is hasty drafting?

Mr. STIKEMAN: Oh, quite. I merely want to find out what the witness thinks should be done to correct the situation.

Hon. Mr. HAIG: As I understand the brief, it charges that discretionary powers are given to the Minister in order to overcome mistakes in the legislation.

Hon. Mr. MORAUD: That is the only reason.

The CHAIRMAN: Mr. Stikeman, would you answer "Yes" or "No" to this question: Would you say that because the legislation is drafted in a short time—drafted hastily, as the brief puts it—that it is therefore possibly imperfect?

Mr. STIKEMAN: I would say yes.

Hon. Mr. HAYDEN: Mr. Chairman, I was wondering who was the witness.

The CHAIRMAN: We are trying to get information, and I think we are justified in asking Mr. Stikeman.

Hon. Mr. HAIG: We are behind you on that, Mr. Chairman.

Mr. STIKEMAN: The department as well as the witness would like a much longer time in which to draft the legislation, because the department itself suffers in turn when the legislation is not as precise as it should be.

Hon. Mr. HAYDEN: I think the short time that has been referred to is the largest single reason for those discretionary powers. It is much easier to insert sections giving discretionary powers than to draft detailed provisions.

Mr. STIKEMAN: I come back to my question to Mr. Glassco.

Mr. GLASSCO: May I answer your question by just referring the committee to what happened in 1944, as an illustration of the present system at its worst? Resolution No. 27 of the budget of 1944 proposed that dividends received by Canadian companies from wholly owned subsidiary companies abroad should be exempt from taxation. That was debated during the budget debate and an amendment was accepted by the Minister of Finance. The budget was introduced on June 26 and the resolutions were adopted in the House of Commons on July 19. This particular resolution was considerably enlarged and moved into an area which required very careful consideration, because the technical matters involved were difficult. The bill was brought down in the House of

Commons on the 1st of August, was passed on the 9th, and the language finally adopted is now found in section 8 (2A) of the act. It is our submission that not only is the language extremely difficult to follow, but that if it does anything it produces a result certainly different from the first budget resolution, and I think also different from the amended budget resolution. I put that result down purely to the difficulty of the matter that was being dealt with and the fact that there was no opportunity for people to come around and criticize the amendment to the act and suggest that it would not produce exactly the result intended.

Mr. STIKEMAN: I think the classic example of haste under the present system was provided in the second session of 1939. The date of the budget was the 12th of September; and on the same day the bill to amend the Income War Tax Act was brought down and put through all stages, and parliament prorogued. It may be recalled that that was the famous day on which the first Excess Profits Tax Act was passed, a measure which was wholly repealed within three months.

Then, Mr. Glassco, on page 8 of the brief says:—

> Taxpayers are constantly complaining that the forms and returns which are required are complex and difficult to understand.

Since Mr. Elliott gave his evidence there has been made available to the public the revised income tax form, the T-1 General for 1945, which purports to be simplified. Do you consider that it is simple enough?

Mr. HERINGTON: I think it is as simple as the legislation permits. The difficulty comes from the fact that there are various groups of taxes—the normal tax, the graduated tax, the investment income tax, and so on.

Hon. Mr. ASELTINE: The new form contains six pages, does it not?

Mr. STIKEMAN: Yes.

Hon. Mr. ASELTINE: I have made out some of them already.

The CHAIRMAN: It does not look any simplier than the old form.

Hon. Mr. HAIG: It is worse. I defy any man to show where the present form is any simplier than the old one. I think that it is much more complicated, except that on one page there is a table that will tell you what your tax is after you have calculated your taxable income. You do not know whether the table is right or wrong, but you hope it is right.

Mr. STIKEMAN: On page 10 of your brief, Mr. Glassco, you refer to 595 corporate taxpayers in Montreal and Toronto whose position you examined in December, 1945, in order to determine the last fiscal year which had been assessed. There are, I believe, 30,000 corporate taxpayers, of which those 595 would be approximately one-fifteenth. Have you any idea how many of the 595 companies which you chose were awaiting decisions on appeals or the fixing of a standard profit?

Mr. GLASSCO: May I ask Mr. Hayes to answer that question?

Mr. HAYES: There were less than one hundred awaiting assessment of standard profits based on the information we obtained, and those were spread over various years, not concentrated in any one year.

Mr. STIKEMAN: You picked these 595 corporate companies because they were awaiting the fixing of a standard profit; was that the reason?

Mr. HAYES: No, they were not picked for that reason.

Hon. Mr. HAYDEN: I do not know whether this is an absolutely clear and accurate statement, because the department follows quite often the practice of assessing corporations where a standard profit has not been determined. The department sets up an arbitrary basis and says, "You can appeal your assessment and keep the thing open". I have had it happen and know whereof I speak.

Mr. STIKEMAN: I do not think so if you file S.P.1.

Hon. Mr. HAYDEN: I have done so and been told to go ahead.

Mr. WOOD: We do not assess our standard profits until the decision has been given.

Mr. STIKEMAN: You do it after one has been appealed, which is probably what happened to Senator Hayden.

The CHAIRMAN: What do you do where depreciation has not been approved for three, four or five years? I am thinking of a paper company in that position.

Mr. WOOD: We cannot complete the assessment until we have decided on the depreciation.

The CHAIRMAN: There is considerable delay in that case.

Mr. STIKEMAN: On page 13 of the brief, Mr. Chairman, the witness under E, paragraph (*b*), refers to the necessity for obtaining rulings in advance on the point at issue. Do you believe, Mr. Glassco, that the statutory rulings should be brought into the administrative practice of the department as a general thing?

Mr. GLASSCO: I think if the law is clear, that is, where your rights stem from the legislation rather than the exercise of a discretion, there is a good deal to be said for taking the attitude that is taken in the United States: "There is the law; go ahead and do it." But that just won't work where the law itself does not give the answer. Our position to-day is that we must go and ask for a declaratory ruling before many types of transactions can be undertaken safely.

Mr. STIKEMAN: Would your board of appeals that you contemplate setting up be prepared to give declaratory rulings in advance of the tax being fixed?

Mr. GLASSCO: We have not specifically recommended that. I know there are some of our members who feel it would be very desirable; I also know that some people hold it is bad practice.

Hon. Mr. HUGESSEN: You would hope that the board of review would establish such jurisprudence that the need for these declaratory rulings would largely disappear?

Mr. GLASSCO: That is so, Senator.

Hon. Mr. HAIG: What happens when you get a ruling by the man, say, at Winnipeg or Vancouver, and then after the returns are in he is reversed here?

Mr. GLASSCO: We come to Ottawa.

Hon. Mr. HAIG: You might as well go to Timbuctoo.

Hon. Mr. HAYDEN: There should be a ruling binding on the Crown and the taxpayer.

Hon. Mr. MORAUD: How can they get a ruling from the board if there is no decision?

Hon. Mr. HAYDEN: No, you could not get an advanced ruling.

Hon. Mr. HAIG: I do not think it would be advisable to get a ruling at all. Senator Hugessen is right, the appeals themselves would establish a procedure.

Hon. Mr. HUGESSEN: There will always be a certain area in which you might have a borderline case, and you would have to come to the department and ask: "If we do this, is it your view that it will result in a certain amount of taxation?" I think there must be some more limited area than at present, but there must always be that class of case.

Mr. GLASSCO: Yes, I do not see how you can escape it in tax law.

Hon. Mr. HAYDEN: I think it would be unfortunate; we want a little flexibility.

Mr. GLASSCO: Yes.

Mr. STIKEMAN: Declaratory rulings would still be in favour of the department, giving it within a limited field the choice it has to-day; you would not disturb that practice at all?

Mr. GLASSCO: No.

Mr. STIKEMAN: On page 15 you refer to the effect that the definition of income should be changed to accord with the ordinary and accepted commercial and industrial concept. How would you define the "ordinary and accepted commercial and industrial concept," or would you endeavour to define it at all?

Mr. GLASSCO: Are you thinking of a definition in a court or in the statute?

Mr. STIKEMAN: Either in the statute or some place that the department and the taxpayer would know what it meant. The English act has not got one.

Mr. GLASSCO: There was a royal commission in 1932 or 1934, of which Lord Macmillan was the Chairman which made a recommendation with regard to the English act and suggested that the definition of income be changed in much the same manner as we seek to avoid legalistic concepts or interpretations necessarily flowing from established jurisprudence which are contrary to business practice. It is not a broad new deal that is required but the removal of what one might call the illogical results of history as applied to present-day conditions when they are no longer applicable.

Hon. Mr. HAIG: There has been an evolution in business practice, and you want an evolution in taxation.

Mr. GLASSCO: Yes.

Mr. STIKEMAN: Would you put that definition in the statute?

Mr. GLASSCO: Yes.

Hon. Mr. HAYDEN: The point you want to cover should be very simple and would apply not only to the Crown but to the taxpayer. There should be no jumping back and forth from a cash to an accrual basis.

Mr. GLASSCO: No. The establishment of an accrual basis is very simple; but there are other things we would do to harmonize the definition of income with present-day understanding. In other words, we think business should pay taxation upon what is generally looked upon as its profit or gain, not that figure modified by four or five deductions, which are required by something that happened in England in 1844.

Hon. Mr. HAYDEN: I take it your suggestion is provoked somewhat by this Trapp case.

Mr. GLASSCO: I do not want to leave the impression that we are hanging our our case on the remarks in the Trapp judgment. That is there more or less as corroborative of our view that the act is not perfect in that respect, but we quote the illustration as to the expense of financing a bond issue. The realistic point of view, as the accountant sees it at least, is that to-day if you wish to take advantage of the cheap money which is about you consider the whole position of your bond issue. It may have twenty years to run and require certain interest payments. If you leave things alone, everything you pay out by way of interest will be allowed as a deduction in arriving at your taxable income; but you can cut down that interest very materially by spending money to redeem the present bonds at a premium and incurring certain legal and printing expenses on a new issue. After you add up what you save by a reduction of interest and compare it with the expense of making the change, you find the company is well ahead.

Hon. Mr. HAYDEN: That is part of the cost.

Mr. GLASSCO: Yes. The legal concept is that the legal and printing expenses of the bond issue and the premium you have to pay the present holders to get the bonds is legally allowable.

Mr. STIKEMAN: You mean the legal interpretation of the statute?

Mr. GLASSCO: Yes.

Mr. STIKEMAN: I should think even the lawyers would support the concept as it is, that it should be an allowable item because an expense of doing business.

Hon. Mr. HUGESSEN: It is not included in the definition of money laid out to earn income in the year.

Mr. GLASSCO: That is probably our stumbling block. It says that the taxpayer may not deduct expenses not necessarily or wholly laid out for the purpose of earning income. That seems to restrict expenditures to the income of the year, and on the narrow interpretation of that one could get into trouble. One could take the classic example of a premium on a fire insurance policy: How can one regard that as for the purpose of earning income. But the point has never been raised. On a strict interpretation of 6(1) (a) the board would be obliged to throw out all fire insurance premiums.

Hon. Mr. HUGESSEN: There was a case in Manitoba where the company spent a lot of money distributing free beer to interested people.

Hon. Mr. HAIG: That never happened in Manitoba.

Mr. STIKEMAN: Then, Mr. Glassco, from what you have just said I assume your thought on defining income applies to the English method, whereby very wide deductions are permitted. You define income in a very general way. In other words, you would not have to go into detail as in the act now if you permitted deductions under sections 5 and 6 as they are under the English statute and as interpreted in English jurisprudence?

Mr. GLASSCO: I would not say yes to that without pointing out that the portion of the English statute which we like best is the one which was recommended by Lord Macmillan, but unfortunately not adopted by the British Parliament.

Mr. STIKEMAN: Could you read it into the record?

Mr. GLASSCO: It is a very brief statement and is from the draft act. I quote it as follows: "The amount of the profits of the business shall be computed in accordance with the ordinary commercial principles applicable to the computation of the profits of that business."

Mr. STIKEMAN: Mr. Chairman, that concludes my questions.

Hon. Mr. HAYDEN: Generally speaking, on the question of direction, Mr. Glassco, you think any discretion which is tantamount to permitting the deputy minister to legislate should be removed from the statute?

Mr. GLASSCO: Yes, sir.

Hon. Mr. HAYDEN: And the discretions left should relate only to the quantum of tax?

Mr. GLASSCO: For administrative purposes I think that certain things are much more easily left to discretion; in other words, there are certain points upon which it is practically impossible to legislate broadly enough to cover every contingency which may arise. There are areas in which discretion may be granted without objection. For instance, the discretion permitting the Minister to enlarge the time for submitting returns; it could be said under what condition the taxpayer should be excused for being late; an administrative official could decide when it is proper and when it is not proper to enlarge the time for submitting returns.

Hon. Mr. HAYDEN: On the question of depreciation there does not seem to be any logic or sense, or sound business practice that depreciation should not be a right to which the taxpayer is entitled.

Mr. GLASSCO: We think it should be.

Hon. Mr. HAYDEN: I am not talking about quantum. Quantum may be discretionary by the Minister, and dealt with by regulation. There is no justification for putting it under the heading of discretions of the Minister as to whether a person is entitled to depreciation.

Hon. Mr. HUGESSEN: There was one point on which I did not quite agree with you, Mr. Glassco, and perhaps I misunderstood you. At the bottom of page 16 and the top of page 17 of your brief you are talking about a manoeuvre on the part of the administration in connection with the Pioneer Laundry case. I take it you are merely referring there to what they did in changing the depreciation benefits from section 5 to section 6; you do not criticize the administration for seeking to fill up the loophole which was brought on by the Pioneer Laundry case, and under which what, in fact, really happens is the same owner shall take depreciation on the same property twice.

Hon. Mr. HAYDEN: I question whether that is a loophole.

Mr. GLASSCO: I think our position is that it is obvious that depreciation is a cost; the taxpayer should be entitled to make a deduction for the depreciation which he suffers.

Hon. Mr. HUGESSEN: I go with you there.

Mr. GLASSCO: Because of some reasons which I need not discuss the administration loses a quarrel with a taxpayer, that is no sufficient grounds to justify the cancellation or obliteration of the taxpayer's legal entitlement to depreciation.

Hon. Mr. HUGESSEN: I agree with you, but you would not go so far as to say that the same taxpayer should be entitled to take depreciation twice for the same assets, would you?

Mr. GLASSCO: No. I wouldn't go that far.

Hon. Mr. HAYDEN: It was a method that was used to take away a right, and I am wondering about the use of the word "manoeuvre"; there might be some justification for its use.

Hon. Mr. HAIG: The tendency has always been when the income tax department loses an appeal they amend the law next year to cover that particular point. That is what has caused the hard feelings.

Hon. Mr. ASELTINE: Do you think that would be a manoeuvre?

Hon. Mr. HAIG: I think that describes it properly.

Hon. Mr. HUGESSEN: They find a new hole and block it.

Hon. Mr. HAIG: There is an absence of a clear statement of fact as to what is taxable and what is not taxable.

Hon. Mr. HAYDEN: Do you think if a limit of one year was put on interest that could be charged that it would be the answer? For instance, I make my return, and if the department has not assessed that return within a year then there is no interest until an assessment is made. Once an assessment is made the taxpayer can pay the assessment and stop the interest running on, or he can take his chance on the ultimate success of an appeal. If you put time limits on which interest would apply before assessment it would certainly cause them to act more expeditiously in dealing with the returns.

Mr. GLASSCO: It might have that result. You suggest as an alternative to our recommendations that the right to re-assess should expire; that the right to vary the taxpayer's calculations should expire after two years.

Hon. Mr. HAYDEN: In that way you are not taking away any rights of the Crown. You are not taking away the right, but you are giving them a very strong motive to move quickly.

Mr. NORMAN: I would like to suggest, Mr. Chairman, that after all business is generally conducted in this country on the basis of doing one year's business in one year. I can not conceive of the reason why the income tax department is distinguished from all other departments. Can it not so organize itself that it can follow the practice of other departments? It is only a question of quantum of people and quantum of capacity. It is a problem of putting off, and the longer it is put off the worse the position becomes. Our suggestion was made with the view that we consider the Crown's rights, naturally, should not be taken away, but at the same time the taxpayer should definitely know in a reasonable period of time—which we think is two years after he has paid his money—whether he is right or wrong. I do not think the question of interest is very material. We considered that feature for some time, as a matter of fact. But I think it is more important that interest be limited to two years or longer if you appeal, and there would be a charge against income in the same way as bank interest.

Hon. Mr. HAYDEN: Maybe there could be a one-year limit on interest and a two-year limit on the right to re-assess.

Mr. GLASSCO: Exactly.

The CHAIRMAN: If there are no further questions, on behalf of the committee I wish to thank Mr. Glassco and his associates for their contribution which has been very valuable indeed.

Some Hon. SENATORS: Hear, hear.

The CHAIRMAN: It was an excellent brief, clear and specific; and I assure you that your recommendations will be given every consideration by the committee.

The committee adjourned until Tuesday, April 9, at 10.30 a.m.

1946

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

## SPECIAL COMMITTEE

Appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon.

No. 5

TUESDAY, APRIL 9, 1946

CHAIRMAN

The Honourable W. D. Euler, P.C.

WITNESSES:

Mr. E. K. Williams, K.C., President, Canadian Bar Association.
Mr. Molyneux L. Gordon, K.C., Canadian Bar Association (Taxation Section).

EXHIBITS

1. Categories of Discretion.
2. Draft Bill re Tax Commissioners Act.
3. Comparison of Statutes, U.K., 1806, U.K., 1918 and R.S.C., 1927.
4. Recommendation of the Canadian Bar Association, (Section on Taxation) forwarded to the Minister of Finance.
5. Letter from the Minister of Finance to the Canadian Bar Association.
6. Recommendations for Amendments to the Income War Tax Act and The Excess Profits Tax Act, 1940, submitted by a Joint Committee representing The Canadian Bar Association and The Dominion Association of Chartered Accountants, January, 1944.
7. Recommendations for Amendments to the Income War Tax Act and The Excess Profits Tax Act, 1940, submitted by a Joint Committee representing The Canadian Bar Association and The Dominion Association of Chartered Accountants, March, 1945.
8. The Canadian Tax Foundation.
9. List of Minister's Discretions.
10. Report on Minister's Powers.
11. "An Engineer Takes a Look at the Tax Problem", by Frederick S. Blackall, Jr.

OTTAWA
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PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1946

## ORDER OF APPOINTMENT

*(Extracts from the Minutes of Proceedings of the Senate for 19th March, 1946)*

Resolved,—That a Special Committee of the Senate be appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon;

(2) That the said Committee be composed of the Honourable Senators Aseltine, Beauregard, Bench, Buchanan, Campbell, Crerar, Euler, Farris, Haig, Hayden, Hugessen, Lambert, Léger, McRae, Moraud, Robertson, Sinclair and Vien;

(3) That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. MOYER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

TUESDAY, 9th April, 1946.

Pursuant to adjournment and notice the Special Committee appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, met this day at 10.30 a.m.

*Present:* The Honourable W. D. Euler, P.C., Chairman; The Honourable Senators Aseltine, Buchanan, Campbell, Crerar, Haig, Hayden, Hugessen, Lambert, Léger, McRae and Sinclair, 12.

*In attendance:* The Official Reporters of the Senate; Mr. H. H. Stikeman, Counsel to the Committee.

Mr. E. K. Williams, K.C., President, Canadian Bar Association, submitted a brief on behalf of that organization.

The following Exhibits were fyled:—

1. Categories of Discretion.
2. Draft Bill re Tax Commissioners Act.
3. Comparison of Statutes, U.K., 1806, U.K. 1918 and R.S.C., 1927.
4. Recommendation of the Canadian Bar Association, (Section on Taxation) forwarded to the Minister of Finance.
5. Letter from the Minister of Finance to the Canadian Bar Association.
6. Recommendations for Amendments to the Income War Tax Act and The Excess Profits Tax Act, 1940, submitted by a Joint Committee representing The Canadian Bar Association and The Dominion Association of Chartered Accountants, January, 1944.
7. Recommendations for Amendments to the Income War Tax Act, and The Excess Profits Tax Act, 1940, submitted by a Joint Committee representing The Canadian Bar Association and The Dominion Association of Chartered Accountants, March, 1945.
8. The Canadian Tax Foundation.

Mr. Molyneux L. Gordon, K.C., of the Canadian Bar Association (Taxation Section), continued the presentation of the Brief submitted by the Canadian Bar Association.

The following Exhibits were fyled:—

9. List of Minister's Discretions.
10. Report on Minister's Powers.
11. An Engineer takes a look at the Tax problem. By Frederick S. Blackall, Jr.

At 12.45 p.m., the Committee adjourned until 2.30 p.m., this day.

At 2.30 p.m., the Committee resumed.

Mr. Molyneux L. Gordon, K.C., resumed his presentation of the brief submitted by the Canadian Bar Association, and was questioned by Counsel.

At 4 p.m., the Committee adjourned until 10.30 a.m., Wednesday, 10th instant.

Attest.

R. LAROSE.
*Clerk of the Committee.*

# MINUTES OF EVIDENCE

THE SENATE

TUESDAY, April 9, 1946.

The Special Committee of the Senate to consider the provisions and workings of the Income War Tax Act, etc., resumed this day at 10.30 a.m.

Hon. Mr. Euler in the chair.

The CHAIRMAN: Gentlemen, we have a brief to be presented to-day by the Canadian Bar Association. Mr. E. K. Williams, K.C., the President of the Association is here, with Mr. Molyneux L. Gordon, K.C., chairman of the Association's Section on Taxation. Mr. Williams is going to read a small part of the brief, and he will explain why he cannot stay all morning.

Hon. Mr. HAIG: I do not know why we should not be honoured by having him stay all morning.

The CHAIRMAN: Well, it seems that he is tied up with the Royal Commission on the spy charges.

Hon. Mr. HAIG: He might digress from the brief and tell us about that Commission. We would not object at all.

Mr. E. K. WILLIAMS, K.C., President of the Canadian Bar Association:

Mr. Chairman and Honourable Senators, the Canadian Bar Association greatly appreciates the invitation of this Committee to appear before it and accepts the invitation with the hope that it may be of some assistance to the Committee in its very important work.

The Members of the Canadian Bar Association comprise approximately one-half of the lawyers practising in each of the Provinces of Canada and a large number of Judges of the various Courts. The Association has always taken a very keen interest not only in matters relating to the administration of justice in Canada but in all laws affecting the welfare of the people as a whole. It has always endeavoured to approach these problems in a broad and constructive manner. It functions throughout the year through its various Committees and Special Committees, the members of which report to the Association twice a year. For a number of years members of the Association have been giving considerable attention to the question of taxation. This was considered so important that in April, 1943, a Special Taxation Committee was organized and this Special Committee subsequently became a special section of the Association known as the Section on Taxation. Mr. M. L. Gordon, K.C., was appointed Chairman of the Section and has held that position ever since.

On the recommendation of the Section, the Council passed the following Resolution in August, 1943 (Exhibit No. 4, in Appendix):

> That the Council of The Canadian Bar Association is alarmed by provisions in the federal taxing statutes giving persons other than Parliament wide discretionary powers which constitute in effect a delegation by Parliament of its legislative authority.
>
> That it accordingly recommends that a standing committee of the House of Commons be set up to which will be referred for consideration all proposed taxation legislation and that every member of the public interested may make representations to such standing committee with a view to having taxation imposed on a fair and equitable basis.
>
> That the taxing departments have administrative powers only and that provision be made for determination of matters of law and disputes as to facts by a judicial body.

This resolution was forwarded to the Honourable Mr. Ilsley who acknowledged the same in a letter dated 4th December, 1943 (see Exhibit No. 5, in Appendix). In his letter, the Minister of Finance emphasized the difficulties that arise if forward notice of probable taxation matters is given to interested individuals and corporations.

It is not to be assumed that the Association was suggesting that the Government disclose its fiscal policy before it was presented in Parliament, but the Committee suggests that the practice in Australia be explored, which provides for two statutes. The first is the Income Tax Assessment Act which provides for the method of enforcing the tax, directs the manner in which the income is to be calculated, the deductions which may be made, the times for payments and methods of appeal, etc. This Act has been on the Statute Books of Australia for many years and is only revised or amended where it is necessary to simplify and clarify its provisions. These amendments are not matters of policy, because the policy of every Government must be, as it is in Canada, to distribute the burden of taxation as fairly and equitably as possible. The second statute is the Income Tax Act, which is passed each year and fixes the rate and deals with other matters of policy.

Consideration is suggested to the adoption of a practice whereby amendments dealing with the mechanical methods of raising money, which are not matters of policy, should be made public before they are submitted to Parliament because there are always bound to be a number of groups of taxpayers who could make useful and constructive suggestions in regard to such matters, while matters which deal with policy may be reserved for the secrecy of the Budget.

At the very outset of its deliberations the Members of this Committee recognized the benefit of joint discussion with members of the accounting profession and invited Members of the Dominion Association of Chartered Accountants to sit in with them at meetings of the Committee; and it is needless to say that they have made a valuable contribution to the work of this Committee which is gratefully acknowledged.

In January, 1944, the two Committees, working as a Joint Committee, made certain recommendations to the Minister of Finance and the Minister of National Revenue in respect to amendments to the Income War Tax Act and to the Excess Profits Tax Act of 1940. All of these recommendations received most careful consideration and some of them were accepted. Some of them which were not accepted we respectfully suggest should receive further consideration. Copies of these recommendations will be available for your information and, I hope, your detailed study.

I should like at this time, Mr. Chairman and honourable senators, to file with the committee first of all the booklet which is dated January, 1944, entitled "Recommendations for Amendments to the Income War Tax Act and The Excess Profits Tax Act, 1940, Submitted by a Joint Committee representing the Canadian Bar Association and The Dominion Association of Chartered Accountants".

(See Exhibit No. 6, in Appendix)

Then the fourth booklet bearing the same heading and dated March, 1945.

(See Exhibit No. 7, in Appendix)

May I say, in parentheses, that these two documents do represent a great deal of very hard work on the part of the committee, and a very great deal of careful consideration given to the problems.

Hon. Mr. CAMPBELL: May I ask you a question just there, Mr. Williams? Were representatives of either of these bodies called in to discuss the proposals with the department after they were submitted?

Mr. WILLIAMS: Mr. Gordon says no.

It soon became apparent to the two Committees—and I think their opinion is shared by a very substantial body of the taxpayers in Canada—that the statute is difficult to construe and quite confusing, and if left in its present form will retard reconversion and may materially affect the prosperity of Canada. It is not improbable that, owing to these features, revenue is now being lost.

The Rowell-Sirois Report, Book II, page 113, chapter III, in dealing with Corporation Taxes, states as follows:—

> The present complexity is beyond belief . . . They have grown up in a completely unplanned and unco-ordinated way and violate every canon of sound taxation.

The magazine published by the Dominion Association of Chartered Accountants, whose members have probably more knowledge of the actual working of the Act than any other body, stated in 1944 Vol. 45, page 195, as follows:—

> One of the postwar "musts" is a rewriting of the Income Tax Act itself. It stands to-day as a horrible example of piling amendment upon amendment, with the result that what is stated or implied by one section of the Act may be modified by another.

Realizing that sooner or later the Income Tax Act must be completely revised, the Taxation Section of the Canadian Bar Association have directed their efforts towards making a critical study of the defects in the present Act. These they put forward with great respect together with many constructive suggestions.

The matter of taxation has been the subject of wide study, both officially and unofficially, for many years. Twenty Royal Commissions have been appointed in various parts of the British Commonwealth to consider and study taxation. The persons presiding over these Commissions have usually been men of outstanding ability, and witnesses who appeared before them included the names of many persons prominent throughout the Empire. It is suggested that this Evidence might be so organized and indexed that it would be available for consideration in the solution of Canadian problems.

The Committee of the Canadian Bar Association believes that the Government can derive much assistance from well-considered criticism and recommendations from organizations whose members are constantly in touch with the members of the public who are most affected by taxation laws. That is the service that the Taxation Section of the Canadian Bar Association seeks to perform. In performing that service they will have available the co-operation of the Canadian Tax Foundation which was incorporated in October, 1945, through the joint efforts of the Canadian Bar Association and the Dominion Association of Chartered Accountants.

At this stage, Mr. Chairman and honourable senators, I should like to file the prospectus, as it were, of the Canadian Tax Foundation. I would draw particular attention to the personnel of the proposed governors of that foundation, which appears on the third page. I would also point out something that really needs no pointing out, that all sections of Canada are represented and that the personnel consists of men who undoubtedly have had wide experience and a great deal of capacity in dealing with problems of this kind.

(See Exhibit No. 8, in Appendix) I make it perfectly clear, however, that the views of the Canadian Bar Association are only expressed through the Committee responsible to it. We come before you as an Association which feels that there is a most important work to be done for the benefit of Canada as a whole. We offer our services of co-operation and assure you that any assistance which you desire will be gladly rendered.

I have asked Mr. Gordon to discuss with you the details of the recommendations that the Taxation Section of The Canadian Bar Association under his Chairmanship desire to present.

Before asking that Mr. Gordon may be permitted to do that, Mr. Chairman, might I add that I should have liked very much to continue to be present at the meetings of the committee but the commission on which I have been engaged now for some time is sitting this morning, and I only got away by leave of the commissioners. But this is a subject which requires very careful consideration to qualify anyone to speak on before a committee such as this. I had hoped that I would have been able to sit in with the members of the various committees in preparation for appearing before you, sir. That I have been unable to do. Income tax and income tax problems have been entirely foreign to my mind for some months, and I feel that as the subject is one that is so intricate and so difficult, without having a chance to refresh my memory and carry on together with those that were doing the work, it would be rather presumptuous on my part at the present stage to attempt to be of any very great help. In other words, I would need to take a refresher course before I felt qualified to discuss any technical matters before the committee.

If there are any questions I should be glad to attempt to answer them. The work which Mr. Gordon has done has been an intensive preparation over a period, not of just a month but of years. I know he needs no refresher course. As President of the association, I do wish to pay tribute, if I may be permitted, to the members of the association and the members of the Association of Chartered Accountants for the really magnificent work they have done. I know it means steady and unremitting effort. Not having been able to give that kind of attention to it myself, I would feel very hesitant about answering any questions such as I know this committee, which is thoroughly seized of the matter, could ask me. I do not want to fumble any more than is necsssary.

Hon. Mr. VIEN: Might I ask Mr. Williams a question? On page 7 you refer to a number of Royal Commissions appointed in various parts of the British Commonwealth, and you suggest that the evidence might be organized and indexed and made available for the study of these problems. Has this been done?

Mr. GORDON: It has not been done, it has only been surveyed.

Hon. Mr. VIEN: Can we have a list of these twenty Royal Commissions to which you refer?

Mr. GORDON: Certainly, sir. It is very difficult to get the evidence.

Mr. WILLIAMS: It is very difficult to get our hands on the records taken some years ago. That problem has been surveyed and it is the intention of the Tax Foundation to work over all that material.

Hon. Mr. CRERAR: Might I point out to Mr. Williams that the reference to this committee relates only to administrative matters. We have not been charged with the responsibility of examining the incidence of taxation in any way. That is a very important matter of course, and I rather gather from a hasty glance at the proposal for a Canadian Tax Foundation that it will concern itself largely with an equitable distribution of taxation. In other words, the incidence of taxation.

Mr. WILLIAMS: Mr. Senator, the work which the Tax Foundation has visualized is a comprehensive study of the matter from all points of view. We understand the limitations of the inquiry which this committee is making, and our desire is to work only within the committee's reference at the present time. But I felt we should indicate to you that the Tax Foundation intends to make as careful a study of the whole question of taxation as it is possible to make. It will be a very, very, big job.

Hon. Mr. CRERAR: I think it is wholly desirable, and perhaps equally desirable that it should be known now that such work will be undertaken.

The CHAIRMAN: Mr. Williams, in many of the briefs submitted to us we find discussion not only of matters of administration, but also—and it is almost

impossible to avoid—matters of policy. We have always made it known that while our order of reference covers only administrative matters, we would hear the others, but that we could not make any recommendations to the government affecting policy.

Mr. WILLIAMS: Yes.

Hon. Mr. CAMPBELL: There is one suggestion in the brief that opportunity should be afforded representatives of bodies such as the Canadian Bar Association and the Dominion Association of Chartered Accountants to appear before the government or somebody to consider new legislation. It is my understanding that the feeling of these bodies is that they could help in making suggestions as to the framing of the legislation so that it could be more easily interpreted.

Mr. WILLIAMS: Yes. One of the ideas behind that, Mr. Senator, is, I think, that the experience of our profession shows that when you are working out a draft of any bill or any agreement, it is essential to have the guidance of persons who are in a position to say: "Now, that is splendid on paper, but have you considered its practical application to such and such a case? It is going to be different from what you, the draftsman, visualize." Sometimes in a multitude of counsellors there is wisdom; on the other hand, it is said that too many cooks spoil the broth. You can have it either way. One of the things in mind was that when the draftsman was at work, those affected, either associations or individuals in business or agriculture, whatever it might happen to be, would look at the draft and say: "I don't know how that is going to affect other persons, but this is the effect it is going to have on us."

I think the experience of all who have had anything to do with legislative draftsmanship is that it is not possible for any drafting body to anticipate everything that may arise, and if one gets assistance from as many other groups as possible there will be a flood of light on the subject, which will result in the recasting of the original drafting.

Hon. Mr. CAMPBELL: To overcome Mr. Ilsley's objection would it not be possible to provide the hearings between the time the budget was brought down and the legislation finally enacted?

Mr. WILLIAMS: Does not the time factor enter into it? If there is ample time between those two periods to give really careful consideration, I would say "Yes." The little experience I have had has shown that the time factor prevents as careful and close consideration of the effects of the proposed legislation as should be given to it.

Hon. Mr. VIEN: I would suggest that we should take all the time required, even at the cost of postponing concrete recommendations to the next session. We are trying to revamp the whole act as well as the methods of taxation, and it is such a radical departure from what has been done so far that we should take all the necessary time to carefully ponder it.

Mr. WILLIAMS: I would not care to be told that I was making a suggestion one way or the other on the question of procedure. I was merely pointing out that there are two difficulties about time; the one is having too little time, and the other is thinking you have too much time, which usually ends up in your having too little time.

Hon. Mr. CAMPBELL: I think Senator Vien was speaking of a different matter than I had reference to. I was speaking of the annual amendments to the Income War Tax Act, where submissions have been made but no proper time afforded to the representatives to appear.

Hon. Mr. VIEN: You mean from year to year.

Hon. Mr. CAMPBELL: Yes; from year to year.

Mr. WILLIAMS: Might I just refer to an experiment that seems to have worked out astonishingly well; namely, the Uniform Life Insurance Act, which

was brought into existence about 1924. It is an act that was passed in each of the Common Law provinces. The subject was studied for three or four years before the act was passed; then there was a gentlemen's agreement between the provincial legislatures that no amendments would be made to that act until a body of experience had been built up. If I recall correctly the result was that the act was not touched for ten years, but at about the seventh year they gathered together the experiences and worked on a proposed draft. All the amendments were made at one time and based upon experience, which resulted in an extremely satisfactory way of handling that problem. Whether that procedure is entirely applicable to this problem, with the shifting current of business, the graphs going up and down, I doubt very much if as long a time should be taken. But if a little more time could be taken to see the effects and implications of all proposed amendments it would be very valuable.

Hon. Mr. VIEN: It implies, does it not, the amendments to the Income War Tax Act and Excess Profits Tax Act from the budget's presentation. The reason we have no time to consider the proposed amendments is largely due to the fact that the Minister of Finance considers the budget appropriations and then the ways and means of raising the necessary revenue to meet those appropriations. I welcome the suggestion of Mr. Williams to the effect that we should have an Income War Tax Act for a fixed period. We have adopted that method in the Bank Act; we revise the Bank Act every ten years, which has brought stability to our banking institutions as well as to the administration of the act.

Mr. WILLIAMS: I think the committee was entirely unanimous in the belief that some proposal, such as outlined at the top of page 6, that is the Australian proposal, seemed to present as simple and logical method as had been developed. It did make a very strong appeal to us.

The CHAIRMAN: I think Mr. Stikeman's report on Australia, New Zealand, United States and Great Britain will include your suggestion.

Hon. Mr. HUGESSEN: I take it that the objection by Mr. Ilsley to this resolution passed by the council of the Bar was perhaps that the wording was a little too broad. You suggested that a committee be set up, say in the House of Commons, to consider all proposed taxation legislation. I suppose Mr. Ilsley's thought was that you referred to tax rates.

Mr. WILLIAMS: I would judge from his reply that that is what he had in mind. This resolution, Senator Hugessen, was prepared at the time when the committee was beginning work.

Hon. Mr. HUGESSEN: You did not really mean that. You do not intend to interfere with the present arrangement by which taxation is imposed at the moment the budget speech is made.

Mr. WILLIAMS: No, nothing of that kind. You can appreciate that when we started we were trying to lay out the work considerably in advance, and the wording of this resolution would probably have been somewhat different if we had the experience then that we have gained since. However, we do feel that we can perform a useful function, not only in endeavouring to assist this committee in its present problems, but by working through the tax foundation and by getting a survey of the whole taxation set-up, not only within the Commonwealth but elsewhere. Conditions are changing rapidly, useful experiments are being made in other jurisdictions, and if we had a fund of reserve work so co-ordinated and indexed that at a moment we could put our hand on any experiment that had been tried and failed, or succeeded, and to learn how similar problems were being met in other places, that work would be very useful to the government and to officials who have to administer the machinery by which the necessary revenue is obtained.

Hon. Mr. HUGESSEN: I quite agree with that, Mr. Williams. May I get back to this idea which appears at the top of page 6, and which is completely

novel to me. I do not know whether the suggestion of dividing the income tax into two statutes, one an assessment statute and the other a rate of taxation statute, has occurred to any other members of this committee. May I ask you, Mr. Williams, if that idea is to be developed further by Mr. Gordon.

Mr. GORDON: I do not think so, but I can easily supply you with the Australia statute.

The CHAIRMAN: I think we have that.

Mr. HALL: Mr. Chairman, I do not think our particular study covered that phase. We were dealing more with the appeal procedure in the various jurisdictions. I think it is mentioned in the introductory paragraph, but I don't think it is developed there.

Hon. Mr. HUGESSEN: Otherwise it has the danger of being an idealism thrown out and not followed up.

Mr. GORDON: I wonder if Mr. Hall could get a copy of the Australian Act.

Hon. Mr. HUGESSEN: If we had an assessment statute separate from the statute fixing the rate of taxation, it would be very effective when pressed for time in the consideration of legislation for each year.

Mr. WILLIAMS: I might say that the Australian provisions are entirely new to me. I think most of us who have had to do recent income tax work under pressure have been content to take the English jurisprudence and such as we have been able to bring up ourselves, such as the useful book written by Mr. Plaxton and Mr. Varcoe. One of our difficulties is that under pressure of daily practice we cannot give consideration to what is being done in other jurisdictions. The tax foundation can do this.

Hon. Mr. HUGESSEN: How long has the Australian practice been in vogue?

Mr. WILLIAMS: For years.

Mr. GORDON: Certainly back as far as 1916. The act is called "The 1916 to 1945 Assessment Act".

Hon. Mr. LAMBERT: Is this resolution on a separate sheet of paper incorporated in the brief?

Mr. WILLIAMS: Yes, Senator Lambert, it is the exact wording of the resolution at page 5 of the brief.

Hon. Mr. LAMBERT: Apart from the suggestion of dividing the income tax act, I think the suggestion in this resolution of having a parliamentary committee to deal with the proposed changes in the act from year to year represents a very logical sequence to the work of this committee. If this committee can accomplish anything in the way of its objective in re-establishing the income tax act on a basis of law and principle, I think it is highly desirable that there should be a standing committee, whether it be in the Senate, the House of Commons or a joint committee. The House of Commons would seem to be the logical place for it since it deals with the question of revenue.

The CHAIRMAN: The Committee suggested by the Bar Association is a standing committee of the House of Commons; it makes no mention of the Senate.

Hon. Mr. LAMBERT: I think it is a good suggestion.

The CHAIRMAN: If there are no further questions, gentlemen, I should like to say to Mr. Williams that we are very grateful for his coming here, and while he cannot stay longer we appreciate that his duties require him elsewhere.

Mr. WILLIAMS: Thank you very much, Mr. Chairman.

The CHAIRMAN: Since Mr. Stikeman has not arrived yet, perhaps we should go on and hear Mr. Gordon. Mr. Gordon is Chairman of the Bar Association, Tax Section.

Mr. GORDON: Mr. Chairman and honourable senators, I should first like to answer the question by Senator Vien about the Royal Commissions. There have been twenty commissions, and for the last three years I have been endeavouring to get them. I have advertised in the London papers; I have written to Australia and New Zealand, and I have gotten about half of them, and the others can be obtained. For instance, in Lord MacMillan's commission, the evidence is in the Income Tax Department and they very kindly lent it to me. I think if the Senate asked for it it could be secured without difficulty. I fancy the Imperial Stationery Office in England would have such matters, but they have been so bombed out that it is very difficult to get what we require. I have been instructed by the taxation section to submit four recommendations to this committee. The fourth recommendation deals with the clarification of the Income Tax Act. I have got together sixteen types of things which I think the Senate should consider and which I think could be amended to great advantage. These suggestions were settled by the section after a great deal of time, trouble and discussion. Our members were good enough to come from Vancouver, Winnipeg, Quebec, Montreal and Halifax to discuss this matter.

The CHAIRMAN: Was that in collaboration with the chartered accountants?

Mr. GORDON: No, sir. We thought we should present separate briefs, although naturally we would discuss matters with them. This brief has been settled after a great deal of discussion, and if I should add anything to it I hope the committee will understand that they are my personal views and have not been authorized by the section.

## RETROACTIVE LEGISLATION

While the question of retroactive legislation may be a matter of Government policy and, consequently, outside the scope of this Committee, the matter is of such importance that it is impossible to consider the problems which confront you without dealing with this question and I, therefore, ask your indulgence to permit me to discuss it.

New industry must be encouraged. New industries must have capital and the first demand of capital is security. If a taxpayer arranges his business in a legitimate way, calculating that he will have to pay a certain tax and, subsequently, by retroactive amendment, a tax is levied on transactions which were not taxable at the time they were completed, security disappears.

Occasionally a taxpayer may devise some scheme which will permit him to avoid tax and he may be made to pay by retroactive legislation, but the damage done may be considerably greater than is warranted by the small increase in revenue.

We recommend that retroactive legislation should, wherever possible, be avoided.

## EXEMPTIONS

Under the Canadian Statute, many sources of income are exempt and many deductions are allowed which are not permitted in England. Most of the deductions were inserted in the Canadian Act when the rates were low but, in view of the increase in rates, now amount to very substantial sums.

We recommend that a list of exemptions and deductions be prepared and an estimate made of the amount of income involved, so that the problem may be carefully studied.

Hon. Mr. CAMPBELL: What have you particularly in mind with respect to exemptions and deductions?

Mr. GORDON: Public utilities, for instance.

Suppose there is a public utility, such as a street car company, operating in Hamilton. If the city of Hamilton expropriates that street car company, the Government will lose a lot of revenue and the street car riders will probably get lower fares. I think Professor McDougall mentioned that in his evidence before this committee.

The CHAIRMAN: The Hydro is a better illustration, from that point of view, is it not?

Hon. Mr. HUGESSEN: Is that the case in England, Mr. Gordon? What happens over there if a municipality has a waterworks?

Mr. GORDON: They pay. The City of London Docks is one of the largest instances, and they pay.

Hon. Mr. HUGESSEN: Does the London County Council pay taxes on the income from its tramways, for instance?

Mr. GORDON: Yes. They do not pay income tax on the taxes they collect, but they pay tax on all business they carry on.

Hon. Mr. VIEN: Have you a tabulation of those exemptions in Canada which are taxed in England?

Mr. GORDON: No, Senator, but I can tell you that all municipal undertakings are taxed in England.

Hon. Mr. VIEN: What about co-operatives?

Mr. GORDON: I could not answer as to co-operatives. I think Mr. Stikeman could tell you about that when he comes. There was a commission in England that dealt with the taxing of co-operatives.

The CHAIRMAN: Did I understand you to say that municipal undertakings in England are taxed on their revenues and not on their profits?

Mr. GORDON: Money raised by taxes is not subject to income tax, but the money raised by selling water or electric light, or from the operation of tramways and so on, that is taxed.

Hon. Mr. HUGESSEN: They are not taxed on their tax income, but they are taxed on their commercial income?

Mr. GORDON: Exactly. I did not think we could do better than suggest that the Income Tax Department tell you the amount of income involved in these exemptions and deductions.

This might be a convenient place to mention other cases where extra revenue might be obtained.

There has been a great deal of discussion about the taxation of persons who have made fortunes in Canada and then left to avoid Income Tax and Succession Duties, and take the benefit of the 15 per cent rate. If these men gave away their property they would have to pay a gift tax and if they died would have to pay Succession Duties. Why not levy a tax equivalent to Succession Duties, and demand payment before they leave the country?

Hon. Mr. HAYDEN: Do you mean a tariff on the export of capital?

Mr. GORDON: If John Smith makes $10,000,000 in Canada and decides to go to some other country where the taxes are lower, why should he not be required to pay some tax before he is allowed to leave?

The CHAIRMAN: What would prevent him from making his investments in foreign securities before he left the country?

Hon. Mr. HAYDEN: Your suggested tax would not be income tax, would it, Mr. Gordon? That would be either an export duty or capital levy.

Mr. GORDON: Well, it would be a tax to help relieve the burden on others.

Hon. Mr. HAYDEN: But we are talking about income tax.

Mr. GORDON: I just give that as an illustration of my point that if this act was carefully considered a great deal more revenue could be obtained without hurting anybody.

Hon. Mr. VIEN: But it would imply a principle of very wide application. You would, for instance, have virtually an embargo on capital.

The CHAIRMAN: Yes, if you made the law workable.

Hon. Mr. VIEN: They have that in England now. You cannot invest in foreign countries and you cannot convert your sterling into foreign currency without leave from the foreign exchange authorities.

The CHAIRMAN: Was that prior to the war?

Hon. Mr. VIEN: No, not prior to the war, but that is the law now.

The CHAIRMAN: We have that here too.

Hon. Mr. VIEN: But not to the same extent.

Mr. GORDON: I just gave that as an illustration of places where, if the act was carefully examined, extra revenue could be obtained without hurting anybody.

Hon. Mr. CRERAR: Are we discussing this brief as we go along?

The CHAIRMAN: Ordinarily we allow the witness to finish his brief before questions are asked. What is the wish of the committee?

Hon. Mr. CAMPBELL: I think it is much better to clear up a thing as we go along.

Mr. GORDON: That would be more convenient for me.

Hon. Mr. HAIG: I protest. I think we should hear the brief first and then ask questions. The other day in the Senate a member spoke on a motion for the second time. Something like that will be happening here if we allow questions now, and again after the brief is finished.

The CHAIRMAN: We have more or less established a rule of procedure that witnesses should be permitted to read their briefs without interruption.

Hon. Mr. HAYDEN: That rule was enforced against me several times.

Hon. Mr. HAIG: Mr. Gordon is also making suggestions concerning matters that are outside our reference altogether. Our reference does not entitle us to discuss the incidence of taxation. We are interested in the mechanics of taxation.

The CHAIRMAN: We also decided that if a brief contained some reference to the incidence of taxation we would not object to the reading of it, as we wanted to avoid interrupting the witness. I think we should abide by the rule that the witness be not subjected to questions until after he has finished his brief.

Mr. GORDON: I had jus got to the bottom of page 8 of the brief.

## MINISTER'S DISCRETION AND BOARD OF TAX COMMISSIONERS

According to a statement appearing in DeBoo's Taxation Service at page 6002, the Minister may exercise 115 discretions which are set out in a table appearing on page 6003, a copy of which is attached as exhibit No. 1.

I have here another analysis prepared by Mr. Leon J. Ladner, K.C., of Vancouver. This is a very fair analysis and I think it might be of interest to the committee. (See Exhibit No. 9, in Appendix.)

The CHAIRMAN: I am afraid you are giving us so much information that we will not be able to get through it.

Hon. Mr. CAMPBELL: We asked for that the other day.

Mr. GORDON: The brief goes on:

It is important to consider how these discretions are exercised because no one man could possibly have the time to deal with the many important questions which arise. Exhibit seven referred to by Mr. Elliott is a memorandum to the Inspectors of Income Tax covering discretionary powers. This memorandum contains two important statements:—

p.93. As the members of the District Staff are in the best position to judge the facts and circumstances, it is expected that in most cases their report will be the deciding factor. Thus it is important that the report be carefully prepared and be as complete as possible;

p.92. If a legal opinion is required this will be submitted by one or more members of the legal staff.

Mr. Elliott pointed out that he had lost 141 key members of his staff whose average length of service was 3.9 years and, as a result, some of the work must be done by inexperienced assessors. At p.25, Senator Vien mentioned the case of a young man receiving a salary of $200 per month who was called upon to help the inspector determine the proper salary to be allowed to a chief executive claiming $18,000 per annum.

You can judge the efficiency of the legal officers of the Department by the fact that they have won something like 66 per cent of the cases which have been decided by the Courts. But if the opinions given by the legal officers of the Department are of the same high grade as their performance in Court, then 34 per cent of the decisions are probably wrong. After reading this brief, members of the Taxation Committee made two comments—

First: If a dispute is referred to Ottawa there is a tendency to uphold the decision made by the local assessor.

Secondly: If doubtful legal points arise, the taxpayer is usually told that the view of the local authorities will be upheld and he can appeal to the Court if dissatisfied, but in many cases the discretion is absolute and there is no appeal.

No one would suggest that the situation should be changed: it is absolutely necessary and proper that the officials of the Department should endeavour to collect all revenue which is legally due. No competent or honest Departmental solicitor could possibly recommend that an appeal from an assessor should be allowed if the decision of the Inspector could be supported on any ground however doubtful, but there is little doubt that the effective exercise of the discretion is in the hands of the assessors or, to say the least, that their opinions have a most important bearing on the ultimate result.

The tax law and its administration have been the subject of criticism of increasing heat in recent years and it is felt by many that when Parliament conferred these important duties on the Minister and authorized him to depute the same to the Deputy Minister, it did not intend that the effective exercise of such powers should so largely depend upon the views of others.

The question is accentuated by the fact that the decisions of the assessors are not made public and their policy is governed by a set of confidential directives; and many taxpayers think that they have paid more than was due because they did not know what the Department would be prepared to allow.

The problem is dealt with in an exceedingly clear manner in the report of the Committee appointed to consder the Minister's powers in England, dated 17th March, 1942.

Hon. Mr. VIEN: Would you give the title of the report that you are referring to?

Mr. GORDON: It was a Royal Commission presided over by Lord Donoughmore. I noticed the Right Honourable Sir John Anderson was also a member.

The volume containing this report is in the Parliamentary library: We have made certain extracts therefrom and have copies for each member of this Committee, but I would like to read a portion of the same—

> We are of opinion that in considering the assignment of judicial functions to Ministers, Parliament should keep clearly in view the maxim that no man is to be judge in a cause in which he has an interest. We think that in any case in which the Minister's Department would naturally approach the issue to be determined with a desire that the decision should go one way rather than another, the Minister should be regarded as having an interest in the cause. Parliament would do well in such a case to provide that the Minister himself should not be the judge, but that the case should be decided by an independent tribunal.
>
> Indeed we think it is clear that bias from strong and sincere conviction as to public policy may operate as a more serious disqualification than pecuniary interest. No honest man acting in a judicial capacity allows himself to be influenced by pecuniary interest: if anything, the danger is likely to be that through fear of yielding to motives of self-interest he may unconsciously do an injustice to the party with which his pecuniary interest may appear to others to identify him. But the bias to which a public-spirited man is subjected if he adjudicates in any case in which he is interested on public grounds is more subtle and less easy for him to detect and resist.
>
> It is unfair to impose on a practical administrator the duty of adjudicating in any matter in which it could fairly be argued that his impartiality would be in inverse ratio to his strength and ability as a Minister. An easy going and cynical Minister, rather bored with his office and sceptical of the value of his Department, would find it far easier to apply a judicial mind to purely judicial problems connected with the Department's administration than a Minister whose head and heart were in his work. It is for these reasons and not because we entertain the slightest suspicion of the good faith or the intellectual honesty of Ministers and their advisers that we are of opinion that Parliament should be chary of imposing on Ministers the ungrateful task of giving judicial decisions in matters in which their very zeal for the public service can scarcely fail to bias them unconsciously.

It is a very interesting report and I commend it to your consideration. It states the situation far better than I could possibly do it myself.

(See Exhibit No. 10, in Appendix)

Hon. Mr. VIEN: It is very interesting.

Mr. GORDON: We have noted the suggestion made by Mr. Elliott, on page six of his evidence, that he would like to have the accumulated advice of other persons, something equivalent to a Board of Directors.

No man can enforce the Act fairly unless he understands the problems which affect the persons who have to pay the tax. These problems are many and varied and no one man can understand them all. The policy suggested by Mr. Elliott has been adopted by the Government in many cases, as for instance the Canadian National Railways.

We think the suggestion has much merit and should be carefully studied: but it is not the complete answer.

The problem is most urgent. The Canadian Bar Association recommends that an Appeal Tribunal should be established. The establishment of this Tribunal would immediately do much to satisfy the public and prevent further criticism. Such a Tribunal should be able to decide disputed matters

in a cheap, speedy and independent manner. In each case the reasons should be made public and we would soon have a body of legal precedent so that all might know what they were expected to pay. Decisions of the Tribunal would give a meaning to ambiguous legislation; remove uncertainty from the Departmental practice; eliminate arbitrary action by junior officials; and do much to prevent delays which must result in substantial loss to the revenue. We are of the opinion that the most immediate and important task before this Committee is to consider the advisibility of setting up an independent Appeal Tribunal or Board of Commissioners, which would deal with the many problems which arise from the exercise of the discretionary powers to which I have just referred.

We thought you might be interested in considering what is being done in other countries where the same problem arises.

The Commonwealth of Australia has appointed a Board of Tax Commissioners. A leading Text Writer deals with their powers as follows:—

> Wherever in any proceedings before the Board a matter arises wherein the Commissioner has exercised a discretionary power, the Board has authority and a duty under section 193 to investigate the matter, so as to arrive at its own decision on the point, and to substitute that decision for the decision of the Commissioner if justice so requires.

This Board gives written reasons and I have here the 10th volume of their Report.

I do not want to file this book as an exhibit. I had to advertise in the Australian papers to get it.

Hon. Mr. VIEN: What is the exact title of the volume?

Mr. GORDON: Taxation Board Review Decisions, Volume X. I think it is out of print.

Hon. Mr. VIEN: We should have a copy of it in the library.

Mr. GORDON: In England the Commissioners determine the amount of the tax and, in doing so, consider all pertinent facts including the proper exercise of any discretionary powers. The taxpayer has a right of appeal to the Special Commissioners and a further right of appeal to the Court on questions of Law.

In South Africa there is a special Court of Tax Appeals. This Court has laid down the principle that if any discretion conferred on the Minister has been properly exercised, they will not interfere. In our opinion, this policy is not satisfactory. The Board gives written judgments and I have here the 10th volume of their Report.

In the United States there is a Court of Tax Appeals which has power to determine and deal with all questions which may arise. This Court gives reasons in writing, which are contained in some 50 or 60 volumes.

We recommend—

First: That the Statute be carefully examined and all unnecessary discretions eliminated. To illustrate this point, let us consider "bad debts".

Section 6.(1)(d) reads as follows:—

> In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of
>
> (*d*) amounts transferred or credited to a reserve, contingent account or sinking fund, except such an amount for bad debts as the Minister may allow and except as otherwise provided in this Act;

Many taxpayers fail to understand that the tax must be computed on the profits earned in each year and no allowances can be made for future losses.

These people seem to think that if they are in a speculative business this section permits them to set up a reserve for future losses, and the form of the section has caused a great deal of misunderstanding and much irritation. It may be

that the best method of dealing with bad debts is to permit the taxpayer to set up a reserve and it is a very common practice; but just why the amount of this reserve should be left to the judgment of an assessor whose decision is probably final, when it should be given as a matter of right and the amount determined by proper evidence, it is hard to understand. It is the method which is adopted which gives cause for complaint and indicates the reason why this discretion should be eliminated. The Department permits a taxpayer to deduct a debt in the year in which it is ascertained to be bad and if the amount is subsequently collected the taxpayer is charged at the rate in force when the money is received. When this ruling was introduced, it seemed an extremely fair and reasonable way of dealing with the problem but in the last five years taxes have been greatly increased and many people hope that reductions will be made in the near future. If a company sold goods prior to 1936 the tax would be 15 per cent, after 1942 it might be 80 per cent. It is not very satisfactory to a taxpayer who is called upon to pay 80 per cent on a debt which was due in1935, to be told that someone who, in 1942, would have had to pay 80 per cent, may now only have to pay 60 per cent.

All this confusion would be eliminated if the Statute provided that the taxpayer may write off any debt which he cannot collect, at any time he sees fit, and if he collects the debt later on he pays at the rate in force when the money is received, subject to this proviso that if there is a difference in the rate amounting to, say 15 per cent, then either the taxpayer or the Revenue can claim that the tax should be fixed at the rate in force when the debt ought to have been paid.

There are many discretions of this kind conferred on the Minister and we could give you example after example of discretions conferred on the Minister which are unnecessary.

We recommend that an absolutely independent Board of Tax Commissioners should be appointed; that their independence should be secured by providing that appointments be made for life; that the Board should sit in as many divisions, or panels, of three as may be necessary to deal promptly with all business which may come before it; that the Chairman of each panel should be a qualified legal practioner of at least 10 years' standing; that, if business requires it, the Board should be compelled to sit in each province at least once a month and should be authorized to establish their own rules of procedure; and that on completion of service they should be entitled to a pension on a par with other judicial officers.

We have prepared a draft Act—attached as Exhibit No. 2—which we hope may be of assistance if your Committee sees fit to accept our recommendations. We cannot estimate how many Commissioners would be required because we do not know the number of cases which will be brought before them, but we fancy that the volume of work will be very great. Mr. Elliott stated (p. 69) that the Board of Referees had received 5,400 claims and they were still being filed at the rate of 100 a month. It is most important, both to the public and to the Revenue, that disputed questions should be disposed of promptly, and where delays are great the financial position of the taxpayer may change and revenue be lost.

### CLARIFICATION OF THE ACT

We are of the opinion that the principal difficulty in administering the Income Tax Act is due to the fact that most of the provisions are obsolete and many of them unintelligible. It was hard to understand the meaning of the Consolidated Act of 1927, which contained 29 pages, but since that date many amendments have been added to the Statute. These amendments cover 188

pages and have apparently been made with little reference to fundamental principles, being enacted to meet specific cases and then applied to something entirely different.

If the Government expects a taxpayer to make honest returns and pay what is justly due, a corresponding obligation lies on the Government to simplify and clarify the Statute so that all should bear an equal burden.

The Statute is not applicable to modern conditions. Mr. Justice Thorson, the President of the Exchequer Court, has pointed out that the language of the Statute does not permit a taxpayer to estimate his income on the accrual basis, notwithstanding the fact, for the last 29 years, the vast majority of trading concerns have prepared their statements in this way, and it is the general opinion that this is the best method of estimating actual profits.

The taxpayer is not taxed on his true income, but is compelled to calculate his income by antiquated rules which nobody can understand, some of which appeared in the English Act which was passed in 1806. Many taxpayers feel that they are unjustly charged and others who, to all intents and purposes, are in the same position, escape.

The senior officials of the Department, who are in charge of making assessments and collecting the revenue, are compelled to spend a major part of their time in adjusting disputes. This may be the principal reason why delays occur in assessments, and is one of the bottle-necks which ought to be removed.

It is quite impossible for the chief assessor and assessors to properly superintend the very necessary business if day after day they have to meet dissatisfied taxpayers and spend a long time discussing their questions. These officials are not there for that purpose, but that is what they largely have to do.

Hon. Mr. VIEN: And the taxpayers are obliged to retain the services of experts to help them at their own expense.

There is not much difficulty in ascertaining gross income. If a taxpayer makes returns on a cash basis, all he has to do is to deduct the amount of cash on hand at the beginning of the year from the sum on hand at the end of the year, and deduct from the amount so found, capital profits and losses, if any. If the taxpayer files on the accrual basis, the calculation is a little more complicated but does not present much difficulty. But it is extremely difficult to determine the items which may be deducted from the gross income for the purpose of determining the net income.

Section 6 of the Canadian Act, which deals with deductions, follows the same plan in dealing with deductions as the English Acts of 1806 and 1918. Exhibit No. 3, which I hope you will find interesting, contains extracts from the three Acts in question.

I think, honourable senators, it will be interesting to refer to Exhibit 3, which will be found on the back page of my brief.

In 1806 England was a small agricultural country with a population of between eight and nine million; trade and commerce were of little importance and the wealth of the country was represented by land-holdings.

The persons who prepared the Income Tax Act of 1806 could not be expected to visualize modern trade and commerce and the original provisions, which are still closely followed, are not suitable.

Little was done in England to modernize the Statute because, prior to 1914, the rates were low, dropping to tuppence in the pound, or less than 1 per cent in 1874.

At first, the English Courts interpreted the Statute strictly and, if a taxpayer did not come within the letter of the Law, he escaped liability. In 1867 that great Judge, Lord Cairns, stated the principle as follows:—

> If the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law.

Later on, when the need for revenue became great, different principles were applied—Lord Sumner stating, in 1921:—

> It is a most wholesome rule that in taxing the subject the Crown must show that clear powers to tax were given by the Legislature. Applied to income tax, however, this is an ironical proposition. Most of the operative clauses are unintelligible to those who have to pay the taxes.

It soon became clear that the more ambiguous the wording, the more likely the Revenue was to catch something. The drafting got worse and worse and, at the present time, it is often difficult to imagine what Parliament intended.

Do not think that this situation only exists in England, without reading Section 47 of the Canadian Income War Tax Act, which is as follows:—

> The Minister shall not be bound by any return or information supplied by or on behalf of a taxpayer, and notwithstanding such return or information, or if no return has been made, the Minister may determine the amount of the tax to be paid by any person.

If this section only permits the Minister, on proper evidence, to determine the income of a taxpayer and levy the amount of tax authorized by the Act, why is it necessary? If the section means that the Minister may, regardless of any returns which have been filed, levy a tax for any sum he sees fit, why not repeal the balance of the Act?

### AVOIDANCE OF TAX

The English Courts have placed a premium on avoidance of tax. In 1929 Lord Clyde stated as follows:—

> No man in this country is under the smallest obligation, moral or other, so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shovel into his stores. The Inland Revenue is not slow—and quite rightly—to take every advantage which is open to it under the taxing statutes for the purpose of depleting the taxpayer's pocket. And the taxpayer is, in like manner, entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Revenue.

In giving evidence before a Royal Commission in 1919, Mr. Bremner, an English Counsel of wide experience, stated:—

> It is my considered opinion, the Government would save a great deal of revenue, and the taxpayer and his solicitors would be saved a great deal of trouble, if he was told in plain language what he ought to do and how much he ought to pay.

and if you will read the evidence presented to Lord Macmillan you will see that this subject is causing considerable concern in England.

It is a well-settled principle of tax law that, where a section is ambiguous, the taxpayer is entitled to choose that interpretation which is most favourable to his pocketbook. In 1934, Mr. Justice Angers stated in the Exchequer Court:—

> There is the well-established principle that in a taxing act the tax must be expressed in unambiguous terms and that in case of reasonable doubt the act must be interpreted in favour of the taxpayer.

No doubt some taxpayers who cannot find a logical interpretation which will save them money, will not find it difficult to invent one which will satisfy their conscience.

On behalf of the Canadian taxpayer, we most strongly urge that every effort be made to clarify and simplify the Act and we are satisfied that if this is done the officials of the Department of National Revenue will be saved a great deal of labour and that the Revenue will collect substantially more money.

REVISION OF INCOME WAR TAX ACT

With your permission, we should like to discuss some phases of the Act which are crying for attention and, in certain cases, we have suggested a remedy; not with the idea that such suggestions should be adopted, but, on the contrary, with the hope that such suggestions, and many others which will no doubt come to mind, should be carefully analyzed and the appropriate remedy applied.

The next part of the brief is headed "Taxes should encourage business," and I think this is really outside the scope of the committee. Possibly I should not deal with it.

The CHAIRMAN: We do not know what it is until we hear it. Your opinion is that it deals with policy?

Mr. GORDON: Yes. But I think it is an important thing, and that you cannot consider the act without having regard to this.

The CHAIRMAN: You might as well continue to read. This is not a lengthly part, and I think you had better read it unless the committee objects.

Mr. GORDON: Very well, sir.

TAXES SHOULD ENCOURAGE BUSINESS

Let us consider three instances where they do not.

The Sun Life Assurance Company of Canada published a statement showing that the average man earned during his lifetime—

| | |
|---|---|
| With elementary schooling only | $ 64,000 |
| A high school graduate | 88,000 |
| A college graduate | 175,000 |

In 1927 a taxpayer was allowed to deduct $500 for each child under 21. At the present time he is allowed to deduct $128 from the tax.

If it desired to encourage education, why should a deduction be made to a man who is supporting a child at college while an ambitious student, whose father is unable to help, gets no benefit? If it costs $500 per annum to send a boy to college and, as a result, his lifetime earnings are increased $87,000, it would seem to be good business, instead of reducing the exemption, to increase the same.

A stranger who settles in Canada on the 31st day of December is taxed on his whole income for the year. Let us consider one specific case. An extremely competent mechanic came to Canada on the 25th of November and it cost him $2,640 more than if he had stayed in the United States. Men of this class are a valuable asset to the nation and the present legislation is an important deterrent.

Section 32A permits the Treasury Board to investigate any transactions made subsequent to the year 1939 and if the Board comes to the conclusion that the purpose of the transaction was to reduce or evade taxation, it may levy such tax as the Treasury Board may determine.

Mr. Ilsley stated that this section was passed as a war measure, but it is causing much consternation in the business community and it is our opinion that it should be repealed immediately.

We recommend that the Department be asked to furnish a statement of the number of cases which have come before the Treasury Board under Section 32A, and the amount of revenue which has been collected, so that the advantages and disadvantages may be set one against the other.

### TAXPAYERS SHOULD BE TAXED ON REAL INCOME

If this is desirable, it is first necessary to eliminate those sections which specifically direct that the taxpayer should pay on something else.

Section 10 reads—

> (1) In any case the income of a taxpayer shall be deemed to be not less than the income derived from his chief position, occupation, trade, business or calling.

If one is entitled to speculate on the intention of Parliament, we might assume that this section was passed for the purpose of preventing rich men, who took up farming or cattle raising as a hobby, from deducting the losses on these enterprises from their income; or, possibly, to prevent people who own unproductive investments on which they hope to make a capital profit, from deducting the carrying charges. If this is so, why not draft a section which deals with the thing in mind, instead of inserting a section which covers a great deal more and which has the effect of discouraging enterprise? Any man who runs one store and thinks he can make money by opening another will probably lose money before the new store gets established, and it might easily happen that a man would make five thousand dollars per annum running a grocery store in one part of the town, and would lose a similar amount if he opened a hardware store in another part of the town. Under the present law, he would probably be taxed on the money he made and could not deduct the money he lost.

In the last five years a landscape gardener earned $8,000 per annum, or a total of $40,000. He bought a one hundred acre farm for the purpose of growing ornamental shrubs but used only one or two acres for this purpose. The farm did not pay its way and a casual employee, through the negligence of another employee, lost his leg and collected $8,000 in damages. The Income Tax Department, rightly, claimed that the man could not set off the losses on the farm against the money earned as a landscape gardener. As a result, the taxpayer was asked to pay on an income of $8,000 per annum, although he actually made only $5,000 per annum, and the balance was mighty little on which to live. I am glad to say that a compromise was arranged which will permit this man to get out of debt in due course, if he lives frugally and his business is prosperous.

We cannot believe that a law which permits such conditions to arise, should remain in force for a single day.

Section 6 (1) (*o*) forbids the deduction of any increases which have been made by the Provincial Government for taxes after the 24th of June, 1940, without the consent of the Minister. If the taxes are increased they have to be paid and if the Minister will not allow the deduction of the increase, then the taxpayer must pay on profits which he did not earn.

It is also necessary to re-draft those sections of the Act which are out of line with modern business practice.

The English Statute of 1806 provided as follows:—

> No sum or sums shall be set against or deducted from or allowed to be set against or deducted from such profits or gains for any disbursements or expenses whatever not being money wholly and exclusively laid out or expended for the purpose of such trade.

The last three lines of this section appear without change in the present English Statute. This section has caused at least as much litigation as the provisions of the Statute of Frauds.

In Canada, the draftsmen has changed six words which has produced results which are indescribable.

Section 6 (1) (*a*) reads—

> a deduction shall not be allowed in respect of
>
> (*a*) disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income;

The first thing that arouses one's interest is—why did the draftsman insert the word "necessarily"? Was his intention to permit the Minister to be able to say "You cannot buy a new typewriter because the old one will do"?

But that is not all. The expenses must be laid out for the purpose of earning the income. The Judicial Committee have just held that moneys laid out for the purpose of reducing expenses are not deductible. That is the Montreal Light, Heat and Power Consolidated case. Under the English section it has been held that losses by theft and, in many cases, damages due to negligence, cannot be deducted. But no business can be carried on without being exposed to such claims and most people think it is unfair that they cannot be deducted. The reason why damages due to negligence cannot be deducted is apparent: 150 years ago a taxpayer who carried on business as an ironmonger was probably located in a small town and most of his customers lived close by and deliveries were probably made by errand boys: accidents were few and no one complained. His great-grandson, who conducts a hardware business in a large city, now delivers by truck and the danger is considerable.

But this is not all. If the ruling of the Judicial Committee is applied strictly

In Canada, the draftsman has changed six words which has produced results

be prohibited. Fire insurance is not expended for the purpose of earning the income but for the purpose of protecting property against loss by fire. Book-keeping expenses and accounting fees are not paid for the exclusive purpose of earning profits but mostly for the purpose of counting your profits after they have been earned. The expense of collecting accounts is not paid for the purpose of earning profits but for the purpose of collecting those profits after they have been earned.

Lord Macmillan recommended that the English section should be repealed and the following substituted:—

> 24. The amount of the profits of a business shall be computed in accordance with the ordinary commercial principles applicable to the computation of the profits of that business.

Perhaps I should point out here that Lord Macmillan was the head of a very important Royal Commission which sat in England from 1926 to 1936. The commission was a very able one, and many prominent witnesses appeared before it, including the late Mr. Neville Chamberlain, who later was Prime Minister. This Commission under Lord Macmillan also prepared a draft act. The act was drawn by Judge Konstam, a well-known writer on income tax law. I have a copy here, but I do not want to part with it. The Income Tax Department no doubt has a copy of it. In most cases the language of important sections in this draft act is infinitely better than the language in our act.

Hon. Mr. CAMPBELL: For purposes of the record would you read the name of the commission and give the date?

Mr. GORDON: It was the Income Tax Codification Committee. The report was published by His Majesty's Stationery Office, 1936. I may say that the

first volume of that report, which shows how the law has grown up in its present complicated and confused state, should be read by everybody who wishes to understand this subject.

Unless this Committee is prepared to recommend that Section 6 (1) (*a*) be amended, it is not much use considering the balance of the Act, because other troubles are merely secondary. Here is the root of the trouble and this is the section it is most necessary to consider.

### MATTERS OF MAJOR IMPORTANCE NOT FULLY DEALT WITH

The Canadian Income Tax Act does not provide a complete code, and leaves undealt with many matters of the first importance. Let us consider "depreciation", "depletion" and "obsolescence".

### DEPRECIATION

It is interesting to note that anyone, looking at the Act for the first time, is not likely to find out that depreciation is allowed, because the only reference to depreciation appears in Section 6 (1), which is headed—

"Deductions from income not allowed."

Everyone must admit that depreciation is a proper charge against profits but you may not realize the substantial amount involved, which is upwards of $350,000,000 per annum; nor the amount of litigation which has arisen owing to the fact that the main provision of the Act covering depreciation is section 6. (1) (n), which provides:—

> In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of
>
> (*n*) depreciation, except such amount as the Minister in his discretion may allow.

Two contradictory theories must be considered. Under one theory, depreciation is given to replace the amount expended in purchasing a capital asset which is used to earn the profits. Under the other theory, which is supported by the English Courts, a capital asset used in trade diminishes in value every year and this reduction in value is something of the nature of rent, and the actual amount by which the value of the asset is reduced is a proper charge against profits, and, consequently, it is not necessary to consider the purchase price but, on the contrary, you must consider the market price; or, in other words, value the asset and find out how much that value is annually reduced.

In an English case, the owner of a fleet of vessels had been allowed sufficient depreciation to write-down the value until it equalled the amount which could be obtained for the vessels as scrap. The Court pointed out that the vessels were still of considerable value and were still depreciating year by year, and directed that a proper allowance should be made.

In another case, the English Government and a private company contributed approximately £57,000 towards the cost of a tramway. The Revenue only permitted depreciation on the amount expended by the owners but the Judicial Committee directed that depreciation should be allowed on the total cost, notwithstanding the fact that the owners had only supplied part of the money.

In Canada, the Minister exercises his discretion by permitting depreciation on the actual purchase price. This may be a fair and proper way to decide the point but it has been decided contrary to the rulings of our highest tribunal, and decisions of this kind impose taxation without the consent of Parliament.

We recommend that every aspect of this important subject should be studied by engineers, accountants and others who have special knowledge of the subject;

that the Law should be investigated by competent persons and the Act amended to reasonably cover the problem so that the taxpayer will know that he is paying according to the directions of Parliament and not according to the views of the officials appointed to collect the tax; and that minimum rates be established and that any taxpayer who claims that these rates are not applicable to his particular business should be at liberty to apply to an independent tribunal for an additional allowance.

DEPLETION

This matter has been very carefully considered by the Departmental officials.

The amount allowed must be very substantial but we hear from far and wide that the mining industry is being throttled by high taxation and many persons are dissatisfied. It is said that successful mines obtain substantial allowances whilst the smaller mines receive insufficient.

We feel that the situation could be improved and we suggest that the problem be re-investigated; that all interested should be given an opportunity to be heard; and that the Statutes in other countries should be carefully considered.

OBSOLESCENCE

Obsolescence is twice mentioned in the Act: first in Section 6.(1)(b) and secondly in Section 5.(1)(p).

Just why it is mentioned in the Act is difficult to say because no deduction is allowed on this account. It is interesting to speculate why a deduction is not allowed and if you want to find the reason it is necessary to go back to the beginning, because in olden days things were made to last; what was good enough for one's granfather was good enough for his grandson, and the question of obsolescence never entered the mind of the draftsmen.

In 1918, the English Act was amended and taxpayers were permitted to deduct for obsolescence. The Canadian Statute was introduced in 1917 and, probably, no one looked at, or considered, the amendment made in England in the following year.

Hon. Mr. CAMPBELL: No one has since, I guess.

Mr. GORDON: No. I took the trouble to look it up before coming here.

An American engineer, Mr. Frederick S. Blackall, Jr. has recently pointed out that practically every machine used to produce commercial goods is six years old and some much older; that a substantial portion of the machinery used for such purposes in Europe has been destroyed and will be replaced by modern equipment; and if this country does not do the same we will not be able to compete. He also points out that the men managing most corporations know more about their own business than do the Revenue officials and that if they decide to discard obsolete machinery and instal modern equipment it is because they think they will be able to earn larger profits and be able to give more employment. The Revenue will tax these profits and will also tax the profits of the manufacturer who supplies the machinery; employment will be increased and the Revenue will obtain a tax upon the wages. He is confident that if obsolescence be encouraged, the revenue would be substantially increased.

If Mr. Blackall's conclusions are sound, why not amend the Act and remedy a grievance?

(*See* Exhibit No. 11, in appendix.)

CONFLICTING PROVISIONS

There are many provisions in the Act which contradict one another. As an example let us compare the sections referring to the taxation of non-residents, first paying particular attention to Sections 9B (5), 8 (4), 25A (2) and 27 (7):—

9B. (5) No exemptions, deductions or tax credits provided by any other section of this Act shall apply in the case of the taxes imposed by this section except those exemptions provided by paragraphs (a), (b), (c) and (k) of section four of this Act.

8. (4) A Minister, High Commissioner, officer, servant or employee of the Government of Canada or an agent general for any of the provinces of Canada, or any officer, servant or employee thereof, resident outside of Canada, shall be entitled to deduct from the tax that would otherwise be payable by him under this Act the amount paid as income tax to the government of the country in which he resides.

25A. (2) Any tax deducted under the provisions of subsection two of section nine B of this Act from any dividends or interest which are made taxable under subsection one of this section shall be applied as a credit against the tax subsequently found due by any non-resident person whose income is liable to taxation under the provisions of subsection one of this section.

27. (7) A non-resident person in receipt of rentals from real estate let, leased or used in Canada may file an income tax return and pay on a net income basis in Canada in respect of the income from such real estate. In such case the tax deducted at the source under subsection two of this section from any payment on account of any real property let, leased or used in Canada shall be allowed as a credit against any tax payable by the non-resident person and any overpayment by reason of such deduction at the source may be refunded.

Section 9B (5) directs that no exemptions, deductions or tax credits shall apply to the 15 per cent tax levied under the provisions of Section 9B except the deductions provided by section 4 (a), (b), (c) and (k); but if you read on further you will find that notwithstanding the specific provisions of Section 9B (5) three deductions are allowed under the provisions of Sections 8 (4), 25A (2) and 27 (7).

Then let us look at section 9 (1) (c), (d) and (e) which read as follows:—

9. (1) There shall be assessed, levied and paid upon the income during the preceding year of every person, other than a corporation or joint stock company,

(c) who is employed in Canada at any time in such year; or

(d) who, not being resident in Canada, is carrying on business in Canada at any time in such year; or

(e) who, not being resident in Canada, derives income for services rendered in Canada at any time in such year, otherwise than in the course of regular or continuous employment, for any person resident or carrying on business in Canada;

and compare them with Article 7 of the 1942 Convention arranged between Canada and the United States which exempts from tax:—

(a) American citizens temporarily present in Canada for not more than 183 days if they are employed by an American national and their compensation does not exceed $5,000;

(b) American citizens temporarily present in Canada for not more than 90 days if employed by a Canadian national and their compensation does not exceed $1,500.

Article 12 of the 1941 Convention arranged between Canada and the United States provides that American citizens shall not be subject to the payment of more burdensome taxes than Canadian citizens.

Canadian citizens are entitled to certain deductions whereas, under Section 9B, American citizens who pay 15 per cent tax are allowed none.

IRRITATING PROVISIONS

Section 3.(1) (e) provides that income shall include

> personal and living expenses when such form part of the profit, gain or remuneration of the taxpayer.

In 1892 the Judicial Committee decided that if an officer or servant occupied a free house, the annual value should not be included as part of his income unless he could rent it to other persons and receive the money. This section applies mainly to persons with low incomes. Lumbermen have to live in camps during the winter; most of them have their own homes and would prefer to stay with their wives and families and, if they did, would probably contribute more to the up-keep of the family by cutting wood, growing potatoes, etc., than the cost of their board. Unfortunately, they have to leave home to get employment. Few people could claim that life in a lumber camp is as comfortable as living at home, yet because of this privilege, which they do not want, their income is increased $180 per annum.

Another class of persons who were underpaid prior to 1939, is domestic servants. As a class, they work very hard and get very little; and most of them hate living in because they are always on call. It is the general opinion that poor people should get higher exemptions and we cannot see why a large and deserving class should be asked to pay on something which is not income and which they generally do not want.

We recommend that Section 3.(1) (e) be repealed or, if this is not desirable, that it be amended so as to exempt persons whose incomes are less than $4,000 per annum.

First Schedule A, Section 1, Rule 1, gives certain exemptions to married taxpayers who have children to support but if an unmarried person is charitable enough to support his brother's fatherless children, he does not get the exemption unless he maintains a self-contained domestic establishment which is defined by Section 2.(1) (j) as a dwelling house or apartment containing at least two bedrooms.

Some people in Canada live in one-room cottages; others help to pay the children's board with a relative. In both cases, if they support a dependent child they should be entitled to the exemption because, if they do not support the child, the same will probably become a public charge. The exemption should not depend upon how they support the child but on the cost of so doing.

UNREASONABLE PROVISIONS

Under Schedule A, Rule 6, subject to certain exceptions, if both husband and wife have an income in excess of $660.00 per annum, both of them lose the $150.00 deduction for married status and both are taxed as single persons and may pay an increased rate. No provision is made to cover the case where the parties to the marriage have separated and one of them has children to support; and the effect of the Section is to tax one person because some other person has a taxable income.

Section 32A.(3) provides that if substantially all the shares of a company having undistributed income on hand are sold to another company, and the Board finds that the main purpose of the vendor in making the sale was to avoid tax, then if you apply the Act strictly, the purchasing company apparently loses, for all time, the exemption to which it is normally entitled under

Section 4.(n). In other words, the liability of the purchaser is determined by the intent of the vendor. It is hard to see how any purchaser can possibly look into the mind of the vendor and ascertain accurately the motives which impelled him to sell; and this section may seriously impede future sales of securities.

Section 32B states that where on winding up a company distributes any assets to its shareholders the Minister may value the assets and the distributable portion shall be deemed a dividend. In the first place, if the Act is applied strictly, it will cover all capital gains which the Act does not assume to tax and, secondly, the section imposes a tax on the total price without permitting deduction and liabilities.

UNFAIR CALCULATIONS

(Prior to the recent reductions)

A married man paid no tax if his income did not exceed $1200 per annum. Most people assume that they are entitled to a reduction of $108 for each child but this is not so. If a taxpayer had an income of $1300 and 3 children, he still paid tax.

The reason is due to the fact that a taxpayer is entitled to an allowance from the normal tax of $28 for each child, making $84 for 3 children, while the normal tax of 7 per cent on $1300 is $91. He is entitled to a deduction from the graduated tax which comes to $196.20 of an allowance of $80 for each child, or $240 for 3 children. But you cannot set off a credit on the graduated tax against a deficit on the normal tax.

Notwithstanding the recent reductions, a married taxpayer earning $1300 a year, and supporting 3 children, pays $3 at the present time.

A very rich unmarried taxpayer who has an income in excess of $100,000 a year, paid the following rates on the excess—

9 per cent—normal tax
85 per cent—graduated tax
4 per cent—surtax on investment income

—

98 per cent

In addition, if his income is derived from dividends paid by Canadian corporations in United States currency, there is a further tax of 5 per cent on such income, making a total levy of 103 per cent.

Hon. Mr. HAYDEN: That is not on everything.

Mr. GORDON: I think we said on incomes in excess of $100,000.

Hon. Mr. HAYDEN: Some of that income may be from U.S. funds. You are adding a lot of dissimilar things together to get a percentage of 103 per cent.

Mr. GORDON: 103 per cent of all income from U.S. funds in excess of $100,000 per annum.

Hon. Mr. HAYDEN: That is, if all his income were in U.S. funds.

Mr. GORDON: He would pay 103 per cent on part of it.

Hon. Mr. HAYDEN: Not the overall percentage.

Mr. GORDON: Not the overall percentage. Property is in a lower bracket.

Hon. Mr. MCRAE: The overall percentage would be 98 per cent.

Mr. GORDON: No, he only pays 98 per cent on the highest part of it.

Hon. Mr. HAYDEN: The average percentage would not necessarily be 98 per cent; it would be somewhat lower.

Mr. GORDON: On an income of $100,000 prior to recent reductions an unmarried taxpayer received about $18,000 and he gets a little more now.

Hon. Mr. VIEN: These percentages are a little bit misleading.

Hon. Mr. HAYDEN: Yes.

Mr. GORDON: They are quite accurate on that portion of income over $100,000 in U.S. funds.

If the wife of a married man has an income of $700 a year, her husband loses his marriage exemption and may have to pay a higher normal tax.

Under Section 3 (7) a wife may reduce her income by making a gift to His Majesty, but this means that the excess is taxed at 100 per cent.

An unmarried taxpayer pays a tax of 7 per cent if his income does not exceed $1,800; a tax of 8 per cent if his income does not exceed $3,000; and 9 per cent if his income exceeds $3,000. Consequently, if he has an income of $3,029 it will pay him to give the $29 to the Government and come in under the 8 per cent rate, but this again is taxing the excess at 100 per cent.

The CHAIRMAN: I would suggest that we have had rather a strenuous session and that we should now adjourn for lunch.

Hon. Mr. HAIG: I move we adjourn till 2.30 p.m.

The committee adjourned until this afternoon at 2.30 p.m.

The committee resumed at 2.30 p.m.

Mr. GORDON: Mr. Chairman and honourable senators, I was at the top of page 26 of my brief, and I will go on from there.

If the wife of a married man has an income of $700 a year, her husband loses his marriage exemption and may have to pay a higher normal tax.

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## SOME PAY, OTHERS ESCAPE

### Superannuation

If two men own all the shares and are the Directors of a private company, the company may organize a Superannuation Fund, include the Directors, and deduct from the profits $900 for each man.

If the same men are partners carrying on precisely the same kind of business, they are not entitled to such privileges.

The reason is that Section 5.(1) (ff) of the Act states that the amount must be paid for the benefit of an employee, officer or director, and a partner is not an employee, or an officer, or a director.

We cannot think that Parliament intended this discrimination and the trouble has arisen because the draftsmen of the Act did not give sufficient consideration to the subject.

### Travelling Expenses

Many taxpayers who receive salaries are compelled to assume certain expenses. If the employment contract is changed and the employer pays the expenses and reduces the salary, the employer may deduct the expenses and the employee only pays on what he gets.

Section 3 defines income as including, amongst other things,

"wages, salaries and indemnities".

Section 5. (1) (*f*) permits a taxpayer to deduct from his income

"travelling expenses, including the entire amount expended for meals and lodging, while away from home in the pursuit of a trade or business;"

In 1924, Mr. Justice Audette held that an annual salary is an amount which is duly ascertained and capable of computation and no deductions were permitted by the Act.

The question came up last year in the case of a member of the Alberta Legislature, and it has just been held that this taxpayer could not deduct travelling expenses.

It is difficult to assume that Parliament intended that salaried employees should be treated differently to anyone else and that a taxpayer who receives a salary and has to pay legitimate expenses should not be allowed to deduct these expenses, because if the deduction is refused, the man is taxed not on his net income but on something entirely different.

It is also difficult to assume that Parliament intended that the proprietor of a business, who is entitled to receive the profits, should be authorized to deduct his travelling expenses whilst his employees are not allowed to do so.

This is one of those cases which are so objectionable because the amount of tax which has to be paid depends upon not what you do but how you do it.

## ANALYSIS OF SECTION 3. (7), 32 & 88

The best method of indicating the various difficulties which arise from bad drafting is to analyze one section.

I would like to deal in particular with Section 88, subsection 8, which reads as follows:—

88. (8) The provisions of this section shall not apply to the following:—

(*a*) gifts or donations made by any individual the aggregate value of which in any year does not exceed four thousand dollars, and taxation shall be on the amount in excess of four thousand dollars only;

(*b*) gifts or donations taking effect upon death by way of bequest or devise; and any property passing to any person upon an intestacy;

(*c*) gifts or donations to a charitable organization or educational institution in Canada, operated exclusively as such and not operated for the benefit or private gain or profit of any person, member or shareholder thereof;

(*d*) gifts or donations made to the Dominion of Canada or any Province or political subdivision thereof;

(*e*) Repealed.

(*f*) gifts to or payments made on behalf of any one person which in the aggregate to or for such person do not exceed one thousand dollars in any year.

Provided that gifts exempt under paragraphs (*b*) to (*f*) inclusive of this subsection shall not be included in compiling the aggregate referred to in paragraph (*a*) of this subsection.

(*g*) gifts or donations made in any year, if the aggregate value thereof does not exceed an amount equal to one-half of the difference between the income of the taxpayer in the next preceding year and the income tax which was payable thereon.

You will note the clause which was inserted after paragraph (*f*). Does this proviso apply to paragraph (*g*) and if not why not? The trouble is due to the fact that the proviso was inserted in 1936 and paragraph (*g*) was enacted in 1938 and apparently the proviso was overlooked.

In 1938, when paragraph (*g*) was enacted, the tax upon a married man with an income of $20,000 was $2,500; so the taxpayer could give away $8,750 without paying a gift tax. To-day, the tax is in the neighbourhood of $11,000 so the

taxpayer can only give away $4,500 without paying a gift tax. When Parliament increased the individual rate, did it intend to change an exemption which had been granted years before?

If a taxpayer makes a gift to his wife he pays a tax under section 88 but he is still liable to be taxed on the income arising from the gift, under section 32. (2). Was this intended?

Section 32. (2) covers all transfers from husband to wife including transfers made for valuable consideration. If a husband sells a Government bond at par, to his wife, he comes within this section. Was this intended?

Hon. Mr. HAYDEN: Instead of doing that, the husband could sell the bond to someone else and give his wife the proceeds and she could buy the bond.

Mr. GORDON: If the value of the gift does not exceed $5,000 the tax is 10%, if $5,001 it is 11%. No relief can be obtained under Section 3. (7) because the exemption only applies to income and not to transfers.

The definition of a charitable institution contained in Section 88. (8) (*c*) is different to the definition contained in Sections 4. (*c*) and 5. (1) (*j*).

Subsection 5 of section 88 permits the Minister to assess either the donor or the donee for the tax. If the donor is made to pay he can obtain no redress from the donee unless the donor can prove a binding agreement which obligates the donee to pay.

Subsection 7 clause (*b*) of section 88, authorizes the Minister to determine the value of the gift. Surely such matters should be determined by the Courts after hearing all pertinent evidence.

SIMPLIFICATION

Two and a half million taxpayers file returns each year. In most cases the return is prepared by one person and checked by another. In the Department the forms are checked twice, so that it requires ten million operations. A saving of one minute on each operation would amount to over 166,000 hours.

Simplification of the Act would permit simplification of the forms.

If it were not for the tables supplied by the Department, calculation of the amount due would be almost impossible because the rate of tax was fixed in 1942 and since that date the tax has been reduced by permitting the taxpayer to deduct the refundable portion and giving him a further credit of 16 per cent. The Schedule attached to the Act should be re-drafted to give effect to these changes.

Two taxes are levied: a normal tax of from 7 per cent to 9 per cent on the total income, and a graduated tax on the total income less $660.

The graduated tax changes at various arbitrary amounts which make calculations difficult, because you have to add $660 to the figures stated in the schedule appearing in the Act.

Take, as an example, a taxpayer with an income of $4,350. The form sets out the gross amount payable on an income of $4,160 which corresponds with the figure of $3,500 appearing in the Schedule attached to the Act, plus $660. The taxpayer then has to write down his total income of $4,350, deduct from this $4,160, and add 46 per cent to the excess of $190.

If the Schedule in the Act was changed so the break came at $3,340, the actual change would be made at $4,000 and the taxpayer, instead of writing down the two sums, could make the deduction in his head and all he would have to do would be to look at the Schedule, write down the amount payable on an income of $4,000 and add to this amount 46 per cent of the excess of $350.

Most people are paid by the week. Why not take this into consideration and change the exemption slightly so as to avoid fractions if you have to make weekly deductions? It is easy to calculate one fraction but when they come by the million things are different.

The following is a list of exemptions and suggested changes:—

FIRST SCHEDULE A:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| s.1 r.1 & 3 | —Exemptions | Change | $660 | to | $676, | or $13 | a week; |
| s.1 r.1 | —Exemptions for married persons | " | 1200 | to | 1196, | " 23 | " |
| s.2 r.3 | —Marriage allowance | " | 150 | to | 156, | " 3 | " |
| s.1 r.5 | —Children's allowance from normal tax | " | 28 | to | 26, | " .50 | " |
| s.2 r.4 | —Children's allowance from graduated tax | " | 80 | to | 78, | " 1.50 | " |

In seeking simplification of the forms, family allowances present many difficulties and the Statute dealing with this problem covers 5½ pages. The difficulty is due to the fact that:

| | | | |
|---|---|---|---|
| $5 | is allowed | for children under | 6 |
| $6 | " | " " | 10 |
| $7 | " | " " | 13 |
| $8 | " | " " | 16 |

but if the taxpayer has 5 children—

| | | | |
|---|---|---|---|
| $1 | is taken | off | the 5th child |
| $2 | " | " | 6th and 7th children |
| $3 | " | " | 8th and each additional child. |

As the average allowance is $5.00 per month for each child, or $60 per annum, we suggest that the family allowance be ignored in the calculation of taxes and that every taxpayer be allowed a deduction of $48 for each child or, better still, $52 each, which would be $1 per week. If a taxpayer has more than 4 children under the age of six, he will lose slightly and the same thing is true if he has more than 5 children under the age of ten; but he would make it up, and a little more, when the children got older and became more expensive to maintain.

The Revenue would lose if a man had 4 children over six and under 16 but if anyone should have an advantage it is the taxpayer with a large family in their teens, because children in their teens are more expensive to support.

Without any change in the Act, some simplification in the form might be obtained if the following changes were made:—

1. The present form covers the Armed Forces and married and unmarried taxpayers. Everyone who fills in a form must first study it carefully. Naturally a taxpayer who is actually married but, for income tax purposes, is deemed to be unmarried, is liable to make mistakes if he reads over the exemptions given to married taxpayers and overlooks, or fails to understand, Clause 38. We suggest that three separate forms be prepared: one for each category. The quantity of forms would not be increased because the taxpayer would only require copies of the form which applied to him, and expenses would be saved because less paper would be used.

2. The present form T.1 General covers six pages and is printed on both sides of the paper. It is very inconvenient to place in the typewriter. We suggest that the form be divided into two parts and be printed on one side of each sheet which can be readily inserted in the standard typewriter: one part to include the actual details which the taxpayer has to fill in and the other to contain the instructions and schedules which he requires for his guidance.

We recommend that every effort be made to clarify the Income War Tax Act and to amend those provisions under which liability to tax depends not upon what the taxpayer does but on how he does it.

We must always keep in mind the words of Lord Justice Greer:—

> I desire to repeat what I said in the beginning of my judgment, that any fiscal changes inevitably do harm to some taxpayers and generally confer benefit on other taxpayers, or do harm to some portions of the citizens of this country, and give benefits to other portions of the citizens of this country, and it might be well worth the consideration of those who make these changes from year to year and regard the Budget as a great opportunity for originality in the imposition of taxes, whether or not it would not be more advisable to leave the taxation of this country, so far as is possible, on the well-tried lines which have been dealt with year after year by decisions of the Courts of Justice, rather than to try new experiments with the object of producing something which is perhaps less certain, but which, if brought about, would produce a more ideal state of things than the one which has been in existence for so long and is so well known.

We are satisfied that the Act cannot properly be revised without a great deal of research. One of the great difficulties is due to the fact that the Courts have construed many words which are used in the Act quite contrarily to their popular meaning. Before any scientific revision of the Act is attempted:

(1) A dictionary should be prepared so that the draftsmen may know the legal meaning of the language it is proposed to employ. This work may take considerable time but the expense will be well repaid.

(2) Copies of the Evidence presented to the various Royal Commissions on taxation should be obtained and indexed so that when a subject comes up for consideration we may know the views which have been expressed by others.

(3) All the case law applicable to Canadian conditions should be examined so that the draftsmen may know where in the past liability for tax has been avoided or the taxpayer inequitably treated.

(4) Statistical reports should be prepared showing the effect of any proposed amendments on the collection of the revenue.

We are convinced that no one man, however expert and capable he may be, is qualified to revise the Act because it is impossible to tax fairly unless you know all the problems which affect the person who is called upon to pay.

In conjunction with the Dominion Association of Chartered Accountants we have organized the Canadian Tax Foundation and have endeavoured to obtain, as permanent officials, the most competent men we can procure. In order to understand the different problems which affect different classes of taxpayers we are arranging study groups in various large centres and hope to include all accountants and lawyers who specialize in tax matters and have to deal with these problems in their actual practice. We think it is manifest that lawyers practising in the West know more about the problems of the Western farmer than lawyers in the East, while lawyers practising in Ontario and Quebec may know more about the mining industry than others.

The Foundation is ready to study such problems as you may deem urgent; to carry out the necessary research, and to draft amendments which we hope will be clear to all and carry out the wishes of the Government. The Foundation is ready to do such work as you desire and to do it in the way you wish it to be done. We offer the services of the Foundation free of charge and trust such services may be of value to the nation.

THE CANADIAN BAR ASSOCIATION
MOLYNEUX L. GORDON,
*Chairman, Taxation Section.*

HENRY F. WHITE,
*Secretary, Taxation Section.*

The CHAIRMAN: Thank you, Mr. Gordon. Mr. Stikeman, will you proceed?

Mr. STIKEMAN: Mr. Chairman, in Mr. Gordon's statement about Section 47 at page 15 of his brief, he referred to the fact that Mr. Justice Thorson in the Trapp case had made some reference to Section 47, but he did not tell the committee what the reference was. I should like to ask Mr. Gordon whether he was referring to this statement made by Mr. Justice Thorson in reference to that section:

> The basis of taxability is fixed by the act, and Section 47 does not, in my judgment, give the minister any power to depart from it. Such a power would have to be conferred in clear and explicit terms before effect could be given to it, and no such terms can be found in Section 47. The view that the minister may under such section permit a taxpayer to file his income tax returns on an accrual basis and assess him for income tax accordingly, notwithstanding the specific provisions of Section 3 and Section 6 (*a*) is, in my opinion, quite untenable.

In your brief, Mr. Gordon, you state that "if this section only permits the minister on proper evidence to determine the income of a taxpayer and levy the amount of tax authorized by the act, why is it necessary? If the section means that the minister may, regardless of any returns which have been filed, levy a tax for any sum he sees fit, why not repeal the balance of the act?" In your opinion, does not that statement of the Exchequer Court answer the question which you hypothetically raise in your brief?

Mr. GORDON: It does answer the question. But I understand the case is going to the Supreme Court and I think it would be presumptuous to say which side the Supreme Court will take. That is the reason the paragraph is drafted in the way it is.

Mr. STIKEMAN: Then another matter of interest for the record is on page 17 of your brief, at the very top of the page, you say: "In 1927 a taxpayer was allowed to deduct $500 for each child under 21. At the present time he is allowed to deduct $128 from the tax." Is it not to be inferred that the $500 to which you refer in the first sentence is the $500 deduction from income?

Mr. GORDON: Yes.

Mr. STIKEMAN: Also, is it not correct to say that the figure $128 is a typographical error; it should have been $108?

Mr. GORDON: Yes, that is right.

Mr. STIKEMAN: At the top of page 18 you cite the example of a man carrying on two stores, and you state that if he looses money on one store he will not be permitted to set that off against the profits of the other. What is the basis for that statement?

Mr. GORDON: The section says that the income of the taxpayer shall be deemed to be not less than the income derived from his chief position, occupation, trade, business or calling. I should think the department most certainly would decide that his chief trade was the one on which he made his money.

Mr. STIKEMAN: You would not think the department would consider he was in one business?

Mr. GORDON: Certainly not. You are master of that; I am not.

Mr. STIKEMAN: It is my impression that in such a case the taxpayer would be permitted to set off the losses on his hardware store against the profits on his grocery store.

Hon. Mr. HAIG: But often you cannot do that.

Mr. STIKEMAN: Yes. Think the point Mr. Gordon is making is that if the businesses are dissimilar and separate entirely there may be instances where losses on one business may not be permitted to be set off against profits on the other business.

Hon. Mr. HAYDEN: Where a member of Parliament is losing money on his farm, he pays taxes on his indemnity but he cannot offset any losses on his farming operations.

Mr. STIKEMAN: That is true, providing the farm, in the opinion of the minister, is not run bona fide for profit.

The CHAIRMAN: If he looses in one store as much as he makes in the other, is he allowed to make a deduction?

Mr. STIKEMAN: Not generally.

Mr. GORDON: I would have thought if he ran two grocery stores that he would have a chance to set off one against the other, but if he ran two stores of a different kind he would not be allowed to do so.

Mr. STIKEMAN: I don't think so. If, in the particular instance you cite, he was in the retail business in both stores, he would be permitted to equalize his profits and losses.

Mr. GORDON: I did not think that was permitted.

Hon. Mr. HAYDEN: He can always incorporate them.

Hon. Mr. HAIG: He would then be much worse off.

Hon. Mr. CAMPBELL: The point you were making, Mr. Gordon, is that the act is not clear and cannot be interpreted by the taxpayer.

Mr. GORDON: Apparently I have misjudged the attitude of the department. I thought a man had no chance to deduct.

Hon. Mr. HAYDEN: That illustrates your point of the difficulty of interpretation.

Mr. GORDON: Exactly; and I had considered the matter to some extent. In the second paragraph there is a definite case of a man who is taxed on $8,000 and earns only $5,000, and he cannot eat.

Hon. Mr. CAMPBELL: Your point is that he was not being taxed on his true net income.

Mr. GORDON: Absolutely.

Hon. Mr. HAIG: Mr. Gordon makes a further point that the act does not permit a man to determine his income; it is determined for him over there.

Mr. GORDON: You have stated my position exactly. There is no reason why the act should not tell a man what he has to pay.

Mr. STIKEMAN: On page 21 of your brief under "Depletion" you say, "It is said that successful mines obtain substantial allowances whilst the smaller mines receive insufficient." Is that not because of the fact that depletion is thirty-three and one-third per cent, some percentage of the profits, and therefore the more successful the mine the greater is the proportion of the profit.

Mr. GORDON: I thought that was discussed at length by Mr. Adamson in his address before the house last session.

Mr. STIKEMAN: Was it your opinion that, since the depletion rates are a deduction from profits, therefore before a mine is profitable it gets no depletion allowance?

Mr. GORDON: No; I think the statement by Mr. Adamson to the house and discussion which followed—

Hon. Mr. McRAE: I think Mr. Stikeman has raised a real suggestion on the question of depletion.

Mr. GORDON: Our recommendation, Senator, is, notwithstanding the great deal of work that has been done on this subject, a considerable amount is still to be done.

Hon. Mr. MCRAE: That is quite right.

Mr. STIKEMAN: Have you any suggestion as to the relief for depletion which should be afforded to mines which are not so successful?

Mr. GORDON: I do not think it would be on any value. I think it is an engineering or a financing question.

The CHAIRMAN: If the mine is making a small profit, or no profit, it would not have to pay income tax.

Hon. Mr. MCRAE: The depletion goes on just the same.

Mr. STIKEMAN: They waste their assets.

Mr. GORDON: May I say this, that in my opinion the whole system of taxing mines arises through a mistake.

Hon. Mr. HAYDEN: A misunderstanding.

Mr. GORDON: A misunderstanding. Mines are taxed in England under Schedule A; and in the Coltness vs. Black case, the House of Lords decided that a mining company could not deduct such things as pit sinkings and other items of that nature. That law has grown up, and the case was cited again in the Court of Appeal as an authority, but counsel did not seem to notice the difference between our statutes and the particulars contained in Schedule A.

Hon. Mr. CRERAR: Mr. Gordon, can you give us any information of the basis on which mining companies are taxed in Australia?

Mr. GORDON: No, I could not. There is a most excellent book written by Ratcliffe and McGrath which I think is the best book on income tax. I should have liked to have brought it down from the library but was not able to do so. South Africa is a great mining country, and I think their acts warrant examination.

Hon. Mr. CRERAR: I am not entirely familiar with it, but I am quite sure that the basis of their taxation is different from ours. This is the way it operates in this country: At the present time there is a 40% corporation tax on mines with certain allowances for depletion; then if that mine is going to operate and give a return on capital invested, the tax becomes a charge on each ton of ore mined. The result is that if the mine is going to give a return on its capital, pay its expenses and meet its taxes, it must mine a higher grade of ore. To illustrate my point, if you take a line "A" to "B" representing the value of ore in a mine—"A" may be three-dollar ore and "B" may be twenty dollar ore per ton—then somewhere between "A" and "B" a breaking point is picked where the mine can operate, say, at seven dollars a ton. If by heavy taxation the expense is increased then all you do is move the point from seven dollars to, say, eight or nine dollars.

Mr. GORDON: It is a very important industry, and I think it should be studied.

Hon. Mr. CRERAR: That is very apparent. Of course, you can take the statements of mining companies, and many of them show the effects of the tax they pay on the ore they mine.

Mr. GORDON: I think Mr. Adamson in his speech to the house had attached a statement—

Hon. Mr. CRERAR: I did not read his speech.

Mr. GORDON: It shows the small number of new mines that have been operating since the tax became so oppressive.

Hon. Mr. CRERAR: The net effect undoubtedly is that ore that otherwise would be mined is converted into waste.

Mr. GORDON: Precisely.

Hon. Mr. CRERAR: I think it can be criticized from two or three angles. For instance, it shortens the life of the mine and reduces the amount of employment given over a period of years; in the second place, it reduces the amount of ore that can be taken from a mine.

Mr. GORDON: Yes, but there are so many technical difficulties in assessing the mines. They are in a great many instances not being properly assessed. For instance, if a man makes a hole in the ground, calls it a shaft, and uses it for five years as a mine, surely he is entitled to the cost of sinking that shaft if he is going to make a profit. These provisions of the English act have been imported into our statutes without anyone seeming to notice the wide difference in the language.

Mr. STIKEMAN: Mr. Gordon, on page 22 you refer to the suggestion by the American engineer, Mr. Blackall, regarding obsolescence, and you conclude by saying, "If Mr. Blackall's conclusions are sound, why not amend the Act and remedy a grievance?" Do you feel his conclusions are sound?

Mr. GORDON: I think so, but I am not an economist. My recommendation is that they should be examined by people who understand them. They seem to me to be reasonable.

Mr. STIKEMAN: Have you any suggestions as to how the grievance might be remedied?

Mr. GORDON: Apply it on the same basis as depreciation.

Mr. STIKEMAN: I suppose you mean not depreciation under the law at the present time, but your modified suggestion as to depreciation.

Hon. Mr. HAYDEN: Commercial depreciation.

Mr. STIKEMAN: On page 24 you refer to the fact that if people support a dependent child they should be entitled to exemption even though the child may be a public charge, or may be the child of a relative.

Mr. GORDON: I say if they do not do so the child is liable to become a public charge.

Mr. STIKEMAN: In the T.1 special form, there is a provision which extends the law perhaps more than the actual language of the statute, but it permits you to claim deductions for a child under your custody and control, and who is under eighteen years of age.

Mr. GORDON: Still it is necessary to have a self-contained domestic establishment. That is what I object to. If I pay $100 a year to some children's home, or to some other relative to support my nephews and nieces, I think I should get a deduction just the same as if it cost me $100 to support that child in my own self-contained domestic establishment.

Mr. STIKEMAN: Section 10 of the T.1 special permits deduction to be claimed on account of any person under eighteen years of age and wholly dependent on you for support, and of whom you have in law or in fact the custody and control. That is not in accordance with the Act. I merely state that to show the situation which you bring to light in your brief.

Hon. Mr. HAYDEN: How does that cure the situation, to put something in the form that it has no statutory force.

Mr. STIKEMAN: It does not clear up the difficulty. Mr. Gordon quite properly points it out; it underscores his point that the law should be amended.

Hon. Mr. LEGER: Your form says "wholly dependent." I understood Mr. Gordon to say "If he was only partially dependent, or out of the goodness of his heart he wanted to make a contribution."

Mr. STIKEMAN: That is true.

Hon. Mr. HAIG: The amounts paid to a children's home or to a children's society can be claimed. But, for example, I have a case in mind of a brother who is contributing to the support of another brother, because the father was not able to make any contribution. The brother who made the payments now comes forward with his claim, but the department will not allow any exemption for it.

The CHAIRMAN: Is that because he is only partially dependent?

Hon. Mr. HAIG: He is not wholly dependent.

Mr. GORDON: Why not change the act?

Hon. Mr. HAIG: That is exactly my thought.

The CHAIRMAN: The difficulty would be that if a man were contributing only partially to the support of a dependent, he is apt to say he is contributing completey.

Hon. Mr. LEGER: He would have to state the amount he has contributed.

The CHAIRMAN: But if he is only partially dependent, there is no allowance.

Hon. Mr. LEGER: Not at the present time, but there should be.

Mr. STIKEMAN: At page 25 of your brief you refer to section 32 B and say as follows, "That where on winding up a company distributes any assets to its shareholders the Minister may value the assets and the distributable portion shall be deemed a dividend." I think for the purpose of the record you will agree with me that they are only distributable as dividends when they give rise to taxable income, if sold by the company.

Mr. GORDON: I think it is most ambiguous, and I would not venture an opinion as to what it means. I think it should be clarified.

Hon. Mr. HAIG: What is the section?

Mr. STIKEMAN: It is 32B and reads as follows:

> Where on winding up or otherwise a company distributes any assets to its shareholders without sale or at a sale price substantially below the fair market price, which assets if sold at the market price would create income of the corporation within the meaning of this Act, the Minister shall have power to determine the fair market price of such assets and the company shall be deemed to have sold such assets at the price so determined and thereby to have received income subject to tax and the distributable portion received by a shareholder or member shall be deemed to be a dividend.

Mr. GORDON: What do the words "income subject to tax" mean?

Mr. STIKEMAN: "The distributable portion received by a shareholder or member shall be deemed to be a dividend." That merely underlines your objection to the authority conferred upon the Minister in determining that a sale has been made, and that the profit may be deemed to have gone into the company's hands and that a dividend may be deemed to have been distributed.

Mr. GORDON: Yes, but the phrase "income subject to tax" is used and there is nothing said about disbursements.

Mr. STIKEMAN: True, but the Minister may only value the assets under that section as such if sold would create income for the corporation.

Hon. Mr. HAYDEN: That is, some income.

Mr. STIKEMAN: Yes. It does not justify the section in any way.

Mr. GORDON: It is a section which I think we should amend.

Hon. Mr. HAYDEN: My interjection is not enough to justify the section either.

Mr. STIKEMAN: And to bring this statement into conformity with the section.

Hon. Mr. HAYDEN: I think it is wholly indefensible.

Mr. GORDON: Senator, I think that if we examined any other section of the act critically we would come to the same opinion.

Hon. Mr. HAIG: Your contention throughout the brief is that the act itself, either by way of definitions or by the language in the statute, should be plain to anybody who reads it?

Mr. GORDON: Exactly, and I am satisfied it could be done.

Hon. Mr. HAIG: And you are satisfied that if that were done the department by and large would not lose any money in the long run?

Mr. GORDON: I think it would get in a lot more money. If you read the evidence of Lord Macmillan's Commission in England—I do not advise you to read it, because it runs to several thousand pages of small print—I think you would be satisfied with the opinion of confident men in England that if the act were clarified the Government would collect a lot more money.

Mr. STIKEMAN: On pages 34 to 37 of your brief you present the draft of an act setting up a Board of Tax Commissioners, and in subsection (2) of section 4 you provide:

> The Board shall have power to determine all disputes between taxpayers and the Department of National Revenue with respect to taxes payable under the Income War Tax Act or under the Excess Profits Tax Act.

My first question is, should this also include disputes under the Succession Duty Act?

Hon. Mr. ASELTINE: I understand they may be all taken over by the provinces again.

Hon. Mr. HAIG: I think that is likely.

Mr. STIKEMAN: Was it contemplated that there should be another board to deal with disputes under the Succession Duty Act?

Mr. GORDON: I think the opinion of every member of our committee was that wherever discretion was needed it should be exercised by somebody absolutely independent.

Mr. STIKEMAN: I would like to find out whether this subsection would include disputes under the Succession Duty Act.

Mr. GORDON: I consider that you have a most efficient personnel in that department. I am satisfied that they are doing their duty in trying to collect all the revenue they can. They cannot do that and at the same time dispose of disputes judicially.

Mr. STIKEMAN: Referring again to subsection (2) of section 4 of the draft act, which proposes that the Board will have power to determine all disputes under the Income War Tax Act or under the Excess Profits Tax Act, does that refer to disputes before assessment as well as after assessment?

Mr. GORDON: The Board should have power to determine disputes before assessment, because if you are contemplating a large undertaking, if you are thinking of reorganizing your company, you cannot do that until you have an authoritative reply to the question: How is this going to affect our taxes?

Hon. Mr. HAYDEN: That would come under subsection (3), would it not, a stated case?

Mr. GORDON: I think that is the most important power of the Board.

Hon. Mr. HAYDEN: The type of case you just mentioned could be dealt with by a stated case?

Mr. GORDON: Yes.

Hon. Mr. HAYDEN: What is the difference between subsection (2) and subsection (3)? What is intended to be covered by the words "all disputes"?

Mr. GORDON: I think we hoped this act was wide enough to cover everything.

Hon. Mr. HAIG: Was that intended to cover all disputes before assessment?

Mr. GORDON: Yes.

Hon. Mr. HUGESSEN: Do you intend that the Board should have power to give opinions on a future set of facts?

Mr. GORDON: I think it is absolutely necessary to-day, with the ambiguity in the act.

Hon. Mr. HUGESSEN: In other words, if a company was contemplating an important reorganization and the question was whether it would involve more taxes or not, you could have a stated case before the Board on that point?

Mr. GORDON: Yes.

Hon. Mr. HUGESSEN: Then I am wondering whether subsection (3) covers that, since it says "whether or not liability for such tax has incurred."

Mr. GORDON: Mr. Hamilton Mockridge, a very competent company lawyer —I think all our friends from Toronto will agree with that—was kind enough to draw this.

Hon. Mr. HUGESSEN: I am not quite certain whether the subsection would accomplish the desired object, that is to have a stated case on a theoretical or hypothetical situation.

Mr. GORDON: Mr. Mockridge drew this on the instructions of the committee, with that object in view. He was very desirous of being here to-day, but an important matter prevented him from coming.

Hon. Mr. HUGESSEN: I just wanted it to be elucidated, because it does not appear to be clear that you intend the Board to have power to deal with hypothetical questions.

Mr. GORDON: We want the Board to have power to deal with such questions, provided the questions are set out in writing, so that there could not be any doubt as to the point upon which the Board ruled.

Mr. STIKEMAN: Section 3 says, "The Board may sit in divisions of not less than 3 members—" What is your reason for suggesting that the Board should sit in panels instead of singly?

Mr. GORDON: My view is a little different from that of the committee. The committee thought that the Board should sit in divisions of not less than three members—that is an accountant, lawyer and a business man.

Hon. Mr. HAIG: Most briefs submitted to us have favoured a Board of three.

The CHAIRMAN: What is your criticism of that, Mr. Gordon?

Mr. GORDON: I think the most important thing is speedy justice. There should be a simple procedure, so that John Smith could say, "I object to this tax of $250 on the following grounds," and the assessor should be able to say to the taxpayer, "There will be a judge here tomorrow or on a certain day next week, and I will give you an appointment for ten o'clock." Then the taxpayer could appear and have the matter decided speedily, and if he was not satisfied he could appeal further.

Hon. Mr. CAMPBELL: A somewhat similar practice is being followed now with respect to the determination of standard profits and seems to be working very well. In order that cases may be dealt with speedily, taxpayers are per-

mitted to go before a committee of three, sitting in a local office, and if the committee's recommendation is agreed upon it may be approved by Ottawa, but otherwise an appeal may be made to a full board.

Mr. GORDON: Do you think the general public are satisfied? I think they get different rulings from different boards. We all know of one board with which the public were entirely dissatisfied.

Hon. Mr. CAMPBELL: When there is dissatisfaction with a ruling, an appeal may be taken before the full Board.

Mr. GORDON: My view is that one man should be able to hear these things, except in cases where the taxpayer preferred to have a board of three.

Hon. Mr. CAMPBELL: That is what I would suggest. You do not recommend that the taxpayer need be bound by the decision of one man sitting alone?

Mr. GORDON: No.

Hon. Mr. CAMPBELL: If the taxpayer felt that his case had not been properly considered by one man, an appeal could be made to a board of three?

Mr. GORDON: Yes.

Hon. Mr. CAMPBELL: But you feel that matters would be expedited if any one member of the board had power to hear cases and try to settle disputes?

Mr. GORDON: Yes. And I think that in big centres like Toronto there should be one member all the time.

I disagree with our committee on another point. The suggestion was that the board should comprise a lawyer, an accountant and a business man. Now, I do not see how a business man would help. The lawyer would be supposed to know the law, and the accountant would be supposed to know the practice in the trading community . . . and in view of the great assistance we got from accountants on our taxation section. I cannot estimate too highly the help that an accountant would give to his fellow members. But a business man would be tempted to think that whatever was being done in his factory was the way things should be done throughout the country. May I refer to some remarks made by Plato two thousand years ago?

Hon. Mr. HAIG: That is ancient authority. Let us have it.

The CHAIRMAN: Was he a business man?

Mr. GORDON: No, but he was a very far-seeing man.

He said:—

> The judge should not be young; he should have learned to know evil, not from his own soul but from late and long observations of the nature of evil in others: Knowledge should be his guide, not personal experience.

I think that accountants and members of the legal profession have the knowledge required to guide them. I do not see the object of having business men on the Board.

Hon. Mr. HAIG: I think our experience is that three men can come to a better judgment than one. I am a member of the Divorce Committee of the Senate, and that committee never sits with less than three members. I would not want to hear one of those cases alone for anything.

Mr. GORDON: I am talking about tax matters.

Mr. HAIG: But the same thing is true.

Hon. Mr. ASELTINE: In one case you are separating a man from his money, and in another case you are separating a man from his wife.

Mr. GORDON: You would be amazed at the large number of cases involving small amounts, $25, $50 and so on.

Mr. HAIG: In this kind of thing I do not believe a board of one member could hand down decisions that would be of use to the profession.

Mr. GORDON: I think the public would be satisfied with a fair-minded man whom they knew to be independent.

Hon. Mr. CAMPBELL: Your point is that if one member of the board were permitted to determine the disputes he might get rid of 50 per cent of them to the satisfaction of taxpayers, and that the rest of the cases could go before the full board?

Mr. GORDON: I think so. But that is not the opinion of the taxation section.

Hon. Mr. ASELTINE: I think you would have much the same experience as with the Official Receiver under the Farmers Creditors Arrangement Act. Nobody is satisfied with his decision.

Mr. STIKEMAN: Do you contemplate rather formal procedure for appeals before the board, with evidence and witnesses?

Mr. GORDON: Again on that subject I differ with my committee. The committee felt strongly that the proceedings should be absolutely informal and that there should be no costs of any kind.

The CHAIRMAN: How many members were on your committee?

Mr. GORDON: I think there were nineteen.

The CHAIRMAN: Were the others unanimous?

Mr. GORDON: I do not think so. I feel it is far more important that justice should appear to be done than that it should be done.

The CHAIRMAN: I don't agree with you on that.

Mr. GORDON: A Lord Chief Justice of England said: "The long line of cases showed it is not merely of some importance, but it is of fundamental importance that justice should not only be done, but it should manifestly and undoubtedly be seen to be done".

The CHAIRMAN: Oh yes, but that includes both. You said it was more important that it should appear to be just than that it should be just.

Mr. GORDON: I say when you go into a crowded department and talk to an assessor, and you have another assessor right beside you hearing what you say, as Mr. Elliott so vividly described it, you do not think you are getting a proper decision. I think there should be a certain amount of solemnity about these occasions, so that the taxpayer would be satisfied that his case was being handled by an independent man in a judicial manner.

Mr. STIKEMAN: Would your requirement of solemnity contemplate witnesses, rules of evidence, and formal argument?

Mr. GORDON: I would leave that to the board to develop as they go along.

Hon. Mr. HUGESSEN: I want, Mr. Gordon, to go back to pages 8 and 9 of your brief. At the bottom of page 8 you say that the minister under this act may exercise 115 discretions. Have you any means of comparing the number of discretions in the English Act or the Australian Act?

Mr. GORDON: If Mr. Stikeman will agree with me, I will say that there are very few discretions in the English Act.

Mr. STIKEMAN: There appears to be no formal delegation of discretions to the minister.

Mr. GORDON: The principal discretion is the authority to direct companies to divide undistributed income.

Hon. Mr. HUGESSEN: I think your principal objection to the discretion would be met if there was this Board of Appeals which could review the discretion impartially.

Mr. GORDON: It would, senator, because the board would soon declare rulings which people could understand and follow. My other point is that I think possibly half the discretions are entirely unnecessary.

Hon. Mr. HUGESSEN: Yes. As between the two, though, you would prefer to have your board, which would probably result, as you say, in wiping out a lot of uncertainty about discretions?

Mr. GORDON: Section 90 provides for capital expenditure allowance and it gives the minister discretion to settle the amount of the capital expenditure. Lawyers know that cases of this sort take a very long time to find out what, for instance, a building is worth; probably it is the longest proceeding known to the law. The minister has neither the clerks nor the stenographers to take down the evidence. When we are litigating with the contractor as to the cost all these things are available; but when we litigate with the minister they are not. Why was the minister given that discretion without the equipment to exercise it?

Hon. Mr. HUGESSEN: The reason I asked the question was that some of the briefs already presented to us state that the appeal tribunal should in the first instance exercise discretion.

Mr. GORDON: It seems to me there should be some discretion. Then the tribunal would say: "We do not think the way it was exercised was just. We think it should be exercised this way and we state the amount".

Hon Mr. HUGESSEN: I am not quite certain what your ultimate suggestion was with regard to the question of bad debts, Mr. Gordon. Is it your view that the taxpayer should be allowed to write off bad debts at any time he sees fit?

Mr. GORDON: Yes. But at the present the Revenue Department has the right to say: "You should have written that off two years ago when the tax was one hundred per cent."

Hon. Mr. HUGESSEN: No. Apart from that, he would not have the right I suppose to say when the debt had become a bad debt?

Mr. GORDON: I would say the debt became a bad debt when the time for payment had passed.

The CHAIRMAN: At the time you do not regard that as a bad debt?

Mr. GORDON: It may not be a bad debt, but that is the time he expected to get it paid.

Hon. Mr. HAYDEN: When later what you had written off as a bad debt is paid, why should it not go into the return for the year he receives payment? It would just appear as revenue for that year.

Mr. GORDON: Suppose there were many losses, you could not go back and put every item in the proper year.

Hon. Mr. HAIG: On a cash basis any bad debts go into that year.

Mr. GORDON: You do not have bad debts on a cash basis.

Hon. Mr. HAIG: You do not write them off, but they are there just the same. If you don't collect them, you don't show them.

Mr. GORDON: I think, Senator, what you say is exactly right. You take it out when it is bad and you put it back when it is paid. But the accountants tell me that would be very involved. I say, just change it when it makes a real difference.

Hon Mr. HUGESSEN: Will you turn to page 14, Mr. Gordon? In the third paragraph you say: "The senior officials of the department, who are in charge of making assessments and collecting the revenue, are compelled to spend a major part of their time in adjusting disputes." Is not that likely to be so under any set of circumstances? Are there not always disputes of some kind which are susceptible of final settlement between the officers of the department and the taxpayer?

Mr. GORDON: I think it would cut down the amount of the work tremendously.

Hon. Mr. HUGESSEN: The officials and the taxpayer would say: "We are in dispute about that, and we put the thing up to the court, to the board."

Mr. GORDON: Exactly.

Hon. Mr. HUGESSEN: Your suggestion for changing section 6 (1) (*a*) struck me as extremely interesting. You propose that we substitute Lord Macmillan's suggested wording?

Mr. GORDON: I do not, Senator, I say that is a suggestion which has been arrived at after a great deal of thought. I think the thought should be directed in another way. I do not think it is the best possible wording. You cannot consider this subject without looking at the history.

Hon. Mr. HUGESSEN: No. I should like to get your views on what you would suggest then as a substitute for 6 (1) (*a*).

Mr. GORDON: May I say something before I come to that?

Hon. Mr. HUGESSEN: Please.

Mr. GORDON: When this act was passed in 1807 England was fighting for her life. Treasury bonds were not accepted in payment of taxes. The law was part of the plan to fight Napoleon. The government did not care what they were going to do. Pitt went into the House of Commons and you will see from his remarks that none of the proper deductions were considered for a minute. He said: "I want that proportion of your income. If a man gets an annuity he will pay us so much. That is what we want." So it started off wrong. At that time it was not intended to tax income but to tax all the money a man had in his pocket.

Hon. Mr. HUGESSEN: It was an emergency.

Mr. GORDON: Yes. As you know, the act was repealed in 1816. I think you should get a report from your legal authorities as to what deductions are allowed or disallowed which look funny.

Hon. Mr. HUGESSEN: What?

Mr. GORDON: Funny. There are lot of deductions which you should get. Then I think you should submit the report to the Association of Chartered Accountants. You would say: "This is the law. Which of these deductions do you think should be allowed and which disallowed?" Then I think you should submit it to the economists and say, "Is it a good thing to allow sinking funds or is it not?" Then I would submit that to the government and say, "Which of these deductions are you prepared to allow?" After that I would have the act drawn to meet the case. I would set out all the deductions for bad debts, depletion, depreciation and add a clause something like this—but I hesitate to read this clause because my whole argument before the committee is that these clauses must be considered with great care. Somebody has been trying to find the solution for 150 years. So why should I be asked to do it in five minutes? But this is the clause I have suggested:

Such other expenses and disbursements as a Board of Tax Commissioners may allow, and the Board of Tax Commissioners shall allow such expenses and disbursements as they consider are properly deductible from gross income in order to ascertain actual net profits.

I say, let us make certain as much as we can; leave the rest to the judgment of a fair tribunal, on which there will be appointed people who have knowledge of the subject.

Hon. Mr. HUGESSEN: One learns a good deal from the act.

Mr. GORDON: If you give me section 88 I will redraft it into 10 lines instead of 9 pages.

Hon. Mr. HUGESSEN: I was referring to section 6 (1) (*a*).

Mr. GORDON: 6 (1) (*a*) contains the whole of sections 5 and 6 and covers 9 pages.

Hon. Mr. CAMPBELL: Mr. Gordon, your whole suggestion is if there was a more scientific approach made to these problems in the light of our economics of

to-day some of the sections of the act could be drafted in a specific manner so as to provide for deductions which should properly be made before determining the income liable to tax.

Mr. GORDON: You have expressed exactly what I have been trying to say all day.

Hon. Mr. HUGESSEN: There is just one question, Mr. Gordon, on the matter of depreciation. I understood you to say that under the English legislation it was specified that depreciation should be allowed and that it should be allowed at a specific rate. Is that so?

Mr. GORDON: No.

Hon. Mr. HUGESSEN: You said at least that there had been statutory provision made for the allowance of depreciation.

Mr. GORDON: There is a statutory right to it. Here there is no right, and it is up to the Minister. I do not want to leave it at that; if we could refer to the section it could be cleared up.

Mr. STIKEMAN: I have not got the English act here.

Mr. GORDON: It would be necessary to look at the act, Senator, because I apparently have not reflected the true meaning.

Hon. Mr. HUGESSEN: You suggest that the Canada Act be widened and extended to provide for certain particular classes of depreciation, or that that should be done by some order in council so that somebody would know.

Mr. GORDON: The minimum rates should be established as far as possible by law; and, if for any particular reason a man's rate was not sufficient, he should be entitled to go before this board and get a larger one.

Hon. Mr. HAYDEN: Why is the taxing authority concerned about the rate? The faster it is written off, the more of your income that becomes subject to taxation.

Mr. GORDON: That is my feeling.

Hon. Mr. HAYDEN: Why have any rates? Why not let them take what they want, and once it is established let them stick to it?

Mr. STIKEMAN: It is more a question of values than rate.

Mr. GORDON: There is a definite rate under which you cannot go. I think the easier we are on the rate the better it will be for the country.

Hon. Mr. HAYDEN: From the taxing authorities standpoint what difference does it make?

Mr. GORDON: They get less revenue this year, although they might get more in ten years.

Hon. Mr. HAYDEN: If I take 20 per cent a year for five years then I am running into a larger tax.

Mr. GORDON: The government might need the money this year.

Hon. Mr. HAYDEN: The government might need the money this year, but in five years the need might be much greater.

Mr. GORDON: I think the question of depreciation is a matter of policy for the government.

Hon. Mr. HAYDEN: It is a question of policy, but I think value is much more important than actual rates taken by the taxpayers each year.

The CHAIRMAN: Gentlemen, our quorum is breaking up. I had hoped that if we got through earlier to-day we might have heard Mr. Oliphant. However, at this hour I do not think it would be fair either to the committee or to Mr. Oliphant to proceed further.

The committee adjourned until Wednesday, April 10, at 10.30 a.m.

## APPENDIX

### EXHIBIT No. 1

CATEGORIES OF DISCRETION

| | |
|---|---|
| | 1. Allowance of Reserves: |
| 5.(1)(a) | a. Depletion; |
| 6.(1)(n) | b. Depreciation; |
| 6.(1)(d) | c. Bad Debts. |
| 6.(2)(c) E.P.T. | d. Inventory. |
| | 2. Limitation of Expenses: |
| 6.(2) | 1. Expenses; |
| 6.(3) | 2. Salaries; |
| 90.(4)(x) | 3. In capital expenditure allowance; |
| 5.(1)(b) | 4. Interest. |
| | 3. Determination of the true nature of transactions where lessening of tax may be involved with reference to companies and individuals: |
| 23. | 1. Inter company purchases and sales; |
| 21.(3) | 2. Value of shareholders' property transferred to company; |
| 23.(b) | 3. Unreasonable payment to non-resident companies; |
| 31.(1) and 52.(1) | 4. Transactions between husband and wife and parent and child. |
| | 4. Determination of the nature of income: |
| 3.(2) | 1. Interest portion; |
| 3.(4) | 2. Tax free living allowance. |
| 7A.(1)(d) 4.(1)(m) | 5. Determining nature and effect of certain legal documents and reciprocal acts. |
| 5.(1)(m) | 6. Approval of Pension Schemes. |
| | 7. Minor Administrative Discretions: |
| 40. | 1. Extending time for making return; |
| 42. | 2. Require production of letters and documents involved in assessment; |
| 46. | 3. Require keeping of books; |
| 74.(1) | 4. Demand payment of taxes for a person suspected of leaving Canada. |
| 75.(2) | 8. Regulations to carry Act into effect. |
| | 9. Waiving of penalties: |
| 77.(3)(b) | 1. Failure to file return. |
| | 10. Determination of Standard Profits: |
| 2.(1)(h) E.P.T. | a. Commencement of business; |
| 4.(2) E.P.T. | b. Nature of business. |
| | 11. Adjust Standard Profits: |
| 4.(1)(a) E.P.T. | 1. Basis of partial fiscal period; |
| 4.(1)(b) E.P.T. | 2. Alteration of capital. |
| 5.(2) and (4) E.P.T. | 12. Reference to Board of Referees in case of new or substantially different business. |

(The sections listed are from the Income War Tax Act unless they are marked E.P.T. which signifies Excess Profits Tax Act.)

## EXHIBIT No. 2

His Majesty by and with the advice and consent of the Senate and the House of Commons enacts as follows:—

1.—This Act may be cited as the Tax Commissioners Act.

2.—There shall be a Board to be called the Board of Tax Commissioners consisting of at least ... members appointed by the Governor in Council, the members of which shall jointly and severally have all the powers and authority of a Commissioner appointed under Part I of the Inquiries Act.

(2) One of the members shall be appointed Chairman and another Vice-Chairman by the Governor in Council. The Chairman and the Vice-Chairman and a majority of the Board, including the Chairman and the Vice-Chairman, shall be qualified legal practitioners of any Province of Canada of at least ten years' standing. In the absence of the Chairman, the Vice-Chairman shall be vested with all the powers conferred by this Act upon the Chairman.

(3) Each member shall hold office during good behaviour for life from the date of his appointment subject to the provisions of Subsection (5) hereof but may be removed for cause at any time by the Governor in Council.

(4) The Chairman, Vice-Chairman and other members of the Board shall be paid such annual salaries as the Governor in Council may determine.

(5) The provisions of the Judges Act (R.S.C. Chap. 105) as to the superannuation and retirement of judges of any superior court in Canada shall apply mutatis mutandis to the superannuation and retirement of members of the Board of Tax Commissioners.

(6) If any member by reason of illness or other incapacity is unable at any time to perform the duties of his position, the Governor in Council may make a temporary appointment of a qualified person to sit in his place and stead upon such terms and conditions and for such term and at such salary as the Governor in Council may prescribe.

3.—The Board may sit in divisions of not less than 3 members and there shall be as many divisions as the despatch of business may require. One member of each division shall be a duly qualified legal practitioner of any Province of Canada of at least ten years' standing and such member shall preside at all hearings before such division.

(2) Any division of the Board shall have power to hear and determine in the name of the Board any matter submitted to the Board provided that any decision of a division of the Board interpreting any Act of Parliament of Canada or of any legislative assembly of any Province of Canada, or any section of any such Act, or involving a question of law, shall be approved by the Chairman of the Board of Tax Commissioners before such decision becomes effective.

4.—The Board shall act as a Court of Appeal to hear and determine any appeal made by a taxpayer from an assessment under the Income War Tax Act or the Excess Profits Tax Act.

(2) The Board shall have power to determine all disputes between taxpayers and the Department of National Revenue with respect to taxes payable under the Income War Tax Act or under the Excess Profits Tax Act.

(3) The Board shall have power to determine and declare the liability for tax under the Income War Tax Act or the Excess Profits Tax Act in respect of any case stated in writing to the Board by a taxpayer or by the Department of National Revenue whether or not liability for such tax has been incurred.

(4) The Board of Tax Commissioners shall duly consider any matter submitted to it and upon hearing the evidence adduced and upon such other inquiry as it deems advisable shall determine the matter affirming or amending the assessment and/or shall deliver judgment in accordance with its findings and the findings of the Board on questions of fact shall be final and conclusive.

(5) The Board shall have and may in determining any question before it exercise all the powers and discretions vested in the Minister under any of the provisions of the said Acts, and notwithstanding any previous exercise or purported exercise thereof by the Minister, shall exercise such powers and discretions in the manner in which in the opinion of the Board the Minister should have exercised the same in the first instance.

(6) An appeal shall lie from the Board to the Exchequer Court upon any question of law or question of mixed law and fact.

5.—The Board of Tax Commissioners may with the approval of the Governor in Council make all necessary rules and regulations respecting

(*a*) the sittings of the Board and divisions thereof throughout Canada,

(*b*) The practice and procedure in all matters of business to be dealt with before the Board,

(*c*) the apportionment of the work of the Board among its members, the allocation of members to divisions and the assignment of divisions to sit at hearings,

(*d*) the publication of the decisions of the Board,

(*e*) generally, the carrying on of the work of the Board, the management of its internal affairs and the duties of its officers and employees,

(*f*) any other matter or thing deemed necessary in the performance of the function of the Board as a court of tax appeals.

6.—The Governor in Council may from time to time or as the occasion requires appoint one or more experts or persons having technical or special knowledge of the matters in question to assist in an advisory capacity in respect of any matter before the Board.

7.—There shall be a Registrar of the Board of Tax Commissioners and such Assistant Registrars as may be required for the despatch of business by the Board, who shall be appointed by the Governor in Council and who shall hold office during pleasure. The salary of the Registrar and Assistant Registrars shall be such as may from time to time be fixed by the Governor in Council.

8.—In the absence of the Registrar from illness or any other cause, the Chairman or Vice-Chairman of the Board may designate one of the Assistant Registrars as Acting Registrar and such Acting Registrar shall thereupon act in the place of the Registrar and exercise his powers.

9.—Such other officers, clerks and employees as are necessary for the proper conduct of the business of the Board of Tax Commissioners may be appointed in the manner authorized by law.

10.—The salaries or remuneration of all officers, clerks and assistants, and all the expenses of the Board incidental to the carrying out of this Act, including all actual and reasonable travelling expenses of the members of the Board and the Registrar and Assistant Registrars and of such members of the staff of the Board as may be required by the Board to travel, necessarily incurred in attending to the duties of their office, shall be paid monthly out of monies to be provided by Parliament.

11.—No member of the Board or Registrar or clerk or assistant shall communicate or allow to be communicated to any person not legally entitled thereto any information obtained under the provisions of this Act or allow any such person to inspect or have access to any written statement furnished under the provisions of this Act.

12.—No member of the Board of Tax Commissioners shall, either directly or indirectly, as director, manager, partner or employer of any corporation, company or firm, or in any other manner whatever for himself or others, engage in any occupation or business other than his duties as such member, but every such member shall devote himself exclusively to such duties.

## EXHIBIT No. 3

| 46 George III (1806) U.K. c.65 Schedule (D). | 8 & 9 Geo. 5 (1918) U.K. c.40 Schedule D. Rules applicable to Cases I and II | R.S.C. 1927 c.97 and Amendments Deductions from Income Not Allowed |
|---|---|---|
| No sum or Sums shall be set against or deducted from, or allowed to be set against or deducted from, such Profits or Gains. | 3. In computing the amount of the profits or gains to be charged, no sum shall be deducted in respect of— | 6. (1) In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of |
| for any Disbursements or Expenses whatever, not being Money wholly and exclusively laid out or expended for the Purposes of such Trade Manufacture Adventure or Concern. | (*a*) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession, employment, or vocation: | (*a*) disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income: |
| nor on account of any Capital withdrawn therefrom; nor for any Sums employed or intended to be employed as Capital in such Trade Manufacture Adventure or Concern; | (*f*) any capital withdrawn from, or any sum employed or intended to be employed as capital in such trade, profession, employment or vocation: | (*b*) any outlay, loss or replacement of capital or any payment on account of capital or any depreciation, depletion or obsolescence, except as otherwise provided in this Act; |
| nor for Rent or Value of any Dwelling-house or domestic Offices, or any Part of such Dwelling-house or domestic Offices, except such Part thereof as may be used for the Purposes of such Trade or Concern. nor for any Debts, except such Debts, or such Parts thereof as shall be proved to the Satisfaction of the Commissioners respectively, to be irrecoverable and desperate; | (*c*) the rent or annual value of any dwelling-house or domestic offices or any part thereof, except such part thereof as is used for the purposes of the trade or profession: Provided that where any such part is so used, the sum so deducted shall be such as may be determined by the commissioners, and shall not exceed two-thirds of the annual value or of the rent bona fide paid for the said dwelling-house or offices: | (*c*) the annual value of property, real or personal, except rent actually paid for the use of such property, used in connection with the business to earn the income subject to taxation; |

nor for any Disbursements or Expenses of Maintenance of the Parties, their Families or Establishments; . . nor for any Sum expended in any other domestic or private Purposes,

(*i*) any debts, except bad debts proved to be such to the satisfaction of the commissioners and doubtful debts to the extent that they are respectively estimated to be bad. In the case of the bankruptcy or insolvency of a debtor, the amount which may reasonably be expected to be received on any such debt shall be deemed to be the value thereof:

(*b*) any disbursements or expenses of maintenance of the parties, their families or establishments or any sums expended for any other domestic or private purposes distinct from the purposes of such trade, profession, employment or vocation:

(*m*) any royalty or other sum paid in respect of the user of a patent.

6. (1) In charging the profits or gains of a trade under this Schedule, such deduction may be allowed as the commissioners having jurisdiction in the matter may consider just and reasonable, as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the trade and belonging to the person by whom it is carried on.

(*d*) amounts transferred or credited to a reserve, contingent account or sinking fund, except such an amount for bad debts as the Minister may allow and except as otherwise provided in this Act;

(*f*) personal and living expenses;

(*l*) Royalties paid by persons who are not residents of Canada out of royalties received by such persons from sources within Canada.

(*m*) depreciation, except such amount as the Minister in his discretion may allow, including
etc. etc

## EXHIBIT No. 4

That the Council of The Canadian Bar Association is alarmed by provisions in the federal taxing statutes giving persons other than Parliament wide discretionary powers which constitute in effect a delegation by Parliament of its legislative authority.

That it accordingly recommends that a standing committee of the House of Commons be set up to which will be referred for consideration all proposed taxation legislation and that every member of the public interested may make representations to such Standing Committee with a view to having taxation imposed on a fair and equitable basis.

That the taxing departments have administrative powers only and that provision be made for determination of matters of law and disputes as to facts by a judicial body.

## EXHIBIT No. 5

MINISTER OF FINANCE
CANADA

OTTAWA, 4th December, 1943.

Dear Mr. LAIDLAW,—I have your letter of November 30th, containing copy of a resolution passed at the annual meeting of The Canadian Bar Association.

This resolution, if carried out, would in effect substitute the American system for the British system of instituting taxation measures. I hope the members of the Association realize all the implications. It would mean all kinds of forward notice of probable taxation measures to interested individuals and corporations. I would be afraid, also, that there would be some log-rolling, but perhaps Canada is above that.

If the members of your Association will cast their minds back over the last year or two and consider the experience of the United States in taxation matters, including the struggles to get on a "pay-as-you-go" plan, the efforts of the Treasury to get anti-inflationary measures of taxation, and so forth, you will see that the evolution of a Budget by a Parliamentary Committee has some disadvantages.

The resolution will, however, receive consideration.

Yours very truly,

J. L. ILSLEY

T. W. LAIDLAW, Esq., K.C.
Secretary-Treasurer,
The Canadian Bar Association,
22 Old Law Courts Building,
Winnipeg,
Manitoba.

## EXHIBIT No. 6

### RECOMMENDATIONS FOR AMENDMENTS TO THE INCOME WAR TAX ACT AND THE EXCESS PROFITS TAX ACT, 1940

SUBMITTED BY A JOINT COMMITTEE REPRESENTING THE CANADIAN BAR ASSOCIATION AND THE DOMINION ASSOCIATION OF CHARTERED ACCOUNTANTS
JANUARY, 1944

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1. Assignment of the Refundable Portion
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6. Inventory Reserves

## INCOME WAR TAX ACT

*1. Establishment of Board of Tax Commissioners*

The Committee is of the opinion that the increased burden which has fallen on the Deputy Minister of National Revenue for Taxation and his staff in recent years makes it essential that the appeal procedure in the Income War Tax Act be amended to provide:

That a Board of Tax Commissioners be appointed to hear and determine the following matters:—

1. All appeals from assessments.
2. Such other matters as may be referred to the Board by the Minister.

That such Board may establish the rules and procedure under which such appeal may be heard.

That the decisions of the Board shall be made public except in the case of a reference by the Minister under item number 2 above.

That the Board hold hearings at various points throughout Canada at which taxpayers may appear either in person or by counsel or other representative.

That the Board may review any question of fact or law or the exercise of of any discretion conferred on the Minister by the Act.

That a further appeal shall lie to the Exchequer Court of Canada from any decision of the Board upon an appeal from an assessment.

2. *Calculations by Taxpayers*

The Committee is of the opinion that little can be done to simplify the returns required by the Government but much could be done in simplifying calculations, which the average taxpayer finds difficult and confusing. This is largely due to the fact that the normal tax is based upon total income, while the graduated tax is based on total income less $660.

It is recommended that the various individual taxes be combined and that two tables be placed in the Act setting out the precise tax payable by married and unmarried persons for each $100 of income received up to $3,000, and for each $1,000 of income received in excess of that amount, and that minor variations be made in the rates, where necessary, to simplify calculations.

The Committee would be willing to prepare proposed tables if such action would be of assistance.

3. *Allowances for Dependents*

Section 1, Rules 1 and 5, and Section 2, Rules 3, 4 and 5, of the First Schedule to the Act permit a taxpayer to make certain deductions in regard to dependents. We assume that if a taxpayer did not support his dependents they would become a public charge. The Committee recommends that these exemptions be amended so as to include all dependents related to the taxpayer by blood or marriage who might otherwise become a public charge. Under the present law a taxpayer is entitled to deduction if he supports his mother, which is a duty most people accept without grumbling. He receives no deduction if he is obliged to support his mother-in-law which is usually done under protest. He is permitted to make a

deduction if he supports a brother or sister, but if his brother should die, leaving two orphan children, he is allowed nothing. This situation causes hardship to many taxpayers with low incomes. The amount involved is not large and the amendment seems both just and equitable.

4. *Interest Penalties*

It is recommended that the Act be amended to provide that the 3 per cent interest penalty shall not be applied in respect of assessments where an appeal has been filed.

5. *Re-opening of Assessments*

The Committee recommends that Section 55 be amended by limiting the time under which an assessment may be re-opened except in cases of fraud or misrepresentation, and advises that the English practice be followed. The limitation in the English Act is found in 13 and 14 George V (1923) Chapter 14, Section 29.

Under the present law an assessment may be re-opened at any time and it frequently happens that the books have been lost or destroyed and the persons cognizant of the facts are unavailable and consequently the taxpayer cannot obtain the necessary evidence to oppose any further claim.

6. *Annuities*

It is submitted that the basis of taxing annuities under the Dominion Income War Tax Act requires re-examination. Current rates of income tax, together with the imposition of two succession duties, Provincial and Dominion, have provoked a critical situation respecting annuities payable as a result of death. Furthermore the taxation of retirement annuities and principal payments made annually under the terms of a will or trust is so inequitable as to discourage many Canadians from making orderly provision for their own old age and their dependents.

The theory that when a life annuity has been purchased the capital has been converted into income is a principle which has been developed in England over the centuries, presumably arising from the system of life interests connected with the method of landholding in tail. No such conditions need complicate the issue in Canada where life interests rarely, if ever, are bought or sold.

To treat the whole of a life annuity or annual payments from the capital of an estate as income for tax purposes results in a capital levy on that portion of the annuity or payment not arising from interest, and violates the principle that an income tax should reach income and should not touch capital. The equitable, economic, social and mathematical considerations should not be ignored.

We are convinced that it is desirable in every way to encourage the people of Canada to arrange their savings in such a way as to provide life annuities for their own old age; this embraces such a provision through the medium of life insurance carried by those upon whom elderly people are dependent for their living.

The income taxation of life annuities discourages this form of thrift and foresight, as clearly indicated in the following example:—

> Suppose a woman is widowed at age 55 and has been left with $18,000 in cash (perhaps the proceeds of an insurance policy on her husband's life). This $18,000 must keep her for the rest of her life. She may buy a Dominion Government Annuity with the entire amount and receive about $100 monthly as long as she lives. She is obliged, on the present basis of taxation, to pay out $246 in income tax (including refundable tax) each year, a sum equal to her income for almost 2½ months. With this knowledge, she decides instead to buy Government

bonds and to live on the interest plus enough from capital to produce a total of $100 monthly. Her actual "income" will be less than $540 in the first year, diminishing year by year, so that no tax is payable. However, after about 20 years she will have used her entire capital and will be destitute.

The purchase of a life annuity from the Government or other insurer merely represents an insurance against the risk of living too long. Why should such a transaction be penalized?

It is submitted that only the true income element in a life annuity should be taxed as income. The principle is now recognized in Canada, the United Kingdom and in the United States with respect to annuities for terms certain where no life contingencies are involved. In the case of life annuities there are a number of methods of approximating to the true income portion of each year's payment, each of which achieves a reasonable degree of equity while at the same time permitting a comparatively simple calculation. The Chief Actuary of the Dominion Government has already offered a suggestion in this connection in a paper delivered to the Actuarial Society of America in May 1940. The method in actual use in the United States also has much to commend it.

With particular reference to the taxation of annuities received under wills or trusts, the relief afforded by the revision of clause (g) of section 3 last year is inadequate. It is submitted that at the least the exemption, to the extent provided, should be extended to all wills or trusts regardless of the date upon which the same became effective.

7. *Accumulations of Undistributed Income*

The Committee has given careful consideration to the problems created by the liability of shareholders to taxation on undistributed income in the case of corporations owned by a small number of individuals. This problem is accentuated when considered in connection with succession duties and the necessity of realizing moneys with which to pay the same.

Upon the death of a principal shareholder of such corporations as have on hand undistributed income in substantial amount, the estate is subject to almost confiscatory taxation upon the withdrawal of funds from the corporation to meet succession duties. Alternatively where the undistributed income represents any significant part of the net worth of the corporation, being possibly invested in fixed and working assets, the liability to ultimate taxation mitigates against the sale of the shares to third parties except at extreme sacrifice.

We believe that the remedy to the present situation should be one of general application: it involves recognizing that earnings reinvested in working assets are in fact capital and, further, that existing rates of personal taxation, while bearable when applied to true income, are unreasonable and confiscatory when applied to "deemed to be" income which is in fact capital.

In the view of the Committee, this problem will recur so long as the present system of taxing both the corporation and the shareholder remains in force and business continues to employ the device of ploughing back earnings to accomplish its expansion and development. The latter practice the Committee views as fundamental to the commercial and industrial well being of the nation. It recommends, therefore, that a permanent solution be sought along the lines of abolition of double taxation of corporations and shareholders.

8. *Averaging of Profits*

When income taxes were comparatively low the taxation of profits on the basis of a twelve-month period did not result in undue hardships or inequalities. However, with the present high tax rates business operations will be seriously penalized by a continuation of such a policy. The Canadian Government should follow the principle recognized by the Government of the United Kingdom

and the United States that a certain fluctuation over a period of years is common to most businesses and the losses sustained in one year are frequently the foundation for profits in later years, or in many instances are the result of an inflation or overstatement of profits in preceding years. For example, under wartime conditions business generally is unable to provide adequately for proper maintenance of plant or probable inventory losses. Expenditures which will have to be made on account of these items should be provided for out of current earnings. To the extent that such provision is not being made, current earnings are being overstated and subsequent years' earnings will be unfairly penalized.

To correct this situation it is recommended that legislation be enacted extending the provisions of paragraph (p) of Section 5 (1), to permit the carry back or the carry forward of losses to the two years preceding or succeeding the taxation year. Such legislation would meet many of the objections to the present tax act under which it is impractical to make adequate provision for anticipated losses. It would not relieve the inequities which sometimes result from the levying of high excess profits taxes in one year and minimum taxes in the succeeding year, and it is recommended that consideration also be given to the enactment of legislation which would provide for at least a partial averaging of profits subject to the excess profits tax.

## EXCESS PROFITS TAX ACT, 1940

1. *Assignment of the Refundable Portion*

There is no provision in Section 18 of the Excess Profits Tax Act whereby the refund due to a corporation may be disposed of in the event of winding up prior to the date for payment. It is recommended that where a corporation is to be wound up the refund may be assigned to a trustee who shall receive and deal with the said moneys on the same terms and subject to the same liabilities as the corporation originally entitled thereto.

2. *Computation of Capital Employed*

Under the provisions of Section 4 of the First Schedule of the Act 50 per cent of the dividends declared in any year must be deducted for purposes of computing the capital employed for that year. This deduction, however, applies only to the taxation year and not to the capital employed as computed for the purpose of determining standard profits for the base period 1936 to 1939. The effect is to penalize a company whose dividend policy has been consistent over a period of years by an arbitrary reduction of the capital employed in the taxation years subsequent to the base period.

To correct this inequity, it is recommended that the following words be deleted from Section 4 of the First Schedule of the Act:—

> provided however, that dividends paid in cash during such period shall constitute a deduction from the capital employed at the commencement of the said period to the extent of one-half the total amount of dividends paid during the said period.

3. *Adjustments to Standard Profits*

The provisions of Section 4 as they apply to increases or decreases in capital employed in the taxation period are not sufficiently specific to permit the taxpayer to determine how he is to be taxed. As an example, there is no specific provision as to the dates as of which a measurement is to be made to see whether capital employed has increased or decreased; further the definition of capital employed, particularly Section 4 of the First Schedule, is not appropriate to the measurement of changes at specific dates.

The meaning of the first proviso to Section 4 (b) (i) is uncertain with the words "accompanied" and "equivalent" both susceptible to a variety of interpretations.

The fact that the whole Section is operative at the discretion of the Minister effectively prevents a taxpayer from asking the courts to deal with the ambiguous language. On the other hand the administrative practice tends to become rigid and to follow certain rule of thumb methods so that the taxpayer fails to gain the benefit of a real exercise of discretion.

It is accordingly recommended that the section be rewritten stating in clear language what adjustments will be made in respect of changes in capital employed.

4. *Consolidations*

The Act is silent as to the position of consolidations. This presents little difficulty where the consolidation has been in effect during the standard period and continues thereafter. Where a change occurs, however, or when consolidation occurs for the first time subsequent to 1939, there is no provision for the determination of standard profits. A regulation has recently been published in the *Canada Gazette* purporting to cure the legislative omission. Apart from the question of the validity of such regulation, its terms do not provide an equitable solution. It is recommended that the statute should expressly provide that where consolidation takes place, the consolidated standard profit should be the sum of the standard profits to which the individual companies are entitled.

5. *Controlled Companies*

Section 15A enacted at the last session of parliament has had the effect of denying the right of application to the Board of Referees for standard profits determination to controlled companies incorporated since 1939 unless substantial new capital has been introduced coincident with the formation of the controlled company.

While this provision eliminates certain abuses which were possible under the prex-existing legislation, it works a severe hardship on certain classes of taxpayers, particularly—

(*a*) Where the controlled company is a service type organization and capital is not an important factor in the earning of income. A specific provision removes management fee companies engaged on war contracts from this disability; and

(*b*) where capital has increased since 1939 but the increase is not coincident with the formation of the controlled company (see examples hereunder).

It is suggested that Section 15A be amended to provide:

(*a*) That in the case of controlled companies incorporated since 1939 the minimum standard of $5,000 shall not apply.

(*b*) That upon the application to the Board of Referees by a controlled company, the maximum capital employed upon which a standard profits may be based shall be the excess of capital employed by the controlling and controlled company together at the time of incorporation of the controlled company over the capital employed by the controlling company on the commencement of the last year in the standard period or, where an adjustment has been made under Section 4 (b) (i), over the capital employed as determined for the purpose of such adjustment.

The adoption of this suggestion will leave service type companies free to apply to the Board of Referees under Section 5 (3) and will limit the amount of capital upon which a standard profits can be granted a new company to the actual amount of new capital introduced into the joint enterprise, either through new investment or non-withdrawal of profits.

*Examples of Discriminatory Effect of Section 15A*

(*a*) Company "X" formed before the war purchases in 1943 the shares of Company "Y". Company "Y" was formed in 1940 and is engaged in a service type business (operating repair garages in industrial plants on a fee basis). Company "Y" has appeared before the Board of Referees and has been granted a standard profits of $25,000, which fact had a considerable bearing on the price paid for its shares by Company "X". The enactment of Section 15A has the effect of cancelling the standard profits granted Company "Y".

(*b*) Company "A", established in 1920, adds to capital employed as follows:—

| | Undistributed Earnings | Proceeds of Sale of Additional Shares | TOTAL |
|---|---|---|---|
| 1940 | $100,000 | | $100,000 |
| 1941 | 150,000 | | 150,000 |
| 1942 | 125,000 | $100,000 | 225,000 |
| | $375,000 | $100,000 | $475,000 |

In 1943 it incorporates a new Company investing therein $450,000 and under the terms of the section application to the Board of Referees is denied and the controlled Company has a maximum standard profits of $5,000.

6. *Inventory Reserves*

The Income Tax Division is continuing to assess the 12 per cent tax under the Third Part of the Second Schedule to the Act on profits before deducting the amount of permitted inventory reserves. This would appear to be contrary to Section 6 (1) (*b*) of the Act, which provides that if a company is taxable under the Second Part of the Second Schedule of the Act the inventory reserve is deductible from profits. The wording does not restrict the deduction to the computation of tax under the Second Part of the Second Schedule.

Under the provisions of Section 6 (1) (*b*) the Minister is assessing the 12 per cent tax on amounts added to profits where a reduction occurs of an inventory reserve.

This double application of the 12 per cent tax may result in taxation of more than 100 per cent of the amounts returned to profits from inventory reserve. It is felt that the administrative practice should be changed so as to permit of the deduction of inventory reserves in computing tax under the third Part of the Second Schedule to the Act.

At the last session of parliament no action was taken to amend Section 6 (1) (*a*) of the Act to clarify the deduction permitted from profits for income tax and the 12 per cent tax payable under the Third Part of the Second Schedule when computing the 100 per cent tax payable under the Second Part of the Schedule in cases where inventory reserves are created or reduced. It is submitted that the formula contained in Section 6 (1) (*a*) is unworkable in cases where inventory reserves apply and it is suggested that Section 6 (1) (*a*) should be replaced by a similar section worded as follows:

> A corporation or a joint stock company taxable under the Second Part of the Second Schedule to this Act shall be entitled in respect of any taxation period to deduct from profits the following:
>
> (1) Such proportion of the income tax payable under the Income War Tax Act (or payable under the said Act prior to the application of Sections 8, 89 or 90 thereof) for the same taxation period as the excess profits taxable under the said Second Part of the Second Schedule bears to the income taxable under the Income War Tax Act.

(2) Such proportion of the tax payable under the Third Part of the Second Schedule of this Act (or payable under this Act prior to the application of Section 9 hereof) for the same taxation period as the excess profits taxable under the said Second Part of the Second Schedule bears to the profits taxable under the said Third Part of the Second Schedule.

## EXHIBIT No. 7

## RECOMMENDATIONS FOR AMENDMENTS TO THE INCOME WAR TAX ACT AND THE EXCESS PROFITS TAX ACT, 1940

SUBMITTED BY A JOINT COMMITTEE REPRESENTING THE CANADIAN BAR ASSOCIATION, AND THE DOMINION ASSOCIATION OF CHARTERED ACCOUNTANTS, MARCH, 1945

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### INCOME WAR TAX ACT

1. *Establishment of Board of Tax Commissioners*

The Committee again wishes to emphasize the need for an amendment to the appeal procedure in the Income War Tax Act and recommends that a Board of Tax Commissioners be appointed to hear and determine the following matters:—

1. All appeals from assessments.
2. Such other matters as may be referred to the Board by the Minister.

It is further recommended that the Income War Tax Act be amended to provide:—

That such Board may establish the rules and procedure under which such appeal may be heard.

That the decisions of the Board shall be made public except in the case of a reference by the Minister under item number 2 above.

That the Board hold hearings at various points throughout Canada at which taxpayers may appear either in person or by counsel or other representative.

That the Board may review any question of fact or law or the exercise of any discretion conferred on the Minister by the Act.

That a further appeal shall lie to the Exchequer Court of Canada from any decision of the Board upon an appeal from an assessment.

2. *Disallowance of "Disbursements or Expenses not Wholly, Exclusively and Necessarily Laid out or Expended for the Purpose of Earning the Income"*

The language of Section 6 (*a*) of the Canadian Act is narrower than the corresponding language of the English Act, which reads as follows (Rule 3, Cases I and II, Schedule D):—

> any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purpose of the trade, profession, employment or vocation.

This provision of the English Act has caused a great deal of litigation and is universally considered unsatisfactory. As the corresponding provision of the Canadian Act is more severe, the situation in Canada is worse than it is in England.

It is recommended that Section 3 of the Act be amended by adding after the word "gratuity" in the second line, the following words recommended by the English Royal Commission of 1936:

> "computed after making deductions in accordance with ordinary commercial principles applicable to the computation of profits of that business"

and striking out Section 6 (*a*).

3. *Obsolescence*

Obsolescence, like depreciation, is a normal operating charge experienced by practically every manufacturing or operating company. While depreciation represents the loss of value of "fixed" assets due to wear and tear, obsolescence is the loss of value such assets due to the development of improved processes or products. Industry is constantly making improvements which render useless or which decrease the value of existing machinery or equipment long before it is worn out, and if capital is not to be impaired, such losses must be made good out of operating profits. In practice, therefore, the prices of goods and services are set at levels which will allow for recovering the cost of obsolescence and depreciation. However, to the extent that a charge for obsolescence is not allowed for tax purposes, a tax is actually being levied on capital. Obsolescence is particularly important at the present time as extensive research is being carried on resulting in improved manufacturing methods.

A deduction is allowed from taxable income in the United States for a regular provision for obsolescence, and losses suffered in excess of such a provision may also be deducted. In Great Britain a deduction is also allowed for obsolescence actually suffered, but only to the extent that obsolete machinery and equipment is actually replaced with improved facilities.

It is believed that if a procedure somewhat similar to that laid down under British practice were followed in Canada it would meet most of the legitimate criticism which has been raised on this score. The British practice may be summarized briefly as follows: Only when a machine becomes out of date because of the invention of a more efficient machine may the British taxpayer

obtain an allowance on account of obsolescence. The taxpayer must prove that the old machine is still capable of doing work and has been put out of use only because of the fact that there is available a more up-to-date machine which makes it unprofitable to continue to use the old machine. Upon establishing these facts an allowance is given by way of deduction from the profits of the period in which the replacement takes place. The amount of the allowance is the cost of the old machine less depreciation already allowed and less any amount realized by its sale, provided the resultant figure does not exceed the cost of the new machine.

Under these regulations the allowance for tax purposes is, in fact, used as an incentive to improve processes or products, whereas the disallowance of such normal losses as a deduction from taxable income, as is the case in Canada, has the effect of slowing industrial progress and withholding from the public the benefits of many improvements.

It is, therefore, recommended that the Income War Tax Act be amended to provide an allowance for obsolescence substantially on the basis of the British practice.

It is further recommended that depreciation and obsolescence should be considered as "Deductions" from income and allowed under Section 5 of the Act.

4. *Dividends from Wholly Owned Non-Resident Subsidiaries. (Section 8, Subsections 2A and 2B)*

Heretofore such dividends have been subject to tax and not exempt as were dividends from Canadian companies.

A Canadian recipient may now deduct from the aggregate of the taxes payable under the Income War Tax Act and the Excess Profits Tax Act an amount equal to the income tax and excess profits tax deemed to have been paid in the country where the subsidiary is situated on the income out of which the dividends were paid. For this purpose dividends will be deemed to have been paid out of the income of the subsidiary in the year immediately preceding that in which the dividends were declared and the tax reduction will be the proportion of the total income and excess profits taxes paid by the subsidiary in that year which the dividends bear to total income. Where such amount exceeds the aggregate of what would be deductible if the taxes were calculated as if the subsidiary's income had been earned in Canada, the lesser amount would be allowed. It follows of course that if the operations of the subsidiary show the loss for the previous year, there will be no tax relief.

It is understood that the reference to the previous year's operations is purely for the purpose of establishing the rate of tax credit, and that it will not be necessary that the dividend be actually earned either before or after payment of foreign taxes. It is also understood that the earnings of the subsidiary are to be considered as though they were the earnings of a separate legal entity operating in Canada for the purpose of establishing the rate of Canadian tax which will apply, and it will be noted that no provision has been made in the Act for the determination of hypothetical standard profits as a basis for such a calculation, which of course creates an impossible situation.

It is recommended that Section 8 be amended so that a Canadian taxpayer may be in a position to determine from the Act how to calculate his liability for taxes in respect of the earnings of foreign subsidiaries.

5. *Individuals Residing in Canada for a Portion of the Year*

It is inequitable that a person who becomes a resident of Canada in a taxation year, or alternatively a resident of Canada who leaves Canada permanently in a taxation year, should have his Canadian taxes calculated on the total income received from sources outside of Canada, in the first case, prior to his residence in Canada, and in the second case, after his departure from Canada.

It is recommended that the following Section be added to the Income War Tax Act as Section 9C:—

> In the case of a person establishing residence in Canada for the first time or in the case of a person ceasing to be a resident of Canada, the tax payable for the first or final taxation period, as the case may be, shall be reduced by that proportion of the tax payable by such person upon his income of such year, without any deduction under the provisions of subsection 1 of Section 8 of this Act, which the number of days that he was not a resident bears to 365.

6. *Delays After which Assessments can be Reopened by the Department*

Section 55 of the Income War Tax Act limits the right of the Department to reopen assessments to a period of six years from the day of the original assessment except in the case of fraud or misrepresentation.

This provision is intended for the protection of the taxpayer and accordingly it is submitted that the delay during which the taxpayers continues to be liable for tax should be reckoned from the date on which the taxpayer fulfilled his part of the proceeding. In practice a six-year delay reckoned from the date of assessment is an indefinite period and might easily run to ten or more years.

It is recommended that the Income War Tax Act be amended to provide that such delay as may be advisable be reckoned from the date on which the returns are due or filed, whichever is the later.

7. *Surtax on Investment Income*

It is submitted that the imposition of a surtax on investment income is contrary to the principle of taxing in accordance with ability to pay.

A taxpayer's ability to pay is not necessarily affected by the source or nature of his income. The surtax bears harshly on many individuals with families who are wholly or mostly dependent upon investment income and have no means of securing added compensation.

At one time the $1,500 limit may have been reasonable, but it is no longer realistic. In view of the advance in living costs and the general recognition of need as a justification for the payment of bonuses or additional wages or salary to substantially beyond the $1,500 figure, it is submitted this limit is no longer justifiable.

It is, therefore, recommended that the surtax imposed by Paragraph AA of the First Schedule to the Income War Tax Act be removed, or, as an alternative, that the $1,500 exemption be increased and that persons over 65 years of age be exempt from the surtax.

8. *Personal and Living Expenses*

It is settled law that if a taxpayer is compelled to reside where his employer directs, he is, apart from statute, not taxable on the value of his board:—

*Tennant v. Smith* (1892) A.C. 150
*Robinson v. Corry* (1934) 1 K.B. 240
*McDougall v. Sutherland* (1894) 3 T.C. 261.

While there may be a few instances where wealthy men obtain free house rent, in most of these cases they would be taxable under the general law on the ground that they are not compelled to live in the house. The policy of declaring that living expenses constitute income, in cases where apart from the statute such expenses would be non-taxable, is imposing an extra tax on persons who, as a general rule, are the recipients of small incomes. The tax produces very little revenue and probably does not pay the cost of collection, to which must be added the expenses of the employer in preparing the weekly or monthly statement and remittance of the tax.

It is recommended that Section 2 (1) (*r*) be amended to exempt from personal and living expenses, the value of board, lodging, etc., not exceeding $1 per day.

9. *Taxation in Cases Where Husband and Wife Have Separate Incomes*

Under the First Schedule, Section 1, Rule 2, of the Income War Tax Act, if a husband and wife each have a separate income in excess of $660, each shall be taxed as an unmarried person.

It is unfair to deprive a husband of married status merely because his wife has a separate income when she may not, in fact, contribute to the costs of the household.

It is recommended that the Income War Tax Act be amended to permit one of the consorts, as agreed upon between them, to claim a married status; provided that, in the absence of such agreement, the husband shall be treated as a married person.

10. *Scientific Research*

(*a*) Section 5 (1) (*u*) of the Income War Tax Act provides that a taxpayer carrying on business is entitled to deduct amounts of a current nature and of a capital nature expended respecting scientific research. The relief granted by Section 5 (1) (*u*) does not, however, apply to a taxpayer who is *not* carrying on business and accordingly imposes a great hardship on such taxpayer, the fruits of whose inventive genius are only realized by way of royalty. The recipient of such royalty is furthermore subject to a 4 per cent investment income tax. These factors act as a deterrent to scientific development by individual inventors of considerable importance to the development of business throughout Canada.

(*b*) Section 5 (1) (*u*), as drafted, presupposes substantial income from other sources subject to excess profits tax out of which development expenses can be deducted and makes no provision for the deduction of such expenses from the profits derivable from such scientific invention. In consequence, the incentive provided by Section 5 (1) (*u*) will be lost and the value of scientific research curtailed when other sources of revenue are reduced or excess profits taxes are eliminated.

(*c*) Under the provisions of the Act, a patent purchased may be capitalized in the amount of the consideration paid therefor and depreciation claimed, whereas the inventor obtains no depreciation on the valuable asset which he has created. This constitutes a deterrent to scientific development and works a hardship on, and discriminates against, individual taxpayers who may not be fortunate enough to dispose of their inventions as a capital asset. Furthermore, depreciation granted under the terms of Section 6, and in particular Section 6(*n*), offers no real inducement to the investment of capital in new ventures, based on scientific research, as such ventures are seldom profitable during the first years of their operation. The inducements, therefore, to scientific research and to the development of new ventures resulting therefrom are restricted to persons who are in receipt of substantial income from outside sources.

It is, therefore, recommended:—

(*a*) (i) That the provisions of Section 5(1)(*u*) be extended to taxpayers other than those carrying on a business;

(ii) That the 4 per cent investment tax on royalties be repealed with respect to royalties received on patents approved by the National Research Council.

(*b*) That the provisions of Section 5(1)(*u*) be extended so as to permit the set-off of capital and current expenditures against income received from the use or licensing of a patent approved by the National Research Council.

(*c*) That provision be made for depletion in respect of income from a new venture, derived from the production or use of a process or formula approved by the National Research Council.

(*d*) That provision such as is suggested above for inventors be made for authors and others in similar circumstances.

1. *Averaging of Excess Profits Taxable Income*

By allowing the carry-back and carry-forward of losses over a comparatively extended period, the government has largely eliminated one major flaw in the Canadian tax structure, although variations in tax rates from year to year prevent the effect of this provision from being a true averaging of income for tax purposes. However, by ignoring excess profits taxable income the new provision has not gone far enough to make wartime taxes equitable.

It is, therefore, recommended that when in any year profits exceed the standard profits, the amount of such excess should for excess profits tax purposes be added to the profits of the preceding fiscal year to the extent that such profits were below standard profits, and any balance remaining should be added to the profits of any of the three succeeding years to the extent that such profits are less than the standard profits.

2. *Determination of Standard Profits for Consolidated Returns*

Section 4(*a*) of The Excess Profits Tax Act, as amended, ratifies and amplifies the ruling issued by the Minister on 28th December, 1943.

Under the provisions of this section, where companies elected to file consolidated returns with respect to a fiscal period previous to 1940 the standard profits of the consolidation are deemed to be the standard profits of each component company in such old consolidation, if each company is still carrying on substantially the same class of business as it did prior to 1st January, 1940, and a standard profit of $5,000 for each company not carrying on the same class of business.

The standard profits of companies which were in existence prior to 1940 but did not elect to file consolidated returns prior to that date are deemed to be the following:—

(*a*) The standard profits of the component company which
  (i) carried on substantially the same class of business continuously since before 1st January, 1940, and
  (ii) had the largest standard profits of all the component companies, and

(*b*) standard profits of $5,000 for each of the other component companies. These other companies do not need to have been in operation or to have carried on the same class of business prior to 1st January, 1940.

There would appear to be no justification for differential treatment between corporations in existence at 31st December, 1939, where a bona fide parent and subsidiary relationship existed at that date. Under the present Act, a distinction is made between such corporations, the basis for the distinction being the election or otherwise to file consolidated returns for a period prior to 1940. Thus, corporations which, for one reason or another, elected to file consolidated returns for a fiscal period previous to 1940 are, in fact, in a preferred position as compared to parent and subsidiary organizations which were in existence prior to the standard period but which did not elect to file consolidated returns during such a period.

It is, therefore, recommended that all corporations eligible to elect to file consolidated returns as at 31st December, 1939, be placed on the same footing as those who, in fact, did elect to file consolidated returns prior to that date, and that Section 4 (*a*) (2) of The Excess Profits Tax Act be amended accordingly.

3. *Differential Treatment of Corporations Dependent Upon the Number of Controlling Shareholders*

Section 2 (1) (*f*) of The Excess Urofits Tax Act defines profits for the purpose of the Act. It establishes that profits subject to excess profits tax shall be the net taxable income determined for the purpose of income tax, with the exception that income shall not include what are commonly known as winding-up dividends deemed to be paid under Section 19. The definition, however, goes farther, and excludes from this exemption winding-up dividends received by a corporation which is controlled by individual shareholders numbering twenty-five or less.

Objection is raised to this principle of according different treatment to corporations depending on whether or not the number of controlling shareholders is above or below an arbitrary figure. Any corporation whose shares are publicly listed is, at any time, open to the hazard of being brought within such a definition, as a result of circumstances completely beyond its control.

There does not appear to be any logic in making winding-up dividends subject to excess profits tax, since excess profits tax is essentially a tax on current profits. It is concluded, therefore, that it was never intended that tax should be collected under this particular provision; rather, it is assumed that the provision was intended solely as a prohibition of certain types of transactions.

Without knowing the particular purpose for which this section was introduced, it is not possible to suggest an alternative provision, but it is submitted that the present provision should be amended.

## EXHIBIT No. 8

CANADIAN TAX FOUNDATION

Canadian Tax Foundation has been incorporated for the purpose of encouraging study, research and investigation in the fields of taxation and economics. The need of an independent body of this kind has become evident to the taxation committees of the Canadian Bar Association and the Dominion Association of Chartered Accountants and, as a result of their joint action, the Foundation has come into being.

*The Purposes of the Foundation*

It is apparent to the sponsors of the Foundation that the tax structure of the nation will have an important influence on our economic development. It is therefore in the public interest that serious study and investigation should be undertaken of various phases of taxation with a view to gauging the effect of particular types of taxes and exposing unjust or unsound features where they occur.

The Foundation is not an advocate for any particular class of taxpayers. Its efforts will be directed to developing factual information relating to the incidence of taxation and it will be particularly concerned with those phases of tax administration which render our various taxes unduly burdensome, aggravating or discriminatory.

The sponsors of the Foundation believe that our tax laws should be so clear that the subject may determine his liability with certainty: that the correctness of the tax tendered should be acknowledged promptly; and that in the event of dispute the subject should have access to the Courts or appropriate tribunals without undue expense or delay.

They further believe that the widest possible dissemination of information as to administrative practice and legal decisions is, particularly in respect of income tax matters, the best safeguard against discrimination and uncertainty.

The Foundation may, therefore, from time to time, publish its findings upon the various matters investigated and may make reports and recommendations to Governments consistent with the objectives set out above. It is hoped that recommendations to Governments may be of assistance in formulating fiscal policy and drafting tax legislation.

*Control of the Foundation*

The control of the affairs of the Foundation and the direction of its policy will be in the hands of a Board of Governors consistang of 22 members of which one half will be nominated by the Canadian Bar Association and one half by the Dominion Association of Chartered Accountants. The Governors will serve without remuneration. By reason of their professional knowledge and experience the Governors should be well qualified to direct the policy of the Foundation along the most fruitful lines.

The following have consented to act as Governors:—

*List of Proposed Governors of the Canadian Tax Foundation*

A. Emile Beauvais, C.A., Quebec, P.Q.
Hon. G. Peter Campbell, K.C., Toronto, Ont.
Lionel A. Forsyth, K.C., Montreal, P.Q.
W. J. B. Gentleman, C.A., Saint John, N.B.
J. Grant Glassco, F.C.A., Toronto, Ont.
Molyneux L. Gordon, K.C., Toronto, Ont.
Hon. Mr. Justice P. H. Gordon, Regina, Sask.
H. C. Hayes, C.A., Montreal, P.Q.
G. E. Hayman, C.A., Halifax, N.S.
H. P. Herington, F.C.A., Toronto, Ont.
W. G. H. Jephcott, F.C.A., Toronto, Ont.
Robt. R. Keay, C.A., Vancouver, B.C.
L. J. Ladner, K.C., Vancouver, B.C.
Hon. Fred A. Large, Charlottetown, P.E.I.
John A. MacAulay, K.C., Winnipeg, Man.
K. J. Morrison, F.C.A., Calgary, Alta.
Gordon R. Munnoch, K.C., Toronto, Ont.
H. G. Norman, C.M.G., F.C.A., Montreal, P.Q.
James McG. Stewart, K.C., Halifax, N.S.
André Taschereau, K.C., Quebec, P.Q.
E. J. Williams, C.A., Winnipeg, Man.

An additional Governor will be appointed from the Province of Quebec.

*Financing of Foundation*

The Sponsors believe that the Foundation can be established on the basis of an annual budget of $60,000.00 and to ensure the proper personnel, sufficient funds to cover the operation for a period of five years is desired. The principal expenditure will be for salaries of full time employees including a Director of Research and assistants, a lawyer, an accountant, a statistician and one or more clerks as required. There will also be the cost of providing suitable quarters and the usual expenses incidental to an office.

The Foundation has been established for research and educational purposes and contributions to it are accordingly deductible in arriving at the taxable income of individuals and corporations (within the statutory limitations).

The Foundation will accept contributions of any amount. Every contributor will receive the annual report on the work carried out and be entitled to attend the annual meeting. He will also receive copies of all reports published by the Foundation.

*Examples of Studies Which May be Undertaken*

The following are cited as some of the possible projects:

A. A study of the terms of existing income tax legislation which are responsible for the complicated form of personal tax returns with a view to making recommendations to the Government which will permit simplification in the form of return and in calculation of the tax by individuals.

B. A review of tax statistics in Canada and other countries and the submission of recommendations to Governments designed to secure adequate statistical information as to Canadian taxation. Such a project is of considerable importance as the effectiveness of future work of the Foundation will be impaired if basic information is not available.

C. An objective investigation of income taxation in Canada for the purpose of determining:

(1) The effect of variations in rates upon the amount produced by the tax. (If rates are too high, the law of diminishing returns will operate.)

(2) What rate structure would result in tax justice, having regard to other forms of taxation and the level of national income.

(3) Particular features of the present law which create undue difficulty or discrimination in the determination of the tax and which unreasonably obstruct or delay settlement of tax disputes.

(4) A study of the burden of taxation generally to determine the relative weight of each type of taxation upon the various classes of taxpayers within the country.

(5) An investigation of the double taxation of corporations and their shareholders including the systems in force in other countries and the probable financial results to taxpayers and Government of changes in the present method.

The sponsors of the Foundation have in view several suitable candidates for the principal positions to be filled. Before making concrete proposals to these men, however, it is felt that the financial position should be secure. As soon, therefore, as the objective above mentioned has been substantially subscribed the organization of the Foundation will be completed.

October, 18, 1945.

## EXHIBIT No. 9

LIST OF MINISTER'S DISCRETIONS

| Opinion of Minister | Shall be final and conclusive | In his discretion (determined or allow) |
|---|---|---|
| Sec. 2 (i) Proviso | Sec. 2 (i) Proviso | Sec. 2 S (ii) |
| Sec. 3-2 | Sec. 4 (o) | Sec. 3 (4) |
| Sec. 4 (m) | Sec. 5 (i) | Sec. 5 (b) |
| Sec. 6-3 | Sec. 5 (j) | Sec. 6 (n) |
| Sec. 7A-1-(b) | Sec. 5 (k) | Sec. 6 (o) |
| Sec. 9B-1 | Sec. 6 - 3 | Sec. 6 (2) |
| Sec. 13 - 1 | Sec. 6 - 4 | Sec. 7A - 8 Proviso |
| Sec. 13 - 2 | Sec. 10 - 3 | Sec. 26 - 2 |
| Sec. 92 - 8 | Sec. 21 - 3 | Sec. 27A - 2 |
| | | Sec. 31 |

Power to determine or shall or may determine or apportion.

Sec. 3 (2)
Sec. 5 (a)
Sec. 5 (h)
Sec. 6 - 5
Sec. 9B (7)
Sec. 10 - 2
Sec. 11 - 2
Sec. 23
Sec. 23A
Sec. 23B
Sec. 47
Sec. 88 - 7 (a)
Sec. 88 - (b)
Sec. 89 - 2
Sec. 89 - (3)
Sec. 90 - 3
Sec. 90 - (x)
Sec. 90 - 5

Approved by the Minister (not forms or regulations)
Sec. 4 (i)

Minister shall be Judge
Sec. 4 (k)
Proviso

Excess Profits Tax Act
Sec. 2 (l) (i)
Sec. 7 (b)

Excess Profits Tax Act
Sec. 4 (4)
covering
Ss. 1-2-3 of
S. 4.
Sec. 7 (b)

Excess Profits Tax Act
Sec. 2 (l)
(d) (ii)
Sec. 4 (a)
(b) (i)
(b) (ii)
(c)
Sec. 6 (1) (b)
Sec. 6 (2)
(a) (b)
(c)
Sec. 8 (b)
Sec. 9 (l)
Proviso
First Schedule
Sec. 3 (c)

May or may give effect to
Sec. 4 (m)
Sec. 6 (n)
Proviso

If the Minister is satisfied
Sec. 4 (r)
Sec. 5 (a)
Sec. 5 (s)
Sec. 6 (k) Proviso
Sec. 6 (n) Proviso
Sec. 7A-1 (d)
Sec. 7A-8 (3)
Sec. 7A-8 (5)
Proviso
Sec. 7A-9
Proviso
Sec. 9B-11
Proviso
Sec. 32B

Minister may allow
Sec. 5 (p)
Sec. 6 (d)
Sec. 6 (i)

Minister may prescribe
Sec. 11-5

May be adjusted
Sec. 23B

| Treasury Board opinion may be: | | |
|---|---|---|
| found<br>determined<br>made | Excess Profits Tax Act | Excess Profits Tax Act |
| Sec. 32A (1) | Sec. 32A | May Direct |
| 32A (2) | | Sec. 15A |
| 32A (3) | | |

Excess Profits Tax Act

Sec. 2 (1) (b)
Proviso
Sec. 4 (2)
Sec. 5 (1)
Proviso
Sec. 5 (2)
Sec. 5 (3)
Sec. 7 (b)
Sec. 9 (3)

## EXHIBIT No. 10

### REPORT OF COMMITTEE ON MINISTER'S POWERS

17th MARCH, 1932.

*Members:*

The Right Hon. The Earl of Donoughmore, K.P. (Chairman)
The Right Hon. Sir John Anderson, G.C.B.,
The Duchess of Atholl, D.B.E., M.P.,
The Rev. James Barr, M.P.,
Dr. E. L. Burgin, M.P.,
The Earl of Clarendon,
Sir Warren Fisher, G.C.B., G.C.V.O.,
Sir Roger Gregory,
Sir William S. Holdsworth, K.C.,
The Right Hon. Sir W. Ellis Hume-Williams, Bart., K.B.E., K.C.,
H. J. Laski, Esq.,
Robert Richards, Esq., M.P.,
Sir Claud Shuster, G.C.B., C.V.O., K.C.,
The Right Hon. Sir Leslie Scott, K.C.,
Gavin Simonds, Esq., K.C.,
Miss Ellen Wilkinson, M.P.,
Sir John J. Withers, C.B.E., M.P.

We think it is beyond doubt that there are certain canons of judicial conduct to which all tribunals and persons who have to give judicial or quasi-judicial decisions ought to conform. The principles on which they rest are we think implicit in the rule of law. Their observance is demanded by our national sense of justice; and it is, we think, the desire to secure safeguards for their observance, more than any other factor, which has inspired the criticisms levelled against the Executive and against Parliament for entrusting judicial or quasi-judicial functions to the Executive.

(i) The first and most fundamental principle of natural justice is that a man may not be a judge in his own cause. It is on this ground that a decision of a bench of magistrates may be quashed by the King's Bench Division of the High Court of Justice, in the exercise of its supervisory jurisdiction, on the ground of bias, if a single magistrate on the bench had any interest in the question at issue.

In DIMES v. GRAND JUNCTION CANAL (PROPRIETORS OF) (1852) 3 H.L.C. 759, the House of Lords, after consulting the Judges, decided that the decree of the Lord Chancellor, affirming the order of the Vice-Chancellor, granting relief to a company in which the Lord Chancellor had an interest as a shareholder to the amount of several thousand pounds, which was unknown to the defendant in the suit, was voidable on that account and must therefore be set aside. In the course of his speech Lord Campbell said:—

> No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest that he had in this concern; but, my Lords, it is of the last importance that the maxim that no man is to be a judge in his own cause should be held sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest. Since I have had the honour to be Chief Justice of the Court of Queen's Bench, we have again and again set aside proceedings in inferior tribunals because an individual who had an interest in a cause took a part in the decision. And it will have a most salutary influence on these tribunals when it is known that this High Court of last resort, in a case in which the Lord Chancellor of England had an interest, considered that his decision was on that account a decision not according to law, and was set aside. This will be a lesson to all inferior tribunals to take care not only that in their decrees they are not influenced by their personal interest, but to avoid the appearance of labouring under such an influence.

In that case the Lord Chancellor's disqualification was pecuniary interest. It goes without saying that in no case in which a Minister has a pecuniary or any other similar personal interest in a decision, e.g. as the owner—whether in his own right or as a trustee—of property which may be affected, should he exercise either judicial or quasi-judicial functions. Such cases may be presumed to be rare, and we do not think it necessary for us to make any special recommendations about them.

But disqualifying interest is not confined to pecuniary interest. In REG. v. RAND (1866) L.R. 1 Q.B. 230 the Court of Queen's Bench laid it down that wherever there was a real likelihood that the judge would, from kindred or any other cause, have a bias in favour of one of the parties, it would be very wrong in him to act. In REX v. SUNDERLAND JUSTICES (1901) 2 K.B. 357 this rule was applied by the Court of Appeal in the case of certain borough justices, who were also members of the Borough Council and adjudicated in a matter arising out of a proposal which they had actively supported in the Council, although their pecuniary interest as trustees for the ratepayers was held insufficient in itself to raise the presumption of bias. "It is hardly necessary to point out," said the Master of the Rolls, "how very important it is that persons who have to exercise judicial functions with regard to any matter should not lay themselves open to any suggestion of bias on their part."

Indeed we think it is clear that bias from strong and sincere conviction as to public policy may operate as a more serious disqualification than pecuniary interest. No honest man acting in a judicial capacity allows himself to be influenced by pecuniary interest: of anything, the danger is likely to be that through fear of yielding to motives of self-interest he may unconsciously do an injustice to the party with which his pecuniary interest may appear to others

to identify him. But the bias to which a public-spirited man is subjected if he adjudicates in any case in which he is interested on public grounds is more subtle and less easy for him to detect and resist.

We are here considering questions of public policy and from the public point of view it is important to remember that the principle underlying all the decisions in regard to disqualification by reasons of bias is that the mind of the judge ought to be free to decide on purely judicial grounds and should not be directly or indirectly influenced by, or exposed to the influence of, either motives of self-interest or opinions about policy or any other considerations not relevant to the issue.

We are of opinion that in considering the assigment of judicial functions to Ministers, Parliament should keep clearly in view the maxim that no man is to be judge in a cause in which he has an interest. We think that in any case in which the Minister's Department would naturally approach the issue to be determined with a desire that the decision should go one way rather than another, the Minister should be regarded as having an interest in the cause. Parliament would do well in such a case to provide that the Minister himself should not be the judge, but that the case should be decided by an independent tribunal.

It is unfair to impose on a practical administrator the duty of adjudicating in any matter in which it could fairly be argued that his impartiality would be in inverse ratio to his strength and ability as a Minister. An easy going and cynical Minister, rather bored with his office and sceptical of the value of his Department, would find it far easier to apply a judicial mind to purely judicial problems connected with the Department's administration than a Minister whose head and heart were in his work. It is for these reasons and not because we entertain the slightest suspicion of the good faith or the intellectual honesty of Ministers and their advisers that we are of opinion that Parliament should be chary of imposing on Ministers the ungrateful task of giving judicial decisions in matters in which their very zeal for the public service can scarcely fail to bias them unconsciously.

We desire to make it plain that we are recommending a general principle as a future safeguard: we do not wish to imply that the principle, though it has perhaps not been clearly envisaged, is in fact violated in any existing statutes, and we have been unable to find evidence to support the view held by some critics that it occurs extensively. An interesting example of the way in which Parliament has observed the principle will be found in old age pension legislation: under Sections 7 and 8 of the Old Age Pensions Act 1908 the Minister of Health is the central pension authority for determining appeals, although the Commissioners of Customs and Excise, who are responsible to the Treasury, i.e. in practice to the Chancellor of the Exchequer, are the Department responsible for the administration of pensions.

The application of the principle which we have just enunciated to quasi-judicial decision is not so easy, since a quasi-judicial decision ultimately turns upon administrative policy for which an executive Minister should normally be responsible. We think, however, that before Parliament entrusts a Minister with the power and duty of giving quasi-judicial decisions as part of a legislative scheme, Parliament ought to consider whether the nature of his interest as Minister in the carrying out of the functions to be entrusted to him by the statute may be such as to disqualify him from acting with the requisite impartiality. The comparative importance of the issues involved in the decision will, of course, be a relevant factor. Where it appears that the policy of the Department might be substantially better served by a decision one way rather than another, the first principle of natural justice will come into play, and the Minister should not be called upon to perform the incongruous task of dealing with the judicial part of the quasi-judicial decision as an impartial judge, when EX HYPOTHESI he and his Department want the decision to be one

way rather than another. We recognize that this kind of case may be rare, but it is a real possibility. In such a case the judicial functions which must be performed before the ultimate decision is given and on which that decision must be based should be entrusted by Parliament to an independent Tribunal whose decision on any judicial issues should be binding on the Minister when in his discretion he completes the quasi-judicial decision by administrative action.

(ii) The second principle of natural justice is one which has two aspects, both of which are as applicable to quasi-judicial as to judicial decisions. No party ought to be condemned unheard; and if his right to be heard is to be a reality, he must know in good time the case which he has to meet. But on neither branch of this principle can any particular procedure (i) by which the party is informed of the case which he has to meet, or (ii) by which his evidence and argument are "heard", be regarded as fundamental. That a Minister or a Ministerial Tribunal does not conform to the procedure of the Courts in either respect imports no disregard of natural justice. There is, for instance, no natural right to an oral hearing.

(iii) It may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or quasi-judicial. Our opinion is that there are some cases when the refusal to give grounds for a decision may be plainly unfair; and this may be so, even when the decision is final and no further proceedings are open to the disappointed party by way of appeal or otherwise. But it cannot be disputed that when further proceedings are open to a disappointed party, it is contrary to natural justice that the silence of the Minister or the Ministerial Tribunal should deprive him of his opportunity. And we think it beyond all doubt that there is from the angle of broad political expediency a real advantage in communicating the grounds of the decision to the parties concerned and, if of general interest, to the public. We deal with this question more fully in paragraph 13 of this Section.

## EXHIBIT No. 11

### AN ENGINEER TAKES A LOOK AT THE TAX PROBLEM

By Frederick S. Blackall, Jr.

*An address before the Providence Chapter of the National Association of Cost Accountants and the Rhode Island Association of Credit Men*

It is perhaps presumptuous for an engineer to appear before a group of financiers, cost accountants, and credit men to discourse on matters of fiscal character; but we engineers, especially when entrusted with the tasks of management, have frequent occasion to observe the impact upon our practical operating problems of those policies and procedures which are more particularly the province of your professions. Possibly the reason why you called me in this evening to discourse learnedly on controversial matters concerning which you know far more than I is the fact that I am an engineer, and as such share the engineer's universal hope that somehow I may be able to provide light without heat. I can't escape the feeling, however, that you should have invited in those famous twins of your profession, the Ernst boys, or somebody representing a firm of accountants with at least four names. I am reminded of a story Governor Ray Baldwin of Connecticut told me the other day. He had just made a political speech, and on the way out of the hall overheard two upstate

farmers talking: "That was a pretty good speech of Baldwin's, wasn't it?" "Yes, I guess it was all right," came the prompt reply, "but an inch and a half of rain would have done us a damned sight more good."

The great task which faces the tax collector today is how to raise more revenue without stifling the sources of income; but the necessity of raising additional revenue has forced upon us a more thoughtful scrutiny of tax measures and fundamental tax principles, and the time has come when the engineering profession, the accounting profession, the legal profession, management, and public servants must give real consideration to the long term effects upon our economy of the methods which we employ in the attempt to balance our budget. A levy, however unsound, which occasions no real sacrifice on the part of the taxpayer may stay on the statute books for years, unnoticed because it doesn't hurt enough. Multiply that same levy by nine or ten, and it may drive the taxpayer out of business and thus destroy the source of revenue altogether. It is merely a manifestation of the old law of diminishing returns.

### VENTURE IS PENALIZED

Thus we should examine the basic soundness of all of the major revenue-raising features of our tax laws, however hoary with age they may be. Inheritance taxes, capital gains, statutory exemptions, capitalization versus expense, and not least of all the treatment of depreciation, are all factors which, properly handled, may at once encourage enterprise and increase tax revenue; if misapplied, they readily can kill the goose that lays the golden egg. The trouble is that our entire tax structure is a hodge-podge of revision and amendment, and in some departments it has become such an obstacle to the development of new business and the maintenance of plant in productive efficiency that it has virtually dried up the sources of venture capital and has substituted security for risk as the investment objective of aggregations of money, whether large or small. In a twelve-horse race, with eleven chances to lose and one to win, you are not apt to bet $2.00 on a horse which will pay off only $2.20. You are not going to put money into a business, with all of its attendant risks, if the maximum profit which you can make after taxes, reserves, and expenses, is 3 or 4 per cent, or maybe less, in your best year, especially if, on top of this, you have to buy your machinery and tools to a substantial extent out of this pittance. Why not put your money into high grade bonds or the savings bank, reasons the entrepreneur, where you can get something close to the same return with virtually no risk at all? These are real and vital problems of tremendous import to every American citizen, be he worker, manager, or capitalist; and of this group, the poor old forgotten man is the one who will suffer most in the long run if the situation is not altered. Actually, labour has far more to lose by unsound tax methods than capital. A few enlightened labour leaders are beginning to recognize their important stake in sound tax procedure; but more of our citizenry must thump for tax revision and do it soon if we are to avoid disaster.

Look at our situation here in New England, for example. We are a great centre of small and medium sized family businesses. The people who own them are not very rich men in the conventional sense of the word. They make a good living by their efforts and their wits, and contribute greatly in the aggregate to the national economy. On paper they may be worth a tidy sum of money, but their assets are tied up in brick and mortar, in machinery and tools, in looms or spinning frames, in dye kettles, or store counters. A genuine problem is presented when the head of such a business dies. The inheritance tax collector comes along, appraises the business at its value as a going concern, and demands payment at almost confiscatory rates within one year in cash. This is the sort of thing which drives the small business, for which our politicians display such loving concern, straight into the arms of a great integrated corpora-

tion if it doesn't indeed drive the small business to the wall altogether. It is apt to be particularly disastrous following a period of great business activity such as we have been through during the war years. To me, as president of the New England Council, concerned with the preservation of New England enterprise, this is a matter of vital import.

### DOUBLE TAXATION

The wisdom of double taxation of corporate earnings through the corporation tax and the personal income tax, in concert, is at last beginning to be questioned. A number of leading economists are urging that the corporation tax be eliminated altogether. England has long recognized the fallacy of double taxation of corporate earnings, and under its pre-war statutes taxed corporations only on undistributed income. In point of fact, corporation taxes tend to benefit the very wealthy, while imposing an undue burden on the man of small income. At the risk of repetition, for I have quoted this before, let me read to you a commentary issued a few months ago in "Management Clinic," a house organ published by Fiduciary Counsel, Inc., of Jersey City, New Jersey. I quote: "The XYZ Aircraft Company pays 80 per cent taxes. It produces income for the benefit of a stockholder who last year was subject to an 88 per cent bracket. It saved this wealthy stockholder 8 per cent on all of his income that was not distributed to him. Another stockholder's income of $10,000 was subject to a 33 per cent bracket. When it paid 80 per cent for this stockholder on the income which it earned for him but did not distribute, he was penalized 47 per cent."

As an illustration of the discouragement which our present tax system imposes on venture capital, they go on to say this: "Just recently one of our clients considered making an investment of $10 million, which he believed would earn 20 per cent the first year. His attorney advised him that if the corporation made a profit of $2 million, paid its taxes and distributed the balance in dividends, he would have left, after paying his taxes, $65,886.09. Taxes would take 96·7 per cent of the $2 million profit and he would receive 3·3 per cent, which is a return of 6/10ths of 1 per cent on his investment. He did not invest—neither will others under such conditions. The post-war unemployment danger cannot be eliminated unless this tax situation is remedied."

### CAPITAL GAINS TAX

Consider again the question of capital gains. I think we are the only large nation which treats them as income. Such treatment introduces a wholly extraneous consideration into the handling of investments, which unquestionably in frequent cases acts as a brake on the free flow of venture capital.

And of course with corporation taxes in the 95 per cent bracket with an overall ceiling of 80 per cent, it becomes commonplace to hear as an excuse for questionable expenditures, "Mr. Morgenthau will pay 95 per cent of the bill." Who is there in this room who does not know from personal experience countless examples of extravagance and unsound business practice fostered by or condoned because of the virtually confiscatory tax rates on business income? Dollars become nickels, and, to paraphrase the words of Mr. A. E. Carpenter, corporation president and editor of that forthright little publication, "The Houghton Line," a sort of mental inflation is produced which fosters habits of wastefulness and complacency from which it is not going to be easy to recover when there are no more war contracts to be renegotiated.

As an engineer, I am especially interested in seeing that our nation's industrial plant is kept at a high peak of efficiency, and it is perhaps for this

reason that the treatment of depreciation under federal tax laws has engaged my attention for a good many years. It is a surprising fact, however, that the nature of depreciation is little understood by a great many businessmen.

DEPRECIATION

What is depreciation anyway? It is or should be the money which we set aside to pay for the loss in value of our equipment which has occurred through its use. To the extent that the Treasury will permit it, I should broaden the definition to include obsolescence. It is too bad that we cannot prevail upon industry to put its depreciation reserves into a separate bank account and to pay for new capital expenditures directly from such a fund. Certainly then businessmen would begin to realize that depreciation is something more than an entry on a balance sheet. If management could see it physically in a separate bank account and thus be reminded every day of the purposes to which that money should be applied, the industrial efficiency of our nation would be enhanced enormously and, incidentally, the taxpayer would soon resist unwarranted and arbitrary extensions of the so-called useful life of capital assets.

The United States has led the world in productive enterprise, but the danger is that we shall rest on our oars and lose our competitive position through unsound replacement policies with respect to plant and equipment. Newly develop areas tend to be efficient. Why? The most important reason, of course, is that industrial plants are of the latest design, provided with the last word in mechanical equipment. As time passes, the competitive edge which this lends to industry is lost to successive new areas.

Is it not therefore obvious that the national interest requires that we of the new world foster and encourage these policies which will keep our industrial plant in the pink of condition? Of course it is, but unhappily the depreciation policies followed by our Internal Revenue Department discourage renewals and replacements. The treatment of depreciation by our Treasury Department is shortsighted, based on grabbiness, on the theory that a bird in the hand is worth two in the bush, on the principle of getting all you can now without regard to the future. Now the United States government, it may be assumed, is in business in perpetuity. At least one new business is born for every one which falters and dies. Therefore, it makes utterly no difference to the sum total of federal revenue when or how depreciation is charged off. Not only in the long run, but on the average in any given year, revenue would be just as great even if capital goods purchasers were permitted to depreciate capital equipment 100% during the first year of purchase; but it makes a tremendous difference psychologically to the potential buyer of capital equipment, a tremendous difference in the rate of renewal of plant, and perhaps a tremendous difference in the swings of the business cycle. I shall deal with this last point later.

In 1940, the American Machinist made a survey of metal working machinery in use in this country. Of the 1,323,131 machines then in use, 70%, or 933,158, were over ten years old. These are figures for a particularly forward-looking and equipment-minded segment of industry. The record is far worse in textiles and many other lines. One reason for this, of course, is that businessmen have not been spending their depreciation reserves annually as they should. An important contributing reason, however, is that they have not been permitted to depreciate their equipment as rapidly as it becomes obsolescent. Mark my words, I did not say "as rapidly as it wears out," but rather "as rapidly as it becomes obsolescent." Such a condition encourages manufacturers to operate with marginal equipment. I can show you many a lathe or milling machine, which is as old as I am, which will still turn or mill. But how fast and how accurately? Our textile mills are full of looms and spinning frames

forty years old or more which still produce virtually as much as they ever did. But time marches on, and these antiques are as outmoded as great grandpa's fringed surrey. The forced extension of life of such sub-standard equipment is a blight on our economy and one which is directly encouraged and fostered by the short-sighted approach of our tax collectors to the depreciation problem. I am not sure that the fault is so much with our tax laws as it is with their administration, with the writers of interpretations and regulations, for every accountant knows that the local examiners, the district tax agents, and above all the men who interpret and apply the statutes enacted by the Congress have it in their power to a substantial extent to determine the so-called "useful life" of capital assets.

What is needed here is a lively recognition by statute, which will not be nullified by shortsighted interpretation, that every time a manufacturer tosses out a less efficient machine and purchases a more efficient machine, every time an obsolete plant is replaced by a modern unit, the public benefits and potential tax revenue over the long term is increased. Certainly Uncle Sam recognizes that the prosperous taxpayer has the largest taxpaying capacity. Then why not frame and apply our tax laws to encourage management policies which will increase efficiency and hence enhance prosperity? Liberalization of the treatment of depreciation would do just that.

Disregarding the acquisitions of machinery and plant which have been financed directly or indirectly by the federal government since 1940, there was a tremendous spurt of capital goods purchasing and plant improvement and replacement with purely private funds during the period when the accelerated amortization provisions of the Second Revenue Act of 1940 went into effect. Not the least of the reasons for this, I suspect, was that the buyer could visualize the recapture of his investment during a period for which he could reasonably make definite plans.

Economists aver that the fundamental difference between periods of depression and periods of prosperity lies in the incidence of capital goods purchasing. When producers are equipping their plants and instituting improvements, business is good. When they are not, business is bad. Here is another cogent argument for fostering sound improvements and replacements. Properly applied, such a policy can be a tremendous force in stabilizing the business curve, which is one of the major objectives of politician and economist alike, if one may trust their public pronouncements.

### WIDE LATITUDE NECESSARY

I submit not only that it would be entirely sound to adopt the wartime accelerated amortization provisions as a permanent feature of our tax laws; for my part, I would go further and permit manufacturers to establish their own depreciation rates on any basis which suited their fancy. I cannot see where the choice could possibly operate to the detriment of the Treasury Department in the long run, even if manufacturers widely availed themselves of the opportunity to depreciate capital acquisitions 100% in the first year. The tax base which the government lost in that year would be available 100% in the years following. The English have allowed this latitude to their taxpayers for years without criticism or sacrifice of income to the Crown. The first thing Hitler did when he wanted to build up a highly productive industrial economy in preparation for war was to permit manufacturers to depreciate the cost of improvements and replacements in the year of purchase if they chose to do so. The effect on Germany's output was electric, and whatever else we may hate about the Nazis, we must admire their productive efficiency.

I should like to mention an alternative proposal which has been made, to wit, that depreciation be recognized as a deductible item only in the year

in which it is spent. The objective of this proposal is the same as that which I am espousing, namely, to ferret depreciation reserves out of hiding and put them into circulation; but I am afraid that this would defeat the purpose rather than foster it. I want to emphasize that this whole business of the treatment of depreciation under the tax laws in its impact on capital goods' expenditures is, to a very great degree, psychological. The man who makes an investment likes to be able to see how and when he is going to get his money back, and psychologically he wants to get it back within the reasonably visible future. But, as a businessman, he wants to be sound about it, too. He is not going to throw a perfectly good machine into the river just because he can take a tax deduction by so doing.

As a matter of fact, Mr. Royal Little of Providence pointed out to me the other night in a thought-provoking discussion of this subject that no change was necessary in the treatment of depreciation reserves, because there was nothing to stop a man from selling an asset which was not fully depreciated, taking a deductible loss on the undepreciated capital value in the tax year in which the asset was removed from the register, and utilizing the tax money thus saved for a new purchase. I can't argue with Mr. Little's point before a group of cost accountants. You and I know that this can be done, but I think I know that it won't be done in any great number of cases. Broadly speaking, management doesn't like to take losses that way any more than the man in the street wants to sell General Motors at 60 if he paid 80 for it, even though every market analyst in the land sets it up in bold face that the stock is only worth 40. That is why people, generally speaking, lose money in the stock market. I think it is the major reason why, and it is purely psychological.

### MUST PROMOTE EFFICIENCY

What I want to do is to have the government encourage the producer to keep his plant up to the minute and make it easy for him to do so, without requiring him to indulge in unusual operations with which he is generally more or less unfamiliar (and need I add that a good many members of the accounting profession would go broke if the average businessman knew anything about preparing his own tax returns). In brief, if we can create a favorable climate in which constant modernization of industry will flourish, a favorable state of mind in which the potential buyer will switch from his investment in one machine to an investment in a newer and better machine every time a newer and better one comes along, it will increase our national efficiency to an enormous extent, will dampen the destructive swings of the business cycle, and will increase the national income, which most certainly will increase the federal government's potential revenue from taxes. It is as simple as that, and about the only reason that it hasn't been done is because those who shape our tax laws and regulations haven't been willing to look beyond the ends of their noses when this important subject has been brought up. For two decades, it has been the ridiculous, stupid, short-sighted policy of our Internal Revenue Department to stretch the so-called useful life of capital goods and plant beyond the elastic limit. To continue the metaphor, if we don't cut it out, something is going to snap. I am told that a revenue agent's work each year is rated to a certain extent by the amount of additional tax revenue which he has been able to dig out of the taxpayers to whom he is assigned. If this is so, the vicious practice should be stopped and the widest possible publicity within and without the Internal Revenue Department should be given to the change in policy. Utterly subversive of the public interest, such a policy is reminiscent of the old days when town constables made their livings on the commissions earned on fines collected from unsuspecting motorists who fell into their grasp.

I have been preaching the gospel which I am expounding here tonight for a good many years past. I don't know that I claim to be the author of the idea, but I have a pretty good hunch that I was one of them. At least I am one of the few people who have felt strongly on this subject for many years. It's fun to believe something which is different or new, and therefore, likely as not, unpopular, and then see that which started out as a visionary dream characterized one day as a highly practical idea. I confess that I get quite a kick out of the growing conviction among certain members of Congress, including a number of high officials of the present administration, that the depreciation provisions of our tax laws should be overhauled to provide more incentive for the purchasing of capital equipment.

Our late president's position in this matter was made clear enough in one of the few specific proposals of his pre-election campaign when, during his radio address from Chicago last October, he advanced the very suggestion that business corporations should be granted more liberal depreciation allowances. The recommendation was embodied in the Byrnes Report on War and Reconversion. Indeed, the major remaining opposition to the proposal comes from the Treasury Department itself, which somewhat petulantly indicated, when the Byrnes Report appeared, that Mr. Byrnes had not consulted the Treasury in making his recommendations. In the face of preponderant evidence of the need for a change in the regulations governing depreciation allowances, one wonders whether the treasury's attitude is not dictated by a stubborn desire to defend its own shortsightedness. It could be. Revenue agents have been so diligent during the past decade in levying retroactive assessments on corporations through the device of revising established depreciation schedules that I understand the Treasury Department, in response to alarms and protests, actually had to issue a policy declaration promising manufacturers that they would be given a period of grace of at least three years between successive attacks by the Internal Revenue Department on this very cornerstone of their accounting procedures. I cannot suppress a wry smile over the fact that if the treasury had not embarked on its policy of whittling down depreciation allowances a decade or so ago, subsequent tax revenue would, in fact, have been higher than it has been. Had they permitted high depreciation allowances back in the days when the tax on corporation income was, say, 13½ per cent as it was in 1935, or 18 per cent, as it was five years ago, many equipment-minded managements would by this time have exhausted their cushion and would now be paying taxes at wartime rates on substantially higher net incomes. The bright young men in the Treasury Department guessed wrong on that one. In spite of this, industry would have benefited, because I dare say that capital purchases and replacements would have been correspondingly higher to the enduring benefit of industry and the nation.

The idea is taking hold, and I hope that men like you, who understand the mysteries of our tax laws—and they are a mystery to the great mass of people—will make your voices heard in the right places in Washington and at the right time to bring this much needed improvement about. But don't forget that the change in the law is needed more for psychological reasons than for any other. Don't argue yourselves out of the necessity for the change on the basis that you can accomplish the same thing some other way, if you will just hire a good accountant to prepare your tax return. There will be jobs enough for you men under a more efficient and more prosperous economy, and this is one way to make our economy more efficient and more prosperous.

1946

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

## SPECIAL COMMITTEE

Appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon.

No. 6

WEDNESDAY, APRIL 10, 1946

CHAIRMAN

The Honourable W. D. Euler, P.C.

WITNESSES:

The Honourable P. Brais, K.C., Counsel, The Montreal Stock Exchange.
Mr. W. E. Dunton, C.A., Consulting Auditor, Montreal Stock Exchange.
Mr. Charles Oliphant, Assistant General Counsel, Treasury Department, Washington U.S.A.

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OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1946

## ORDER OF APPOINTMENT

*(Extracts from the Minutes of Proceedings of the Senate for 19th March, 1946)*

Resolved,—That a Special Committee of the Senate be appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon;

(2) That the said Committee be composed of the Honourable Senators Aseltine, Beauregard, Bench, Buchanan, Campbell, Crerar, Euler, Farris, Haig, Hayden, Hugessen, Lambert, Léger, McRae, Moraud, Robertson, Sinclair and Vien;

(3) That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. MOYER,
*Clerk of the Senate.*

60817—1½

# MINUTES OF PROCEEDINGS

WEDNESDAY, 10th April, 1946.

Pursuant to adjournment and notice the Special Committee appointed to examine into the provisions and workings of the Income War Tax Act and the Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, met this day at 10.30 a.m.

*Present*: The Honourable W. D. Euler, P.C., Chairman; The Honourable Senators Aseltine, Beauregard, Buchanan, Campbell, Crerar, Haig, Hayden, Hugessen, Lambert, Léger, McRae, Moraud, and Sinclair—14.

*In attendance:* The Official Reporters of the Senate. Mr. H. H. Stikeman, Counsel to the Committee.

The Honourable P. Brais, K.C., Counsel, The Montreal Stock Exchange, submitted a brief and a supplementary brief on behalf of that organization, and was questioned by counsel.

Mr. W. E. Dunton, C.A., Consulting Auditor, Montreal Stock Exchange, was heard.

Mr. Charles Oliphant, Assistant General Counsel, Treasury Department, Washington, U.S.A., was heard.

On motion of the Honourable Senator Campbell, seconded by the Honourable Senator Léger:

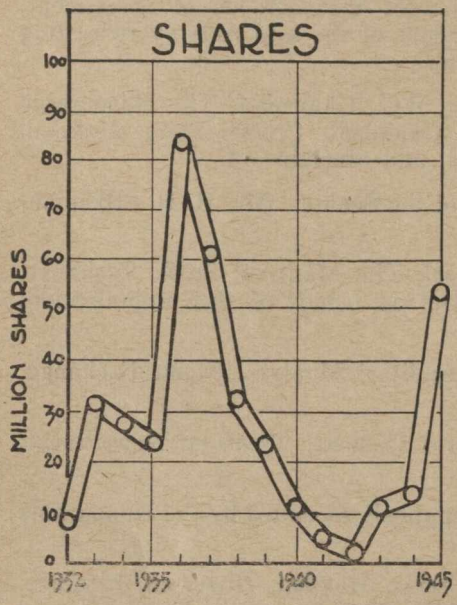
The Honourable Senators Campbell, Crerar, Hayden, Hugessen, Lambert, Léger and Vien were appointed a drafting Committee.

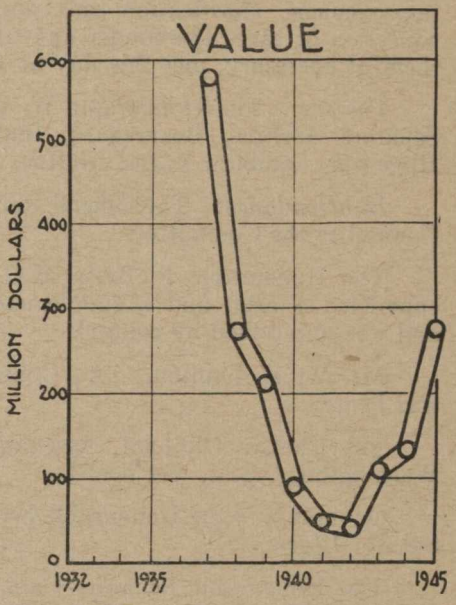
At 1 p.m., the Committee adjourned until 10.30 a.m., Tuesday, 30th April, instant.

ATTEST:

R. LAROSE
*Clerk of the Committee.*

# VOLUME OF TRANSACTIONS ON MONTREAL STOCK EXCHANGE AND MONTREAL CURB MARKET




## VOLUME OF TRANSACTIONS

MONTREAL STOCK EXCHANGE AND MONTREAL CURB MARKET

| Year | Shares | Dollars |
|---|---|---|
| 1932 | 8,353,857 | ..... |
| 1933 | 31,520,701 | ..... |
| 1934 | 28,862,906 | ..... |
| 1935 | 23,738,420 | ..... |
| 1936 | 84,956,640 | ..... |
| 1937 | 60,782,429 | 583,573,275 |
| 1938 | 32,231,905 | 274,434,316 |
| 1939 | 23,434,198 | 215,645,856 |
| 1940 | 10,620,945 | 95,017,236 |
| 1941 | 5,080,296 | 54,427,190 |
| 1942 | 3,799,405 | 44,538,859 |
| 1943 | 10,080,228 | 110,893,216 |
| 1944 | 13,556,473 | 130,399,220 |
| 1945 | 54,561,740 | 284,347,970 |

# MINUTES OF EVIDENCE

THE SENATE

Wednesday, April 10, 1946.

The Special Committee of the Senate to consider the provisions and workings of the Income Tax Act, etc., resumed this day at 10.30 a.m.

Hon. Mr. Euler in the Chair.

The CHAIRMAN: This morning we are to hear the brief of the Montreal Stock Exchange and the Montreal Curb Market, which will be presented by Honourable Mr. Brais as counsel. Then, as you know, we are to hear Mr. Charles Oliphant, Assistant General Counsel of the Treasury Board at Washington. I think we ought to hear Mr. Brais first as his brief is not very lengthy. After that has been presented we could give Mr. Oliphant all the time he likes.

I should mention that this brief deals exclusively with matters of policy. We have not interfered when other briefs were being read which might also contain matters pertaining to policy, and I suppose we will follow the same course in this case. But Mr. Brais will know that we are not authorized to make any recommendations whatsoever in regard to matters of that kind.

Mr. BRAIS: Honourable senators, as the Honourable Chairman has drawn to your attention, the first brief, which is simply entitled "Brief on Taxation", and which has already been forwarded to Ottawa and is in your hands, refers almost exclusively to matters of policy. When this was drawn to my attention it was also mentioned that members of the Montreal Stock Exchange would desire to add to that brief certain matters which come more strictly within the purview of the reference to this committee. Accordingly a supplementary brief on taxation has been prepared and it is before you this morning. It deals more with those matters which you have in mind.

There are here as a committee and a delegation Mr. H. MacD. Paterson, Chairman of the Montreal Stock Exchange, Mr. H. R. McCuaig, Chairman of the Montreal Curb Market, Mr. Jacques Forget, Governor of the Montreal Stock Exchange, Mr. F. G. McArthur, Governor of the Montreal Stock Exchange, Mr. G. P. G. Dunlop, General Manager of the Montreal Stock Exchange and Curb Market, and Mr. W. E. Dunton, Consulting Auditor of the Montreal Stock Exchange and the Montreal Curb Market.

The Toronto Stock Exchange being busy making a considerable amount of money—as I admit with some regret—have desired that we should make representations on their behalf, but they have not been able to send a delegation.

Mr. Trebilcock, Executive Assistant to the President of the Toronto Stock Exchange, concludes his letter by saying:

> Will you be good enough to have counsel report to the committee—that is this committee—that the Toronto Stock Exchange joins with you in the presentation of the brief and in the arguments presented by counsel therewith.

So this presentation is made on behalf of the Montreal Stock Exchange and Curb Market and the Toronto organizations.

On behalf of the members of the Montreal Stock Exchange and the Montreal Curb Market, we submit the effect of the present taxation on our businesses, as demonstrated by the following example. Our members all operate as partnerships or sole proprietors with full personal liability. The business of a stock

broker fluctuates very considerably from year to year, and this typical example is a fair average of results over a period of ten years of a successful firm.

The reason why a stock broker operates under his own personal name is more a matter of prestige so far as he is concerned and the protection of his clients so far as the public is concerned. A stock broker has never desired to incorporate as a bond house incorporates, and it has always been considered in the public interest that he should not do so, because when difficult years come and market crashes arrive, his assets are there to protect the business of his clients and alleviate to a certain extent the shock of a market crash.

Hon. Mr. CAMPBELL: Is that under a rule of the exchange?

Mr. BRAIS: I thought it was; it is not.

The CHAIRMAN: It is in the Toronto Stock Exchange, I think.

Mr. BRAIS: It has always been the practice of stock brokers not to incorporate, so the public may have the full benefit of their assets.

The CHAIRMAN: I am informed that in Toronto it is obligatory for them to remain as partners.

Mr. BRAIS: I was under that impression but my clients advise me otherwise.

The CHAIRMAN: In Toronto?

Mr. BRAIS: No, in Montreal. I could not tell you about Toronto.

There is an example here of a typical stock broker's firm, showing its operations from the first year to the tenth year.

TYPICAL STOCK BROKER'S FIRM—CAPITAL $100,000

(THREE PARTNERS SHARING PROFITS—40%, 40% AND 20%

| | Profits of firm | Excess profits tax, at 60% over $37,400 | Income taxes at 1946 rates on partners share of profits after E.P.T. | Total of taxes (excess profits tax, plus income taxes) | Amount left out of profits for partners after all taxes | Average per partner |
|---|---|---|---|---|---|---|
| 1st Year | 47,000 | 5,760 | 15,260 | 21,020 | 25,980 | 8,660 |
| 2nd Year | 31,000 | .... | 9,900 | 9,900 | 21,100 | 7,033 |
| 3rd Year | 6,000 | .... | 425 | 425 | 5,575 | 1,858 |
| 4th Year | 18,000 | .... | 4,230 | 4,230 | 13,770 | 4,590 |
| 5th Year | 7,000 | .... | 660 | 660 | 6,340 | 2,113 |
| 6th Year | 9,000 | .... | 1,200 | 1,200 | 7,800 | 2,600 |
| 7th Year | 15,000 | .... | 3,120 | 3,120 | 11,880 | 3,960 |
| 8th Year | 30,000 | .... | 9,380 | 9,380 | 20,620 | 6,873 |
| 9th Year | 41,000 | 2,160 | 13,930 | 16,090 | 24,910 | 8,304 |
| 10th Year | 65,000 | 16,560 | 19,140 | 35,700 | 29,300 | 9,767 |
| Total for 10 years | 269,000 | 24,480 | 77,245 | 101,725 | 167,275 | 55,758 |
| Per year | 26,900 | 2,448 | 7,725 | 10,173 | 16,727 | 5,576 |

This has been taken under actual market conditions and shows to what extent there is a very large variation in the earnings of the broker, with the result that in the bad years he has very little money, if he does not run into any very serious losses, and in the good years, which are unhappily staggered, the money he does make is taken up in taxation, and he is not able to build up a reserve for his own necessary benefit and the benefit of his clients. A joint stock company would be able to leave money in the business for the purpose of building up a reserve, whereas brokers—and the same would apply to a number of other business organizations where the individual does not want to place himself under the protection of a charter—whether doing business as a partnership or individually, are not in a position to get any protection at all.

The result is, without going through the detail of the table, that the average annual earnings per partner would be as follows: During the worst five years each partner would get $3,024, and in the best five years each partner would get $8,127; and if averaged over ten years the earnings would be $5,576 per partner.

It is difficult for a partner in a stock brokerage firm in Montreal to maintain a standard of living, commensurate with his position in the community, and in order to secure business by personal contact, on less than $5,000 a year. Some years he earns considerably less and some years considerably more, but on the average it is impossible for him under present taxation to have anything left over above living expenses to build up any reserve or add to the capital of the firm.

The example given is that of a successful firm but even such firms have severe and unexpected losses at times. Under the present taxation it is impossible to be prudent and provide for such contingencies, other than by the original capital.

In view of the above informatiion the chap who is handicapped today in trying to get set up in business is the young man who comes back from overseas, who has served his apprenticeship in a broker's office and is ready to start off on his own. Today he is not able to build himself up any capital in order to carry on a brokerage business. The man who has been in business for some time has been able to preserve his capital and is not handicapped in the same way as the young man starting out to-day.

Under the circumstances, honourable senators, I have asked my clients to be good enough to prepare for me a statement of the number of men coming back into the brokerage business who have served overseas. They have provided the very interesting figure of 2,028 partners and employees with military service. There is no organization with a finer record of contribution to the war effort on the fighting fronts than the brokerage houses. They were young and healthy men and possessed the right spirit. As I say, the number of employees and partners was 2,028; the number who served in the last war was 446, or over twenty per cent. It is these ex-servicemen who are handicapped to-day and I know when we mention that situation we will get a sympathetic hearing.

With the terrific fluctuations in volume, that the brokerage business is noted for, a broker has, through necessity, to increase and decrease his staff or their remuneration with the times. In the past, the broker has been reluctant to do so, and, as a matter of fact, carried his staff to the bitter end; first, as a matter of sympathy, and secondly, in the hope that business would come back to normal, and further because of the difficulty of training a new staff. Under the present tax set-up it will not be possible to carry staffs, and of course the last man in will be the first one to go. However, under present taxation he will have to cut severely in bad times, and thus increase unemployment unless provision is made under the taxation laws for some reserves in the good times.

It would seem reasonable that all partnerships and sole proprietors including stock brokers should be allowed the same privileges as incorporated companies, namely, to be taxed on the profits left in the business at the same rate as companies.

For instance, in the last year of the aforementioned typical example, if the firm were incorporated, the taxes on the business would be $22,500 instead of $35,700 providing the partners' salaries were $5,000 a year, on which in addition they would have to pay tax of about $1,000 each. This difference of $10,000 would provide a reserve in the business for the lean years, which have always come in the past.

The CHAIRMAN: Is there not a compensating factor for the shareholder? In a joint stock company there is a disadvantage against them in that they pay double taxation.

Mr. BRAIS: The shareholder?

The CHAIRMAN: Yes; in a joint stock company there is first the regular income tax, and then when the money is distributed in dividends to the individual shareholder he again pays tax. That is not the case with the partner or the single proprietor.

Mr. BRAIS: It is not the same with the partnership or with the single proprietor, but across the board it is still to the advantage of the company. The company can leave in its treasury a portion of the funds available to see them through the lean years.

The CHAIRMAN: I am only pointing out one advantage.

Mr. BRAIS: It is there, sir. There is much more necessity, I believe, of allowing them to leave some of that money there for the benefit of facing the difficult years.

It is, therefore, suggested that the tax on profits left in a business by a partnership, or by a sole proprietor, should be taxed at the same rate as incorporated companies.

It is further suggested that the provisions in the Income Tax Act, regarding profits in one year being used to offset losses of other years, should be calculated after the allowance for salaries to partners or proprietors. This is not the case at present. In the example given, there are three years out of the ten when the business would show a loss if this were done, presuming the partners had a salary of $5,000 each.

We would like to bring to your attention that under the 1946 rates, some of our firms will pay more taxes than they would have under the 1945 rates. This is due to the refundable portion of the 1945 Excess Profits Tax having been allowed as a deduction from income for Income Tax purposes.

I had an interview with Mr. Ilsley on that qustion and he told me in no uncertain terms that he thought the former statute had been unfair to joint stock companies in that differentiation. We propose to have further talks with him, but it has brought a situation to light whereby those who will be forunate enough to make more money this year will pay a tax on a higher basis than last year.

To sum up, we respectfully suggest that you should consider the advisability and the equity of placing all businesses, whether incorporated or not, on the same basis of rate of taxation on profits that are left in the business. In addition, we submit that the present 1946 rates of taxation on profits of business, whether incorporated or not, are such that it is impossible to provide sufficient reserves to properly carry on business in the lean years, especially for those that fluctuate to the extent that the stock brokerage business does. Unless the rates are considerably lowered, it is our opinion that unemployment will be increased and that it will remain impossible to build up reserves sufficient to maintain stability in the stock brokerage business, whose main function is to provide a free and open market for the investment of the savings of the public.

This is submitted on behalf of the Montreal Stock Exchange and the Montreal Curb Market.

Hon. Mr. CAMPBELL: Your suggestion, therefore, is so far as all partnerships are concerned they should no longer be taxed on a personal basis but on a corporate basis.

Mr. BRAIS: My suggestion is that they should be taxed on the basis of a corporation; that they should have the same privileges that a corporation has.

Hon. Mr. CAMPBELL: And that they should pay personal taxes on their salaries, and any dividends or withdrawals from the business.

Mr. BRAIS: As and when withdrawals are made.

Hon Mr. CAMPBELL: And that they should pay the corporate rate on earnings of the business.

Mr. BRAIS: Anything that is left in the business would have to be treated the same as it is treated by a joint stock company.

Hon. Mr. CAMPBELL: Taxed at a corporate rate.

Mr. BRAIS: That would be at the corporate rate.

Hon. Mr. HAYDEN: Do you suggest, that where business fluctuates violently in its earnings, a normal basis of earnings should be established, akin to the standard profit and apply income tax annually on that basis, disregarding actual earnings.

Mr. BRAIS: I do not know how long we are to have the standard basis of earnings with us.

Hon. Mr. HAYDEN: I am just using that as an example, the establishment of a normal basis of earnings, and say that is the standard basis of earnings for this business regardless of fluctuation from year to year, then the tax would be levied on that basis.

Mr. BRAIS: A corporation decides what reserves it is going to leave in; I think an individual, and I should like Mr. Dunton to correct me if I am wrong, should be allowed to calculate what he is going to leave in his business for the purpose of carrying him over the lean years.

Hon. Mr. HAYDEN: There has been some discussion in relation to farmers because their earnings fluctuate so violently. I was wondering whether your suggestion was applicable to them.

Mr. BRAIS: There is a basis on which you could work with the farmers, that would be on his acreage; whereas, the stock broker, and particularly the chap who is beginning in business, has not the requirements to meet personal expenses that the old-timer has. I do not see how you can fix that any more than you can fix the lawyer's standard of earnings, which of course would be based on his standard of living and other requirements. For the farmer there is some basis on which you could operate, and I think it is an excellent suggestion.

Hon. Mr. HAYDEN: What do you suggest should be done in view of the fluctuation in the earnings of the brokerage business from year to year?

Mr. BRAIS: That the money the broker has available be left in the business at his discretion. This principle should apply to any similar business. We are not asking this for the stock brokers alone. But we feel our need is great because we are subject to greater variations than any other type of business.

Hon. Mr. HAYDEN: The money is not subject to tax until it is taken out?

Mr. BRAIS: Not until it is taken out.

Hon. Mr. HAYDEN: And if you were on a corporate basis, it would not even be subject to the regular rate of corporate tax.

Mr. BRAIS: I do not think it would be. I have had a chat with Mr. Clark about this question and while he has not said "No", I know that the government is looking into the problem for the sake of stability of these businesses.

Hon. Mr. CAMPBELL: May I ask one more question, Mr. Brais. I cannot see just how your proposal would be on the same basis as the corporate practice is to-day. For instance, assuming a broker makes $25,000 in one year, and $15,000 another year; in the three previous years, which were lower, he withdrew $5,000 per year. If you treat it on a corporate basis, he would be allowed the $5,000 as a charge against that business the same as a corporation, and then he would pay the corporate rate of tax on the balance. If he wished to distribute that balance he would also have to pay his income tax on that, if it is on a corporate basis. Your suggestion is that he could make an election; in a year of higher earnings he would say, "I only need to leave $5,000 in as a reserve and withdraw everything else, upon payment of personal income tax, and those earnings would not be taxed on a corporate basis at all; in fact, there would be no double taxation." Would there not be a very distinct advantage to the partnership as against the corporation in a case of that kind?

Mr. BRAIS: Might I ask Mr. Dunton to answer that question to be sure that you get the right answer.

Mr. DUNTON: The suggestion of the Stock Exchange was that any reserve left in should be taxed at the same rates as the corporation rates.

Hon. Mr. CAMPBELL: I did not understand, when Mr. Brais said to leave it to the discretion of the partner as to what he should withdraw or what he should leave in.

Mr. DUNTON: The suggestion was that whatever the partners left in should be taxed at the corporation rates, but that there should be no restriction as to how much they should leave in or how much they should take out.

Hon. Mr. CAMPBELL: That is, you would tax the partnership as you would a corporation?

Mr. DUNTON: Yes, put it on the same basis as a corporation.

Mr. BRAIS: Our supplementary brief, which is also a short one, deals with matters that have been particularly referred to this committee. With your permission I will now read it: Supplementing our brief of January 31, 1946, we would like to submit the following:—

## BOARDS OF APPEAL

In addition to the present right of appeal to the Exchequer Court, it is suggested that there should be established Local Boards of Appeal in Montreal and in all the cities across Canada where there is located an Income Tax Office. This Local Board of Appeal should be composed of three or more men, the majority of whom should be other than officers of the Income Tax Department.

There is a slight variation there from the other suggestions that have been made. We do not ask that income tax officials should be on that board, but we felt that at the inception it might be well to have some income tax officials on the board in order to steer it on the meanings of rulings. Often a new board will make rulings that appear to apply to one particular case only, but when they are read in the light of all the cases that are to come they are seen to be very broad.

To this Board the taxpayer should have the right of appeal with the least amount of formality and expense.

From time to time there occur differences of opinion between the taxpayer and the Department, in which the amount of money involved may not be very large with the result that the taxpayer pays the additional tax, but is left with a feeling of injustice. The fact that he is able to appear before an independent Board and argue his point of view, even though the decision might eventually go against him, would tend to eliminate the feeling of unfairness. In addition, it would ensure that the various assessors were interpreting the Department Rulings and the Act in a similar manner. The findings of such a Board could serve as a guide to the assessors.

In order to ensure uniformity amongst these Local Boards, it is suggested that there be a Head Office Board of Appeal to whom either the Department or the taxpayer could further appeal his case. This Head Office Board of Appeal should travel across Canada at stated intervals so that taxpayers across the country would not have to appear in Ottawa.

It is suggested that the findings of these Local Boards of Appeal, and the Head Office Board of Appeal, should be available to all taxpayers without the name of the taxpayer in the case being published.

INTEREST ON ARREARS OF TAXES

At the present time the Department does not allow as an expense of the business the interest charged by the Government on payments of taxes, either on Income Taxes or Excess Profit Taxes, even though the liability of the amount of taxes payable may be, and often is, not determinable for a number of years.

The figures in the next paragraph of the brief are not to be taken as typical at all of profits made by brokers. Mr. Dunton, when preparing the brief, simply used these figures for purposes of illustration.

For instance, the taxpayer may feel that he is entitled to a standard profit under the Excess Profit Tax Act of $100,000. He computes his tax accordingly and pays it promptly. Some years later he may be awarded a standard profit of $60,000. As this would involve an additional payment of $40,000, the interest in addition would be several thousand dollars, which he could not deduct as an expense of the business. In the meantime this $40,000 has been producing income in the business, which in itself is fully taxable. This is particularly so in the brokerage business, where the firms are constantly borrowers of money.

Under the Income Tax Act an individual has to estimate his profits for the current year in advance, and make instalment payments. Should his profits exceed this estimate then he has to pay interest on the difference between the estimated tax and the final tax, and such interest is not allowed as an expense of the business. The profits in the brokerage business fluctuate to such a great extent that it is practically impossible to estimate the profits ahead of time. It does not seem reasonable that the interest on a tax that is not yet determined should be disallowed as an expense of the business.

As interest on tax payments is theoretically to adjust discriminations between the taxpayers, if it is allowed as an expense, the theory or principle behind it would not be upset.

Hon. Mr. CAMPBELL: Is interest charged before the tax is due? Supposing that at the beginning of 1946 a man estimates his income for that year at $100,000, and he actually earns $150,000, is interest charged in that case?

Mr. DUNTON: There is an interest charge on the under-estimate.

Mr. STIKEMAN: Not if it is paid on time.

Mr. DUNTON: Then I am wrong.

Hon. Mr. HAIG: Let us be sure about this. Say I estimate my 1946 income to be $10,000, and I pay my quarterly instalments of income tax on that basis, and when I get to the end of the year I find that my income was larger than I had estimated it and therefore my quarterly instalments of tax payments were too small. Then I would have to pay interest on the amounts that I had underpaid on the quarterly dates?

Mr. STIKEMAN: No. An individual pays interest only from December.

Hon. Mr. HAIG: Then I do not need to make my quarterly instalments at all. I can just stand pat and pay in December.

The CHAIRMAN: You must pay your instalments.

Hon. Mr. HAIG: Suppose when I get to the end of the year I find that my income has been $14,000, instead of $10,000 as estimated. Do I not have to pay interest on the shortage in my quarterly instalments?

Mr. STIKEMAN: No, sir.

Hon. Mr. MCRAE: What protection has the Government got against an under-estimate of income?

Mr. STIKEMAN: None.

Hon. Mr. HAIG: I do not think that is so.

Mr. STIKEMAN: Your estimate cannot be lower than your last year's income. That is the Government's guarantee against an under-estimate.

Hon. Mr. HAIG: But suppose I estimate my 1946 income to be the same as my 1945 income was, and it turns out to be a lot better than that.

Hon. Mr. ASELTINE: You cannot be penalized for that.

The CHAIRMAN: A man might know very well that his income this year will be a good deal less than it was the year before. Do you mean to say that in such case he cannot put in the estimate of what he is pretty sure his income will be? It would be absurd if he could not do that.

Mr. STIKEMAN: Looking at section 48, I think there is interest on under-payments.

Hon. Mr. HAIG: I think so. I think I have been charged.

Hon. Mr. MORAUD: No, interest is not charged.

Hon. Mr. HAIG: Read the section.

Mr. STIKEMAN: Subsection (3) of section 48:

> Every person, other than a corporation or a person to whom subsection two of this section applies or a person whose chief business is that of farming, shall pay all taxes, which he is liable to pay upon his income during any taxation year under any of the provisions of this Act except sections 9B, 27 and 88 thereof, as estimated by him on his income for the year last preceding the taxation year or on his estimated income for the taxation year, in either case at the rates for the taxation year, by quarterly instalments during the taxation year as follows.

Then, at the end of that subsection:

> and if, after examination of any person's return under section fifty-three of this Act, it is established for the purposes of this Act that the instalments paid by him under this subsection amount, in the aggregate, to less than the tax payable, he shall forthwith after notice of assessment is sent to him under section fifty-four of this Act, pay the unpaid amount thereof together with interest thereon at four per centum per annum from the thirty-first day of December in the taxation year until one month from the date of mailing of the said notice of assessment and thereafter at seven per centum per annum until the date of payment.

Hon. Mr. HUGESSEN: That is after assessment.

Mr. STIKEMAN: Yes.

Hon. Mr. HAIG: Then I was wrong.

Hon. Mr. HUGESSEN: Supposing he makes his return on the 31st of April?

Mr. STIKEMAN: Then he pays interest from the 31st of December.

The CHAIRMAN: Let me come back to my question about estimated income. Suppose that my income last year was $20,000 and that I know it will not be more than $10,000 this year. Have I to make my instalment payments this year on the basis of $20,000?

Mr. STIKEMAN: No; on the basis of your estimate.

The CHAIRMAN: And if at the end of the year it turns out that my estimate was too small, interest will be charged against me?

Mr. STIKEMAN: Only from the end of the year.

The CHAIRMAN: That is an inducement to a man to underestimate his income.

Mr. BRAIS: All that is asked here is that the interest which the individual has to pay because of underestimating his income should be chargeable to the business, because the business has had the use of the money to earn more money.

Hon. Mr. HAYDEN: There is a subsection dealing with instalment payments, and I think that under that subsection interest is payable on the underestimated tax until paid.

Hon. Mr. CAMPBELL: You are thinking of subsection 6?

The CHAIRMAN: If I am found to have underpaid each instalment during the year, do I have to pay interest on the amount underpaid in each instalment?

Mr. STIKEMAN: Yes.

The CHAIRMAN: If that were not so, a man could underestimate his income right along.

Hon. Mr. CAMPBELL: It seems that you may estimate your tax on the basis of your earnings for the previous year, or you may estimate a different amount, but it cannot be lower than the amount you earned in the previous year.

The CHAIRMAN: Mr. Stikeman says it can be lower.

Hon. Mr. CAMPBELL: If your estimate of this years income is not lower than your earnings for last year, and you pay the instalments, then no interest becomes payable till the end of 1946.

Hon. Mr. CAMPBELL: If your estimate of this year's income is not lower previous year's income, and if in fact your income for this year turns out to be higher than you had estimated, do you then have to pay interest on the amount by which each of your instalment payments was lower than it should have been?

Mr. STIKEMAN: Subsection (6) of section 48 says:—

> (6) Any person required to pay tax on the quarterly instalment basis as provided in subsection three of this section, or under section eleven of The Excess Profits Tax Act, 1940, who pays less on any quarterly instalment date than the required instalment as referred to in subsection three of this section or section eleven of the Excess Profits Tax Act, 1940, shall pay interest at four per centum per annum upon any deficiency until paid. The deficiency shall be the amount by which the amount paid is less than the required instalment mentioned in the said subsection and section when calculated at the taxation year rates, on either
>
> (*a*) the income of the preceding year, or
>
> (*b*) the income of the taxation year,
>
> whichever is the lesser.

In other words, if your instalment is lower than it would have been if calculated on the basis of your preceding year's income or of the income in the taxation year, whichever of these is the lesser, you have to pay interest on the deficiency, but not if your estimate is the same as the income of the preceding year.

The CHAIRMAN: That is fair enough, otherwise it is just an inducement for a man to underestimate his income because he has not to pay any interest on the excess.

Mr. STIKEMAN: There is no interest until the end of the year providing you do not underestimate your income compared with that of the preceding year.

Mr. BRAIS: My fear is in regard to the previous year's income. For example, if the broker in the first three months of the year ran into a disastrous market and did not make any money at all, and did not have any money to pay the tax, he would be obliged to estimate on the previous year and borrow money to pay tax on income he has not made; but towards the end of the year

he runs into an active market, and then he would find he had paid on too little and he would have to pay interest on the excess.

The last portion of the brief, honourable senators, is with reference to partnership insurance.

It is suggested that the premiums paid by the partnership on the life of one of the partners where the surviving partners are the beneficiaries should be allowed as an expense of the partnership to the extent that such premiums exceed the increase in cash surrender value of the policy. As it is practically impossible for a partner in a brokerage firm to build up any capital under the existing tax laws, it jeopardizes the continuation of the firm when a partner with a large part of the capital dies.

Further, practically the only plant and machinery of the brokerage business are the brains and personalities of the partners. Insurance premiums might be considered as being depreciation allowance on such plant and machinery. Each partner contributes either skill or capital to a partnership. It would seem reasonable that those contributing skill and industry should not be penalized by the sudden loss of capital.

Respectfully submitted,

The CHAIRMAN: Mr. Stikeman, do you wish to put some questions? This is our usual practice, Mr. Brais.

Mr. BRAIS: Thank you, sir.

Mr. STIKEMAN: I should like to ask you, Mr. Brais, whether the independent board to which you refer should in the opinion of your members consider disputes which may arise with the department before the assessment is actually finalized on such matters as depreciation allowance and so on.

Hon. Mr. MORAUD: In other words, to obtain a ruling.

Mr. BRAIS: It seems to me and to Mr. Dunton that there should be an assessment, because the assessment may clarify problems, and in any event give material to work on.

Mr. STIKEMAN: Therefore your board would be a board to which you would appeal your assessment before taking it to the Exchequer Court?

Mr. BRAIS: Yes I think that would simplify the procedure and save a lot of time.

Mr. STIKEMAN: Would you consider the board should always sit en banc with three members or singly?

Mr. BRAIS: No, I think from my experience of boards sitting en banc and singly, I would prefer that the board should sit en banc.

Mr. STIKEMAN: You explained to us earlier that the board might be composed of some members of the taxation department, but I gather they would not be members of the board in their official capacity; the board therefore would be independent?

Mr. BRAIS: There would be two processes there: either have an adviser to that board in the person of a member of the department or a skilled member of the department, like yourself, Mr. Stikeman who would have to sever all connection with the department.

The CHAIRMAN: He is not a departmental member now.

Mr. BRAIS: I appreciate that.

Hon. Mr. Hayden: Do you think there should be a departmental adviser to the board at all?

Mr. BRAIS: I have this in mind. You set up a board—we have found it so with the Workmen's Compensation Board and other boards—and it runs into that difficulty at its inception. The board at its inception sometimes makes a ruling so broad that there may be fifteen cases radiating from that particular

case to which that ruling has no application. There would have to be some direction to that board.

Hon. Mr. HAYDEN: Do you mean the quantum should influence the principle?

Mr. BRAIS: No. I may make a ruling on a case but in the wording I have made that case such that the ruling can apply to fifteen other types. In other words I have made the ruling too broad.

Hon. Mr. HAYDEN: You would suggest a sort of legal adviser?

Mr. BRAIS: A legal adviser. Unfortunately the auditors are now usurping some of the privileges of the lawyers in advising on income tax. We have serious objections to that practice, but apparently we cannot stop it. There should be a technical adviser so the problem can be canalized on the one case.

Hon. Mr. HAYDEN: I think there should be a board absolutely independent of the department.

Hon. Mr. HAIG: I agree with the witness. I do not think a man still in the department should be on the board.

Hon. Mr. HAYDEN: He should not be an adviser either.

Hon. Mr. MORAUD: It depends on the functions of the board. Would you have the board make rulings on assessments, or would you have it make rulings beforehand?

Hon. Mr. HAYDEN: The only way you could get to the board would be to appeal your assessment.

Hon. Mr. MORAUD: But you may ask that board to give rulings beforehand.

Hon. Mr. HAYDEN: No.

Hon. Mr. MORAUD: I was wondering what the witness thinks about it.

Hon. Mr. HAIG: The witness said no.

Mr. BRAIS: I am a little bit lost as to what is the question really before me.

Mr. STIKEMAN: I asked you would you want the board to advise before an appeal was put in.

Mr. BRAIS: After the assessment. The dissatisfied taxpayer would then appeal to the board.

Hon. Mr. HUGESSEN: Take the case of a proposed reorganization of a company do you think that the board should have power to deal with that theoretical case and say: If you do so and so, you will attract a certain tax?

Mr. BRAIS: I did not understand the question. I see no objection to references being made to a board by the Commissioner of Income Tax. Suppose he has a problem which is coming up, he has a competent board; he makes a reference to that board. That is perfectly all right. I would not think that the taxpayer should be entitled to go to the board before there is an assessment.

Hon. Mr. MORAUD: Why not? If the Commissioner has the right, why not the taxpayer? We will say the taxpayer has a company which he is going to reorganize. Why should he not have the right to go to the board and say, here is my problem?

Mr. BRAIS: I think he should have the right to go to the Commissioner and have a reference. But if every person wanted to go to that board on every problem that came up you would find a group of individuals or a type of business always before that board and it would clog that board.

Hon. Mr. MORAUD: We are going to the department. Why should we not go to the board?

Mr. BRAIS: After assessment?

Hon. Mr. MORAUD: No before.

Mr. BRAIS: In odd cases you have asked me what my opinion was. I see no objection to the department wanting to have a reference; but I see some complications in the practical operation of the board if everybody could at no expense go before that board.

Hon. Mr. MORAUD: The party is not the Commissioner, it is the taxpayer.

Mr. BRAIS: With a board there, we must presuppose that if the problem is sufficiently serious to merit consideration the Commissioner would want that consideration given by the board.

Hon. Mr. MORAUD: Suppose he says, "I won't go"?

Mr. BRAIS: In a reasonably democratic government it should not happen. We must not make it too tight.

Hon. Mr. CAMPBELL: The taxpayer comes to the department and says: There is a question about the interpretation of this section and how it is to apply in this particular reorganization. You cannot tell me definitely what the meaning of the section is. I cannot advise my client therefore, and I suggest to you that you state a case on this particular section and on these facts for the Board of Review. You feel that that would be the proper procedure under your proposed amendment to the act?

Mr. BRAIS: Adding this: If the Commissioner did not see fit, or the minister—it always stems from the minister—did not see fit to grant that, and subsequently the matter went before the board, and the board did not agree with the taxpayer, that would make the taxpayer feel that he had some protection on the assessment.

Mr. STIKEMAN: Do you think the board should be allowed to substitute its opinion for the minister's discretion?

Mr. BRAIS: If the board exists, it should.

Mr. STIKEMAN: The Exchequer Court is unable to do so.

Mr. BRAIS: That has not been a very healthy jurisprudence.

Mr. STIKEMAN: I wanted to get it clear that your feeling is that the board should hear appeals on all grounds, whether discretional, factual or legal?

Mr. BRAIS: Yes. We know what the discretion is based on, and if the discretion has not been exercised or has been arbitrarily exercised, I think the board should be entitled to use that discretion.

Hon. Mr. HUGESSEN: Your opinion, Mr. Brais, sums up what other witnesses have said to us in previous hearings. They have objected very strongly to the breadth of discretion given to the minister. But I rather gathered from them that if there was this board of appeal, and it was given power to review the exercise of ministerial discretion, their objection to the discretion would largely disappear. In other words, the taxpayer would have his day in court before this board of appeal, which would review the discretion of the minister. Would you agree with that?

Mr. BRAIS: Yes.

Hon. Mr. HAYDEN: You think discretions are all right, in fact make a more flexible statute, as long as the taxpayers is given the right of appeal?

Mr. BRAIS: Yes.

Mr. STIKEMAN: Do I gather from your discussion of interest that you contemplate that interest should not be charged at all, or is it limited to your statement that the interest charged should be a deduction from profits?

Mr. BRAIS: Those are my instructions, just as you have it there. We carefully considered it when that part of the brief was drafted, and we came to the conclusion that if you are not charged interest, as the honourable Chairman has said, it would be an inducement to underestimate your income; but if you

are charged interest, you should be allowed to deduct that interest, because in the main while the income on the deficiency is a profit of the business, it produces income on which the government would to that extent receive interest.

Mr. STIKEMAN: Would you charge it to the year in which it was assessed or the succeeding year?

Mr. BRAIS: The auditor tells me that interest accrues from day to day and should be distributed in that way.

Mr. STIKEMAN: If for a given year you are deficient in your tax payment, and later on the tax is computed and the interest charged, in what year should the interest itself be charged?

Mr. DUNTON: I think the amount involved is so very large that the most practical method would be to allow it to be charged in the year in which it was paid.

Mr. STIKEMAN: That would be the succeeding year.

Mr. DUNTON: Yes.

Mr. STIKEMAN: It would be much simpler that way.

Mr. DUNTON: It would be simpler, although technically it would be divided up into years.

Mr. STIKEMAN: There is no technicality present; I just wanted your thoughts on the subject.

Hon. Mr. HAYDEN: Mr. Brais, the Chartered Accountants Association suggested a limited period for the right of the department to assess or to re-assess a return. They suggested that it must be done within a year or two.

Mr. BRAIS: Yes, that is right, with the exception of fraud. I do think there should be a limit, whether it should be two years or three years I do not know. It should be within the least possible time to allow the department to examine the returns. Some difficulty might arise after the death of the taxpayper, and a great hardship might be created with no suggestion of fraud.

Mr. STIKEMAN: In your reference to the possibility of permitting insurance in certain organizations such as the brokerage partnership, you draw an analogy between depreciation and permission to set up a charge for the diminution of the mental or intellectual values of the personalities in the partnership. Would you extend that principle to all taxpayers and permit amortization of intangible capital in every case?

Mr. BRAIS: I certainly believe it should be extended to the legal partnerships.

Some Hon. SENATORS: Hear, hear.

The CHAIRMAN: Order.

Mr. BRAIS: But in the case here it is necessary to protect the creditors of a going concern by not withdrawing from the concern a very substantial portion of the capital upon the death of one of the partners. I think it would certainly put the business on a healthy basis if this partnership insurance could be incorporated. Under the circumstances, I believe it would be in the interest of the government as well as the company to incorporate parternship insurance.

Mr. STIKEMAN: I was interested in the thought behind that suggestion, that you would draw a parallel between insurance and depreciation. Depreciation is a charge that is allowed for wear and tear; therefore, to make an analogy you would really have to compare it with the amortization of intangible assets which would not be subject to wear and tear during the course of time. I now ask you, would you extend this as a principle of taxing law to all businesses in respect of intangible assets, whether mental, patent or copyright.

Mr. BRAIS: To all businesses where there are partners, and where the withdrawal of one partner would do harm to that business. It has been mentioned to

me by one of my good friends, and I think you will agree with it, that the broker who goes through bad years and good years suffers a lot of wear and tear. It is not intangible; it is real mental wear and tear.

Mr. STIKEMAN: Your answer to the question is somewhat limited to partners and partnerships; that is, the partners who suffer mental wear and tear.

Mr. BRAIS: I would not say just that.

Mr. STIKEMAN: The witness does not extend it past a partnership of this kind. It seems to me the principle should be extended to all businesses.

The CHAIRMAN: He is representing this particular business.

Hon. Mr. HUGESSEN: I wish to ask Mr. Brais one further question about boards of appeal, and I shall put it in the way of a suggestion to him. First of all, your suggestion was that each board should consist of three or four men; and secondly, there was to be a head office board of appeal. I am wondering if you would not be overweighing the machinery. I am just thinking out loud now, Mr. Brais, but I should like to have your thoughts on the subject. Would it not be possible to have a board, say, of two men sitting on each appeal, rather than have a central board of appeal sitting in Ottawa? I would envisage a board of, perhaps six men all together sitting in groups of two all around the country, and being changed from time to time. It might consist of six or eight men, but should be sufficient so that two or three of them could sit on a panel all over the country at different times.

Hon. Mr. HAIG: The Railway Commission does just that.

Hon. Mr. HUGESSEN: They should not confine their activities to one city, nor should there be one separate board for Montreal or Toronto. As I say, I envisage a board of a certain number of men, sitting in groups of two in different parts of the country, but action as one board. Would not that give the amount of flexibility required and insure a uniformity of practice throughout the country?

Mr. BRAIS: I am a little hesitant about approving such a board, or making that suggestion myself. We have found that boards of appeal vary, and since the honourable senator comes from my part of the country he will know what I have in mind. But when a board sits in separate places, and when judges sit two in one place and three in another place, it has failed to do exactly what we are trying to do here, that of getting uniform decisions. Whereas if the board sat together and saw a good deal of each other it could deal with new problems as they came up and before someone else on the other side of the country had a similar problem. It would prevent conflicting decisions. I am looking at it from the practical standpoint.

The CHAIRMAN: What would the composition of this head office appeal board be, head office officials?

Mr. BRAIS: No.

The CHAIRMAN: And if it did consist of officials you would be going back to the problem you now complain of.

Mr. BRAIS: No, it would consist of highly competent lawyers or auditors, whatever the government saw fit to appoint. They would at least be men with a great deal of experience in these matters.

The CHAIRMAN: And just as independent as the original appeal board.

Mr. BRAIS: Oh, quite. And they would, for example, have an overflow of two or three members who had sat on other cases and who could confer on their problems.

Hon. Mr. HAIG: On behalf of the members of the committee I wish to move a vote of thanks to the officials of the Montreal Stock Exchange and the Montreal Curb Market for coming here and giving their able presentation.

Mr. BRAIS: Mr. Chairman and honourable senators, on behalf of my clients and myself I thank you.

The CHAIRMAN: We have with us this morning Mr. Charles Oliphant. Mr. Oliphant is the Assistant General Counsel for the Treasury at Washington, and he has very kindly accepted our invitation to come here and give us the benefit of his advice and information. I now call on Mr. Oliphant.

Mr. OLIPHANT: Mr. Chairman and honourable senators, I come here more as a visitor than anything else. I have been in Ottawa before, and it is always a pleasure to renew my acquaintances here. While I am with the Treasury Department and am an official of that department, my appearance here is entirely personal. I believe the invitation was extended with the idea that I might be able to give you some historical background on the conditions we have had in our country, and so anything I may say is on that basis. With those preliminary remarks I will sit down, and go on from there.

The CHAIRMAN: Would you like to be asked questions?

Mr. OLIPHANT: Whatever Mr. Stikeman thinks best. I might say that I think the problem you now have is somewhat the same difficulty we had after the last war. In our income tax set-up we had comparatively few returns up to the first Great War. Then, with the war and the high tax rates we suddenly were faced with a flood of returns. Our department went through the process of its own education, in terms of what the law should be and what the law was. And secondly, perhaps the more important, in terms of how to get the business done with the least amount of difficulty.

This is what happened in our country. Along in 1920 or 1921 when we were suddenly flooded with millions of returns, where we had thousands before—and I think that is where you are today with 2,500,000 returns as against something like 500,000 before the war, with no prospects of having less in the future. When we were faced with that situation, we first set up revenue agents. We have two things that run hand in hand; we have collectors all over the country who get the returns in and service them, and audit the smaller returns. We also have the revenue agents in some 37 locations, and they do the examining job much like, I understand, your inspectors of revenue do.

We found there was a good deal of difference of opinion with respect to any issue. There had to be a review in Washington, and in a sense an independent review, or at least a skilled review, so we first set up a committee of appeal and review. May I preface that remark by saying that an agent will go and make an examination; he writes a report of what the taxpayer says. The taxpayer then comes in and the matter is argued back and forth. If the taxpayer agrees to the adjustments, or a mutual agreement is reached, they sign an agreement form. That agreement between the revenue agent and the taxpayer is reviewed in Washington by what we call an audit review division. If the division does not agree with it, it goes back to the revenue agent and the same torturous process is gone through again.

It was the existence of the backlog of work built up in Washington in that audit review set-up that required the establishment of this committee of competent men, called our Committee of Appeals and Review. You understand that organization is an appellate body, and entirely within the bureau of Internal Revenue, which is in turn within the Treasury Department. This appellate body too had its limitations. For instance, a taxpayer may have felt that he did not have his issues fully adjudicated, and wanted an opportunity of an independent judgment. At that point there arose another problem. Under our system as it was then we assessed the tax as you do. We have a statute of limitations and always have had, which provides that the taxes will be assessed within three years from the time the

return is filed. In those days the government was forced to look at the case with general rapidity to get it within the three-year provision, and at the same time the taxpayer had only one course of action. He could accept what the bureau said, and pay the tax; then if he wanted to go further and have an independent view on the subject he was obliged to sue in one of the district courts. This procedure is expensive, in addition to having to pay the tax.

Many disputes arose, and it inflicted a real hardship on the taxpayer through having to pay the tax and then proceed through the judicial process of suing. Eventually if he got a decision in his favour, he would receive a refund.

So we set up a Board of Tax Appeals. That board is composed of sixteen members, one of which is the chairman. They are appointed for a term of twelve years, at a salary of $10,000 a year. That board is not a court. Its name was changed—I am skipping ahead a little bit now—its name was changed in 1942 to the Tax Court of the United States, but it remains an independent establishment within the executive branch of the Government.

At the same time that that board was set up we provided that if you filed your return the collector would assess the tax on the income shown on that original return. Then the case would go over for examination by our revenue agents, and the revenue agents and the bureau would propose an additional assessment, which is something like your reassessment, as I see it. On that the statutory limitation, of course, was the same; that additional assessment had to be made within three years.

So the procedure that we devised for getting the business done and getting the cases to the board was that, as before, the revenue agent would make his examination, the taxpayer would come in, and if they could agree an additional assessment was made and the tax was paid. If they could not agree, then, as a refinement, a letter would go out to the taxpayer, a preliminary letter, advising him of what our preliminary determination was, and he was given a right to protest it. That is again a semi-private procedure within our revenue agent's office. He had to protest within sixty days. He came in then for a second conference in the revenue agent's office and they would try to settle the case again. If they could not, the taxpayer's protest would be denied, and at that point—this is all statutory now—the commissioner would issue a statutory notice of deficiency. That notice goes to the taxpayer, and it says, "I propose to assess against you as a taxpayer an additional amount of . . . dollars for the year, say, 1942."

If the taxpayer does not agree with that determination of a deficiency, he has the opportunity of filing within ninety days an appeal to the Board of Tax Appeals, or to the Tax Court. So the initial step towards an independent review is this notice of deficiency which the commissioner sends out. In that the taxpayer is furnished with a copy of the revenue agent's report, except in fraud cases. In fraud cases our revenue agents furnish a copy of their findings to the taxpayer, so that he presumably will know the basis of the assessment.

This deficiency notice goes to the taxpayer, setting out the deficiency and why there is believed to be a deficiency, and if the taxpayer then does not want to accept this finding he files an appeal to the Board of Tax Appeals, now the Tax Court. That appeal comes into Washington, into the main office of the Board of Tax Appeals. With his appeal the taxpayer encloses a copy of the commissioner's determination, and he says in effect "I take exception to it and I want the Board, or the Tax Court"—I will refer to it as the Tax Court—"I want the Tax Court to look over it and see whether they agree with it." In his appeal the taxpayer must set out his reasons for thinking that the commissioner made a mistake. The commissioner then files an answer, in which he may deny he made a mistake, or he may admit he made a partial mistake. When that answer is filed the taxpayer and the commissioner are at issue.

Hon. Mr. LEGER: The appeal and the answer are the pleadings?

Mr. OLIPHANT: Yes, they are our pleadings. All this may sound fairly formalistic, but in actual operation it is not. To a degree it is fairly formalistic but it is nowhere near as strict as, for instance, the procedure for our ordinary court pleadings.

I ought to interpose one comment here. If the taxpayer does not file his appeal within ninety days, he no longer has a right of appeal, so the commissioner may address a motion to the Tax Court for a dismissal. There may be a good many other preliminary motions. The appeal may be frivolous—there are not many of those. It may not be complete, and so on. There will be a good many preliminary motions which the commissioner may address to the court. All those motions are heard in Washington, on a motion day, and are either granted or denied. This procedure takes place prior to the filing of the commissioner's answer.

If the motions are denied, the taxpayer's appeal is accepted by the court as stating a case, so the commissioner then files his answer. I will go into some detail on this, if you wish me to, or I will pass over it quickly, as you prefer.

The CHAIRMAN: We would prefer that you stated whatever you think is necessary to complete your picture.

Hon. Mr HUGESSEN: Before you go on, may I ask you how many members sit on this procedural court?

Mr. OLIPHANT: On the motion court, just one. There may have been two or three exceptions over the years that I have been in the bureau and the years before that, when, because of an important motion, there was more than one member on the court.

Hon. Mr. HAYDEN: Is there a time limit within which the commissioner may make a motion?

Mr. OLIPHANT: Yes; the commissioner can attack the appeal within thirty days after it is filed. Once that answer is filed the parties are at issue. The presiding Judge of the Tax Court—he used to be called the chairman—with the Secretary of the Court and the Clerk of the Court, make the calendars, which set appeals down for hearing at convenient times in the major cities around the country. There will be a convenient grouping of all the cases in that way. Fifty cases may be set for hearing in Birmingham, Alabama, to start on March 1, let us say. While the rules of the court do provide for a division sitting with three members, there have only been two or three instances when more than one judge has sat. Our overwhelming practice consists of one-judge hearings.

Hon. Mr. LEGER: Do you call witnesses and have arguments by lawyers, and so on, as in a court of law?

Mr. OLIPHANT: Yes. I will come to that in a moment senator. Let us suppose hearings are set for Birmingham, Alabama. The cases there may last two or three weeks. In most of the cases the parties will have agreed in writing as to what the facts are, will have made stipulations of fact. In nearly every case there is either a complete or a partial stipulation of fact. Let me take what would be an average case. There will be a partial stipulation of fact in the average case, and when the case is called for hearing the person representing the taxpayer will make an opening statement. Let me interpose something on that score. The Board's rules will provide that an individual may represent himself, and a corporation may be represented by a duly authorized officer, and either may be represented by counsel—that is a lawyer or an accountant, there being a bar or group of practitioners whose qualifications are set by the Board itself. There is a regular so-called tax bar in our country, composed of lawyers, accountants and men of that calibre.

Hon. Mr. HUGESSEN: Do you mean that your name has to be inscribed on a list before you are entitled to appear before the Board?

Mr. OLIPHANT: If you wish to represent anyone other than yourself you must be admitted to practice before this Tax Court. We have found that advisable.

Hon. Mr. HUGESSEN: And the only people whom the Court admits to practice are lawyers and accountants?

Mr. OLIPHANT: That is roughly true, although there are special cases in which others are allowed to appear.

Now let us get back to the average case. There has been an agreement between the taxpayer's representative and the commissioner's representative on most of the facts or part of the facts. That is in writing. The hearing will take place in a convenient court room. When the case is called the taxpayer's representative will get up and make an opening statement of what he thinks the facts are and what he thinks the conclusions ought to be. Then the commissioner's counsel—the commissioner's counsel are all lawyers—gets up and makes a statement of what he thinks the facts are and the law is. Then the taxpayer puts in his case. He will call a witness or two, and there will be examination and cross examination. The proceedings are reported. Then the representative of the commissioner, the respondent, will put in his case. Ordinarily the respondent does not call many witnesses because—and this gets somewhat close to your discretionary power—with certain exceptions, which I do not think are material for presentation here, the statute makes the commissioner's determination prima facie correct. There is an assumption that it is correct, and it is up to the taxpayer to refute it. That sounds quite a weapon for the Commissioner every instance, but because the burden of proof is on the taxpayer, in the ordinary to have. In practice it is not, because the standing rules are for the Commissioner and the chief counsel to proceed to put on our case. We do the best we can in case there are few witnesses. Well, our evidence has been put in.

Getting to your point, sir, we have a witness box, a chair, the witness will be called, he will be sworn. Our tax board has power to subpoena.

The CHAIRMAN: It is all at the taxpayer's expense?

Mr. OLIPHANT: No. I probably should have said that all this costs the taxpayer is $10 when he files that appeal.

Hon. Mr. HAYDEN: Plus his counsel fees.

Mr. OLIPHANT: It is true of course that he has to pay his own counsel.

The CHAIRMAN: His witnesses too?

Mr. OLIPHANT: The witnesses are partially at the taxpayer's expense, but, as I say, the court has power to call witnesses and to subponea books and records. The case is called, the witness is put in the box, he is sworn. You then see how formal the proceedings are in themselves. By statute again the rules of evidence before the tax court are the rules of evidence in effect in the courts of equity in the District of Columbia, 1928; that is the statutory language. What that means is that the rules of evidence, as applied in the tax court, are such that the tax court gets all the picture. It is just that: the court will take it on itself to bring out the whole picture. It will examine the witnesses itself. There are few exclusions of evidence for purely formalistic reasons.

Hon. Mr. HAYDEN: Hearsay?

Mr. OLIPHANT: Not hearsay, no. We do have to apply the hearsay ruling. But there are ways of getting your evidence in if it is appropriate. All I am trying to say is that it is an opportunity for the taxpayer to present all his case, and for the commissioner to present all his answers.

Hon. Mr. LEGER: No objecions to leading questions?

Mr. OLIPHANT: There are objections, yes, but as the practice goes you can lead a witness just so far.

Hon. Mr. CAMPBELL: As you can anywhere.

Mr. OLIPHANT: Yes. We have all been cut off at the right point. The judge will finally say, "You have been leading the witness far enough."

After the witnesses have been heard, there is very rarely oral argument on the law before the Tax Court. Practically in every case the parties are given time in which to file a brief. The brief contains two things. One, all the facts. The reason for that is that our statute requires—and I think this is important—that the court make a finding of fact in every case. You gentlemen can probably appreciate that. Second, argument on the law. The briefs are usually simultaneous.

Hon. Mr. HAYDEN: No exchange?

Mr. OLIPHANT: There is an exchange of briefs.

Hon. Mr. HAYDEN: After filing?

Mr. OLIPHANT: The briefs come into the tax court and copies are sent by the tax court to both parties, and then there can be answering briefs filed. Then you case stands submitted on the briefs.

Bear in mind, this hearing we are talking about has all been before one member. He takes this batch of cases he has heard back to Washington with him. He then considers them and reaches his conclusions as to what the answer should be. Then they go to the presiding judge of the court to decide whether they should be reviewed by the whole court. Review of the decision or opinion of one member is within the discretion of the tax court itself. On important questions, not one, two or three men review it, but the whole court review the decision.

The CHAIRMAN: How many would that be?

Mr. OLIPHANT: Sixteen men will review the decision.

Hon. Mr. HAYDEN: That is internal?

Mr. OLIPHANT: Yes, that is internal.

Hon. Mr. HAYDEN: That cannot be open to the taxpayer?

Mr. OLIPHANT: There have been motions in the past asking for a review of a decision where there has been a one-man decision, but it is not very frequently done. The Commissioner never does it.

Hon. Mr. HUGESSEN: There is no statutory right?

Mr. OLIPHANT: No, it is all an internal operation.

Let us presume he does, and it has to be reviewed by the board. The whole board will look at it, and the majority of the board may reach a conclusion different from the judge who heard the case.

Hon. Mr. CAMPBELL: That is a review before judgment is delivered?

Mr. OLIPHANT: Yes.

Hon. Mr. BUCHANAN: Is the taxpayer represented?

Mr. OLIPHANT: No, it is all done in the confines of the judge's chamber. If the decision is reviewed by the board, then one judge representing the majority view will write an opinion, and then the other members can dissent or concur, and that opinion is printed. If the case is not reviewed by the board, and it is of some importance, the case is still printed. It will come out as the opinion of one judge. That is the opinion of the tax court if it is not reviewed.

In other cases which decide no principles, such as cases involving questions of fact, valuation and items like that, the opinion will come out in the form of a memorandum opinion and it will be mimeographed. But in every case there is a published decision by the board.

The step after that is that, within a given time, the decision becomes final. Then the taxpayer has to pay the tax unless he wants to appeal to one of our circuit courts. If he wants to do so, he files a notice of appeal with the tax court, and at that point he puts up a bond for the amount of the additional tax which the tax court has determined to be due.

The CHAIRMAN: Is that to a board of sixteen judges?

Mr. OLIPHANT: He can go into one of our federal circuit courts of appeal.

Hon. Mr. CAMPBELL: On questions of law and of fact?

Mr. OLIPHANT: On questions of law.

Hon. Mr. HUGESSEN: Questions of fact are precluded?

Mr. OLIPHANT: Yes. He can appeal to one of our eleven circuit courts of appeal. If he loses there he can apply for a writ of certiorari to the Supreme Court. A good deal of our business goes to the Supreme Court. About ten per cent of the business of the Supreme Court last year was tax cases.

Hon. Mr. HUGESSEN: Could you give us any indication of what proportion of the judgments of the United States Tax Court of Appeal are appealed to the federal courts?

Mr. OLIPHANT: What proportion?

Hon. Mr. HUGESSEN: Yes.

Mr. OLIPHANT: I think I can probably do it best this way. We are talking now of the amount of business done. The government puts out about 10,000 of these statutory notices a year on income tax cases; that is, these determinations of the deficiency.

Hon. Mr. HUGESSEN: Ten thousand?

Mr. OLIPHANT: Statutory notices of the determinations of deficiency. About a thousand of those go to the tax board—from a thousand to twelve hundred, about 12 per cent of the determinations we make will be appealed. Our tax court will decide about 800 or 900 cases a year. They carry a backlog of from 4,000 to 5,000 cases. That is, one out of ten of our examinations go to the tax board. I would assume that probably one out of five go from the tax court to the circuit court. It may not be that high.

Hon. Mr. ASELTINE: Then from the circuit court to the Supreme Court?

Mr. OLIPHANT: Yes, on a writ of certiorari.

Hon. Mr. ASELTINE: How many?

Mr. OLIPHANT: A very small fraction leave the circuit courts, because we pretty well accept what our circuit courts say, and it is pretty expensive even getting to the Supreme Court. But I would say that the appeal to the tax court is inexpensive.

The CHAIRMAN: How many judges?

Mr. OLIPHANT: Three judges.

Hon. Mr. LEGER: I am curious to know how by a writ of certiorari you appeal to your Supreme Court.

Mr. OLIPHANT: That is our way of doing it.

Hon. Mr. LEGER: You are appealing not on grounds of jurisdiction but as of right?

Mr. OLIPHANT: On what the law is.

Hon. Mr. LEGER: It is a little different here. We could not use a writ of certiorari here.

Mr. OLIPHANT: The question of law will go to the Supreme Court. I should go back so you will get the full picture. This procedure of issuing a statutory notice of deficiency is to enable the taxpayer, if he wants to, to

go to the tax court without having to pay the tax. If he wants to, of course, he can still pay the tax and file a claim for refund and sue in one of our district courts, just as he always could.

Hon. Mr. HAYDEN: Is that a federal court?

Mr. OLIPHANT: It is a federal court. In terms of cases, our tax court is better than ten to one; that is, nine taxpayers out of ten will take their case to the tax court.

Hon. Mr. HUGESSEN: But he has the other option of paying the tax and suing to get a refund?

Mr. OLIPHANT: In the district court.

The CHAIRMAN: Is that appealable?

Mr. OLIPHANT: Yes. It is just a fork in the road. Your appeal from the district court lies to the circuit court, and the appeal from the tax court lies to the circuit court.

The CHAIRMAN: And from there to the Supreme Court.

Mr. OLIPHANT: Yes, from there to the Supreme Court.

Hon. Mr. CAMPBELL: You say there are about 1,000 cases appealed to the circuit court and that there is a backlog of 5,000 cases?

Mr. OLIPHANT: They cut it down. That brings up something else. When we first set up the tax court, within two or three years, we were swamped. In 1927 or 1928 they had something like 20,000 cases pending. From 1921 through to 1938 there were 115,000 cases filed in the tax court. Along about 1928, 1929 and 1930 there were so many cases pending in our tax courts that something had to be done about it. We went to the taxpayer and tried to get a settlement of as many cases as we could.

After that difficult period we had established a body of precedents in the tax courts, in our printed decisions. The taxpayer knew he could go to the tax court if he wanted to and he knew he had an inexpensive route of appeal. With that knowledge he did not go so often.

Hon. Mr. HAYDEN: The taxpayers knew what the court might do.

Mr. OLIPHANT: That is right. They had two things in mind, the published precedents and the knowledge that they had the right to go to the court.

Hon. Mr. ASELTINE: That is what we are anxious to establish here.

Hon. Mr. HAIG: That is what we want.

Mr. OLIPHANT: I do not know what your needs are, but this is our historical background.

Hon. Mr. HUGESSEN: It occurred to me that the figure of 10,000 appeals in a huge country like the United States was very modest.

Mr. OLIPHANT: It is.

Hon. Mr. HUGESSEN: It was very much higher in the beginning.

Mr. OLIPHANT: That is right, but there are only about a thousand appeals filed when we send out about ten thousand notices.

Hon. Mr. HUGESSEN: I meant to say 10,000 notices of deficiency.

Hon. Mr. HAYDEN: There might be more appeals if you sent out more notices.

Mr. OLIPHANT: That is true.

Hon. Mr. HAYDEN: It proceeds on about a 10 per cent basis.

Mr. OLIPHANT: That is right. It is a question of getting the business done and that is the way we do it.

Hon. Mr. HAIG: You attribute that result to the fact that the decisions are published, and the people know they have a right to appeal.

Hon. Mr. HAYDEN: They are not going to waste time on an appeal if if there is a precedent absolutely against them.

Mr. OLIPHANT: I think that is true.

Hon. Mr. LAMBERT: After 1928 and 1929 when this congestion occurred did you increase your facilities to deal with it?

Mr. OLIPHANT: Yes, indeed we did.

Mr. STIKEMAN: Do you give theoretical rulings as well?

Mr. OLIPHANT: The tax court does not. There has to be a cause of action before any of our fact-finding or judicial bodies will proceed.

The CHAIRMAN: They would not proceed on a theoretical case such as was discussed this morning?

Mr. OLIPHANT: No, sir, we have a different procedure. A taxpayer can address a request for a ruling to the Commissioner of Internal Revenue. However, it is mainly a question of time.

The CHAIRMAN: I suppose it is not binding.

Mr. OLIPHANT: No. Let me come to that, because in a sense it is. The commissioner will issue a ruling, and if the taxpayer wants to make that binding he asks for what we call a "Closing Agreement." That is a little more formal, and the ruling is signed by the commissioner. He then draws up a form of closing agreement with the taxpayer.

Hon. Mr. HUGESSEN: Do you mean a local commissioner?

Mr. OLIPHANT: No, our Commissioner of Internal Revenue at Washington. We are now talking of prospective transactions.

Hon. Mr. HUGESSEN: Your local collector has no power?

Mr. OLIPHANT: No, except to make application to our revenue agents. Our prospective rulings are handled in Washington. A form of closing agreement is made up and it then goes over to the Secretary of the Treasury. If the closing agreement is approved by the Secretary of the Treasury, it closes the year. That closing agreement is issued by statute, and cannot be set aside, except for fraud, malfeasance or misrepresentation of a material fact. I may say that in practice once the commissioner makes a ruling he sticks by it.

The CHAIRMAN: Does it usually stick at Washington?

Mr. OLIPHANT: These rulings on prospective transactions are made at Washington. As far as past transactions are concerned we have the same procedure; they can get rulings and closing agreements if they want to close their year up rapidly.

Hon. Mr. HUGESSEN: And that is statutory?

Mr. OLIPHANT: Our closing agreement is statutory.

Hon. Mr. HUGESSEN: It does not go to the court; it stays with the commissioner?

Mr. OLIPHANT: That is correct; it is entirely administrative.

The CHAIRMAN: It is final then.

Mr. OLIPHANT: That closing agreement is final.

Hon. Mr. HAYDEN: That is another way of getting away from tax courts.

Mr. OLIPHANT: We are talking about future transactions.

Hon. Mr. HAYDEN: I understand that; but what happens if I want to close out a year in a hurry?

Mr. OLIPHANT: When the letter goes out you can agree to it.

Hon. Mr. HAYDEN: Supposing no letter goes out, can I then go to Washington?

Mr. OLIPHANT: Yes, and you agree to it. I missed this point; the requirement that the commissioner issue a statutory notice. It has to be done. During the time that that statutory notice is out—the 90 days in which the taxpayer has to answer or appeal, and while the case is pending—the commissioner cannot assess the tax. If the taxpayer wants to agree and he waives his right to go to the tax court, he can ask for a closing agreement and it will be executed. That closes out the year. Of course that is on a past transaction.

Hon. Mr. HUGESSEN: Can he get a closing agreement on future transactions?

Mr. OLIPHANT: On some issues. It depends on what the issue is, and how much work we have on hand. For instance, you do not have a tax on capital gain, but we do, and of course if you own stock you may want to know whether it is a capital transaction you are dealing in. The commissioner will say whether or not the transaction is a capital transaction, and you as a stockholder may be able to get a ruling; however, it may be that there are thousands of other stockholders, and we may not want to give you a ruling because we would have to do the same for the others. There are some other issues we will not give rulings on. For instance, at the present time we will not give rulings on new organizations which claim to be exempt from tax by reason of being charitable, or scientific or literary organizations.

Mr. STIKEMAN: Have you anything equivalent to our discretionary powers?

Mr. OLIPHANT: That question is a little difficult to answer. Everything the commissioner decides goes into his determination of this deficiency and the taxpayer has the right to contest that determination in the tax court.

Hon. Mr. HAYDEN: It includes everything involved in reaching that decision?

Mr. OLIPHANT: That is right.

Hon. Mr. ASELTINE: Ther is no final discretion?

Mr. OLIPHANT: No, sir.

Mr. STIKEMAN: I understand you have a technical staff who are special members of the department who go about through the various districts and meet the taxpayers on disputed issues. What is their place?

Mr. OLIPHANT: I spoke a while ago about the great volume of work that suddenly faced our tax courts in the late 1929 and early 1930's, and, as I say, we settled a good many cases. At the same time we set up a special advisory committee. We do love to set up special groups. This special advisory committee was not made up of lawyers, but of administrative men within the bureau, but with whom were associated lawyers in the bureau of Internal Revenue. This special advisory committee was the organization that went through the country and settled a lot of these cases; and out of that special advisory committee grew the administrative machinery which is an appellate body. Going back to this deficiency notice, once the letter has gone out, if the taxpayer cannot agree with the commissioner he can take his case and file an appeal to the technical staff: This technical staff is an entirely administrative body. It is set up in twelve divisions all over the country. There is a division counsel attached to each one of the staff, a lawyer or administrator, and they will consider the case.

Now, if I am not confusing you, may I go back a little. As I said before, one of our revenue agents makes a report that is referred to the audit and review division. If the taxpayer comes in and places his case before a technical staff—and that is an entirely informal presentation—the technical staff then reach an agreement with the taxpayer, and once the agreement is reached it is final as far as the Commissioner of Internal Revenue is concerned. That is a

decentralization procedure. We have twelve offices scattered around the country. Cases that go to the technical staff are disposed of finally, and do not go to Washington.

Hon. Mr. HAYDEN: Can any case go to the technical staff?

Mr. OLIPHANT: Any case can. I am not being too lucid about it because it is somewhat complicated. Going back to the case in which the taxpayer could not agree with the revenue agent and before the deficiency notice was sent out, if the taxpayer wanted to at that point he could ask for the case to be reviewed by the technical staff; if he does not go to the technical staff then the commissioner issues his ninety-day statutory notice, then the taxpayer files his appeal and he can then go to the technical staff. The taxpayer has to go through those steps.

Hon. Mr. HAYDEN: Supposing he goes to the technical staff and then gets into the regular channel of appeal, will the decision of the technical staff appear on the record and go against the taxpayer?

Mr. OLIPHANT: No.

Hon. Mr. HAYDEN: It does not form part of the record?

Mr. OLIPHANT: No, it does not. The hearings before the tax court are de novo.

Hon. Mr. CAMPBELL: I suppose in negotiations before the technical staff both the revenue department and the taxpayer would have to agree to the results.

Mr. OLIPHANT: That is correct. It is an attempt to reach an agreement.

Hon. Mr. HAYDEN: It is purely a compromise before the technical staff.

Mr. OLIPHANT: It is a settlement procedure. The feeling is that we are going to be continually faced with a substantial number of taxpayers, and 97 per cent of our cases are disposed of by agreement without going to the staff.

Hon. Mr. CAMPBELL: Is that procedure set up by statute or is it an internal arrangement?

Mr. OLIPHANT: Do you mean the technical staff?

Hon. Mr. CAMPBELL: Yes.

Mr. OLIPHANT: It is entirely internal but the main part of the dispute is handled within the department.

Hon. Mr. CAMPBELL: A while ago you spoke of the difficulty of interpreting law. I think you put it this way what the law said and what the law should be. Is there an attempt made annually to change provisions in the sections of the act which are not clear?

Mr. OLIPHANT: Our tax laws are under constant study both by the department as a policy matter and by the Treasury Department. In the House of Representatives we have a Committee of Ways and Means, and in the Senate we have a Committee on Finance; and in addition to that there is a Joint Committee of the Senate and the House on Taxation, and that committee is looking policywise at tax legislation all the time.

Hon. Mr. CAMPBELL: Do they hear representations from representative bodies of taxpayers as to proposed changes in the act?

Mr. OLIPHANT: That is right.

Hon. Mr. CRERAR: That is as regards the incidence of taxation, but do they hear representations as to administration?

Mr. OLIPHANT: Procedural changes, you mean?

Hon. Mr. CRERAR: Yes.

Mr. OLIPHANT: Those representations can be made to our joint committee. As a matter of fact, there were hearings earlier in the year on the administration of our section 722, which is the same as your Board of Referees section.

Hon. Mr. BUCHANAN: I would like to be a little clearer on the constitution of the Tax Court, which is composed of sixteen members. Are those members all lawyers, or are some of them chartered accountants?

Mr. OLIPHANT: Most of them are lawyers. When the court was first set up, most of the members came from the Bureau of Internal Revenue, which was the only place where we could get qualified men to do the job. The answer to your question, Senator, is that most of them are lawyers.

Hon. Mr. HUGESSEN: I understand, Mr. Oliphant, that your country has gone farther than Canada in legislating in detail. It has been suggested to this committee that with regard to matters such as depreciation the statute might contain rates, and that with regard to cerain other matters which are now left to ministerial discretion the legislation should cover specific cases. Is it a fact that in your country the legislation is as detailed as possible to cover specific instances?

Mr. OLIPHANT: No, that is not so. Our legislation—this of course is my personal opinion—our legislation is broadly designed to hit the problem but it is not detailed. The Congress enacts the legislation and then the commissioner, with the approval of the Secretary of the Treasury, is authorized to issue regulations, which have the force and effect of law.

Hon. Mr. HUGESSEN: Is the scope of those regulations largely discretionary?

Mr. OLIPHANT: No. They are generally interpretive of the law. There are some exceptions to that. For instance, we have a constantly recurring problem with respect to affiliated corporations and we have a consolidated return which affiliated corporations can file. The Congress practically turned the legislative job with regard to affiliated corporations over to our commissioner, because it was so complicated that it did not seem the Congress was equipped to do it.

Hon. Mr. HUGESSEN: On the specific question of depreciation, does your income tax statute say affirmatively that depreciation shall be allowed as a deduction from income?

Mr. OLIPHANT: A reasonable amount is allowable as a deduction.

Hon. Mr. HUGESSEN: Who is the judge of the reasonableness? Is that left to the commissioner?

Mr. OLIPHANT: Yes. It is within his discretion.

Hon. Mr. HAIG: That question would be taken to the Court of Tax Appeals?

Mr. OLIPHANT: If the taxpayer does not agree with the commissioner's rate or valuation he can take the matter to the Tax Court.

Hon. Mr. HUGESSEN: The Court of Tax Appeals can review the discretion of your commissioner on the question of depreciation?

Mr. OLIPHANT: Suppose the commissioner determines that the useful life of a frame house is twenty-five years. The Tax Court can say it is thirty years or twenty years.

Hon. Mr. HUGESSEN: They can review his discretion

Mr. OLIPHANT: Yes.

Hon. Mr. HUGESSEN: You were here yesterday, were you, Mr. Oliphant?

Mr. OLIPHANT: Yes.

Hon. Mr. HUGESSEN: Then you probably heard the discussion on the question of what should properly constitute the expenses that are deductible from income. It was pointed out that our requirement that such expenses must be wholly and exclusively laid out for the purpose of earning the income stems from the English statute of 1806. How do you define expenses?

Mr. OLIPHANT: Expenses incurred in the conduct of the trade or business. That is the general definition.

The CHAIRMAN: Do you use the word "necessarily"?

Mr. OLIPHANT: I would have to look at the book before I could answer.

Hon. Mr. HUGESSEN: Is that a subject for much the same area of disputes as here?

Mr. OLIPHANT: A good many of the cases before the Tax Court involve, for instance, the reasonableness of compensation paid an officer by a corporation.

Hon. Mr. HUGESSEN: Is it within the commissioner's discretion to determine what that compensation should be?

Mr. OLIPHANT: He makes his determination, and if the taxpayer does not agree he can appeal to the Tax Court.

Hon. Mr. HUGESSEN: Suppose a corporation has paid a man $25,000 and the commissioner considers that to be grossly excessive, could he determine that the corporation should deduct only $10,000, for instance?

Mr. OLIPHANT: Yes.

Hon. Mr. HUGESSEN: In other words, he has the same discretion as our commissioner has?

Mr. OLIPHANT: Yes.

Hon. Mr. HAIG: Except that there is an appeal from the determination of the commissioner in the United States.

Hon. Mr. McRAE: My observation is that the various rulings made in the United States through the years have resulted in a certain uniformity of decisions, on which lawyers rely when advising their clients. It seems to me that you have reached quite an advanced position in that regard. Am I correct?

Mr. OLIPHANT: Well, up until 1942 we had something like 35,000 decided tax cases. Among that number of cases you can find something close to your own case on almost any point. We have built up a tremendous body of precedent.

Hon. Mr. ASELTINE: Are the decisions of the Tax Court published as law reports?

Mr. OLIPHANT: The decisions that are printed are published in a bound volume. The memorandum opinions are mimeographed.

Hon. Mr. ASELTINE: They are not published?

Mr. OLIPHANT: They are only published in the sense that they are mimeographed, and anybody can get a copy on application.

Hon. Mr. CRERAR: Do you use the same type of return for the taxpayer whose income is $3,000 as for the taxpayer whose income is $50,000?

Mr. OLIPHANT: No, sir. We have a short form of return on which the collector will compute the tax, for incomes up to $5,000.

The CHAIRMAN: Mr. Stikeman has all that information.

Hon. Mr. CRERAR: Did you always have those different forms? If not, why was the differentiation made?

Mr. OLIPHANT: We did not always have them. The differentiation grew up as part of our withholding system, which came in with the current tax payment act of 1943.

Hon. Mr. CRERAR: Does that simplify the practice?

Mr. OLIPHANT: It does not simplify the dispute practice, because it is the higher income returns that go to dispute anyway. We have very few appeals from taxpayers whose income is below $5,000.

Hon. Mr. HUGESSEN: May I ask one more question, about the deficiency notice that goes out to the taxpayer? I gather that is accompanied by the revenue agent's report, is it?

Mr. OLIPHANT: No. The revenue agent's report will have been furnished to the taxpayer when he was first given an opportunity to protest the findings of the revenue agent.

Hon. Mr. HUGESSEN: The revenue agents' reports that I have seen lead me to believe that they are much more complete than any such information furnished to the taxpayer here. The taxpayer in your country gets a fairly complete statement of what the revenue agent thinks about his case, does he not?

Mr. OLIPHANT: It shows the adjustments that the revenue agents make.

Hon. Mr. HUGESSEN: And gives the reasons for them, does it not?

Mr. OLIPHANT: Not in too much detail. In most cases there will have been conferences between the two and they will know what the issues are.

Hon. Mr. HUGESSEN: Is it a statutory requirement that the revenue agent shall furnish details?

Mr. OLIPHANT: No.

Hon. Mr. HUGESSEN: Just a matter of practice?

Mr. OLIPHANT: Administrative practice.

Hon. Mr. HUGESSEN: I think your practice is much better than ours. It gives the taxpayer a much clearer idea of what he is faced with and the reasons.

Hon. Mr. HAIG: Mr. Chairman, I have very much pleasure in moving a vote of thanks to Mr. Oliphant for coming here and giving us this information. Let me add that we very much appreciate the courtesy of his government in allowing him to come.

Mr. OLIPHANT: It is a pleasure to be here.

Hon. Mr. ASELTINE: We hope you will come again.

Mr. OLIPHANT: I hope so too.

Hon. Mr. CRERAR: I should like to second the motion. Mr. Oliphant has given us a good deal of very useful information, and it will be very helpful to us in getting through our work.

The CHAIRMAN: You have heard the motion, Mr. Oliphant. It has been very good of you to come up here—at your own expense, I understand—and give us a great deal of valuable information. We appreciate what you have done and are very grateful to you.

The motion was carried by acclamation.

The CHAIRMAN: Gentlemen, before we adjourn I think we should decide what is to be done during the recess.

Hon. Mr. CAMPBELL: I think we should appoint a committee to digest the evidence and then confer with Mr. Stikeman on the preparation of a draft bill.

I move that for this purpose a committee be appointed composed of Senators Crerar, Hayden, Hugessen, Lambert, Leger, Vien and—

Hon. Mr. HAIG: Yourself.

Hon. Mr. LEGER: I second the motion.

The motion was agreed to.

The committee adjourned until Tuesday, April 30, at 10.30 a.m.

1946

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

## SPECIAL COMMITTEE

Appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon.

No. 7

TUESDAY, APRIL 30, 1946

CHAIRMAN

The Honourable W. D. Euler, P.C.

WITNESSES:

Mr. A. Leslie Ham, Counsel, Joint Stock Insurers.

Mr. George B. Elwin, Chairman, Special Committee of the Ontario Regional Committee of the Canadian Chamber of Commerce.

Mr. H. C. Hayes, Chairman, Taxation Committee of the Canadian Chamber of Commerce.

OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1946

## ORDER OF APPOINTMENT

*(Extracts from the Minutes of Proceedings of the Senate for 19th March, 1946)*

Resolved,—That a Special Committee of the Senate be appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon;

(2) That the said Committee be composed of the Honourable Senators Aseltine, Beauregard, Bench, Buchanan, Campbell, Crerar, Euler, Farris, Haig, Hayden, Hugessen, Lambert, Léger, McRae, Moraud, Robertson, Sinclair and Vien;

(3) That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. MOYER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

TUESDAY, April 30, 1946.

Pursuant to adjournment and notice the Special Committee appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, met this day at 10.30 a.m.

*Present:* The Honourable W. D. Euler, P.C., Chairman, The Honourable Senators Bench, Buchanan, Crerar, Farris, Haig, Hayden, Hugessen, Lambert, Léger, McRae and Robertson—12.

*In attendance:*

The Official Reporters of the Senate.

Mr. H. H. Stikeman, Counsel to the Committee.

Mr. A. Leslie Ham, Counsel for the Joint Stock Insurors, submitted a brief on their behalf.

Mr. George B. Elwin, Chairman, Special Committee of the Ontario Regional Committee, The Canadian Chamber of Commerce, submitted a brief on behalf of that organization, and was questioned by counsel.

Mr. H. C. Hayes, Chairman, Taxation Committee, The Canadian Chamber of Commerce, was heard and was questioned by counsel.

At 1 p.m., the Committee adjourned until 11 a.m., Thursday, 2nd May, 1946.

Attest:

R. LAROSE
*Clerk of the Committee.*

# MINUTES OF EVIDENCE

THE SENATE,

TUESDAY, April 30, 1946.

The Special Committee of the Senate to consider the provisions and workings of the Income Tax Act, etc., resumed this day at 10.30 a.m.

Hon. Mr. Euler in the chair.

The CHAIRMAN: Gentlemen, this morning we have before us the Canadian Underwriters Association represented by Mr. Ham, the Manager, and the Canadian Chamber of Commerce. It is thought for certain reasons, advisable to hear the Canadian Underwriters Association first.

I should first like to say to Mr. Ham, as I have said to other representatives of organizations, that this committee has no power to deal with matters of policy with respect to income tax. I think, with one or two exceptions, your brief deals largely with the matter of policy. Since this has been the case with nearly all of the associations the committee has adopted the practice of hearing the representations, but have issued the warning that any recommendations which this committee might make to the government later on cannot be based upon representations made on matters of policy. With those preliminary remarks I will now call on Mr. Ham.

Mr. A. LESLIE HAM: Mr. Chairman and honourable senators, the difficulty we found in preparing the brief was to distinguish between matters of policy and others, because they were so closely interwoven. It was very difficult to give a true and clear picture without encroaching on matters of policy.

For the purpose of the record may I say that I am not here in the capacity of representing the Canadian Underwriters Association, but am representing the joint stock insurers in Canada whether members of the association or not. The submission is filed on behalf of the joint stock companies carrying on in Canada the business of fire, automobile and casualty insurance on the cash plan.

We appreciate the magnitude and importance of this inquiry, and the fact that its scope is circumscribed on questions of government policy. This brief was prepared on behalf of 223 companies, and under the instructions of a committee of something over 80 companies and two subcommittees. This brief has been filed with all 223 companies for some three months now.

The CHAIRMAN: Does that include foreign companies?

Mr. HAM: It includes British, Canadian and foreign companies writing this class of business. All of them do not write all of those classes. Some write just fire, some write just automobile and some write just casualty. And incidentally I might say that some of them do write marine insurance, which is dealt with in one small section of this brief, but the companies I represent are not the only marine underwriters, so it is only incidentally that they were touched upon in the brief.

I do not think it is necessary for me to read page 1 of the brief, because it is merely a historical survey of our efforts to date, but this page can be placed on the record.

# IN RE SPECIAL COMMITTEE OF THE SENATE APPOINTED TO EXAMINE INTO THE PROVISIONS AND WORKINGS OF THE INCOME WAR TAX ACT AND THE EXCESS PROFITS TAX ACT, 1940.

## Submission on Behalf of Joint Stock Companies Carrying on in Canada the Business of Fire, Automobile and Casualty Insurance, on the Cash Plan Exclusively

(Except those claiming exemption from taxation on the ground that they are Mutuals or Co-operatives).

This brief is submitted for the consideration of the Special Committee of the Senate.

The words "Mutual" or "Mutuals" as used throughout, means insurers who claim exemption under the said Acts as mutual insurers, reciprocals, co-operatives or joint stock companies controlled or owned by co-operative companies and associations unless the context otherwise requires the meaning "mutual" as distinct from reciprocals, co-operatives, or the above mentioned joint stock companies.

The words "Royal Commission" as used throughout mean the Royal Commission on Co-operatives appointed by virtue of Order in Council P.C. 8725.

*A. History*

1. The discrimination in taxation hereinafter referred to arises out of:

(*a*) the enactment of sections 4 (g), 4 (i) and 4(p) of the Income War Tax Act, R.S.C. 1927, cap. 97. Said sub-sections appear in Appendix "A" attached hereto;

(*b*) the enactment of section 2(f), Excess Profits Tax Act, 1940, Statutes of Canada 1940, cap. 32. The said sub-section appears in Appendix "A" attached hereto;

(*c*) and finally out of section 13(b) of the Special War Revenue Act, R.S.C. 1927, cap. 179. The said sub-section appears in Appendix "A" attached hereto.

2. A brief filed in October, 1941, on behalf of those Joint Stock companies who are members of the Canadian Underwriters' Association, with the Right Honourable J. L. Ilsley, K.C., Minister of Finance and with the Honourable Colin W. G. Gibson, K.C., then Minister of National Revenue, drew the attention of the Government to the discrimination arising under these sections as drafted, as well as by virtue of the ministerial discretion permitted by these Acts. This presentation was followed up with a number of interviews with said Ministers and their deputies.

3. The appointment of a Royal Commission afforded a further opportunity for Joint Stock insurers generally (i.e. those on behalf of whom this submission is made) to present additional material and argument and reference will be made hereafter to the findings of that Commission in view of the fact that the findings of the Royal Commission are directed to the elimination of the discrimination.

4. This submission made on behalf of 223 Joint Stock insurers*, is directed at the "mechanics of the said Acts" as they presently exist and at certain changes recommended to be made thereto by the Royal Commission.

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* See Appendix "H" attached hereto for list of said companies.

*B. As to the Draftmanship of the Said Acts*

1. As to section 4(g), Income War Tax Act—Mutual Corporations (*for wording thereof, see Appendix "A" attached hereto*).

(*a*) There is no definition of the term "Mutual Corporation" in the Statute. The result is that not until 1940 were the Joint Stock Mutuals assessed to income tax in spite of the fact that they have "capital represented by shares", and patently did not come within the exemption.

(*b*) The Royal Commission during its hearings apparently could not secure and acceptable definition of the term "mutual insurance" or "mutual corporation" and in the report the Royal Commission refers to the definition found in the Ontario Insurance Act, being R.S.O. 1937, cap. 256, sect. 1, ss. 43, reading as follows:

> "Mutual insurance" means a contract of insurance in which the consideration is not fixed or certain at the time the contract is made and is to be determined at the termination of the contract or at fixed periods during the term of the contract according to the experience of the insurer in respect of all similar contracts whether or not the maximum amount of such consideration is predetermined.

This definition in itself is open to criticism since Joint Stock Companies themselves write policies where "the consideration is not fixed or certain at the time that the contract is made and is to be determined at the termination of the contract according to the experience of the insurers in respect of all similar contracts." And this would mean that it is conceivable for joint stock insurers to write mutual insurance, which contradiction no insurer, joint stock or other, has ever suggested as being possible.

I interject here, as an example, the General Insurance Company of America, a joint stock company, which does write participating policies. It comes strictly within that definition of insurance.

It is to be noted, however, that the said Ontario Insurance Act, sect. I, ss. 11* defines "Cash Mutual corporation" and ss. 42 defines "Mutual corporation" both of which exclude "a corporation with share capital" and the statute makes a further distinction between "cash plan" and "mutual plan". This latter distinction is found in the Statutory Conditions. (See Statutory Condition 10* under section 106 of the said Act).

It is submitted that said sub-section 43 "Mutual Insurance", quoted above, does not define mutual insurance but defines "a participating policy". It is to be noted that life insurance companies, joint stock or mutual, write a large volume of contracts known as "participating policies" and these fall within the four corners of the above definition. No one, however, has ever suggested that such a participating policy when written by a joint stock life company is in substance mutual insurance.

It is suggested that the fact is that while one may distinguish between joint stock insurers and mutual insurers they both may write policies, participating or non participating, without changing either their character or the character of the insurance contract as written. The distinction as to Joint Stock or Mutual should be made between the writers of insurance, not between the insurance contracts themselves.

The CHAIRMAN: Mr. Ham, you refer to Ontario insurance companies. Does the same thing apply to companies with a Dominion charter?

Mr. HAM: Yes, because the province more or less controls insurance, under property and civil rights, so Dominion licensed companies come under those sections of the Ontario Act.

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* See Appendix "B" attached hereto for text of the said references. Ontario Insurance Act, sect. 1, ss. 11 and ss. 42 and Statutory Condition 10 under sect. 106.

2. As to section 4(*i*), Income War Tax Act—Farmers' Association. *(for wording thereof, see Appendix "A" attached hereto).*

(*a*) There is no definition of the word "Farmer" and it is submitted that the occupation of farming and other pursuits are not mutually exclusive so that many citizens are not only farmers but follow some other trade, employment or avocation.

(*b*) There is no definition of the term "Association". The question arises: does the term include "a corporation"? All mutual insurers, with the exception of Reciprocals are corporations and since there are no known Reciprocal exchanges operating in Canada that insure farm properties, the word "Association" could not be meant to apply to them.

The word "Association" is defined by Webster's New International Dictionary Second Edition:

1. An associating, or state of being associated; union; confederation; fellowship.

2. A union of persons in a society for some particular purpose. In the United States, as distinguished from a corporation, a body of persons organized, for the prosecution of some purpose, without a charter, but having the general form and mode of procedure of a corporation.

Thus, if the term "Association" is used in contra-distinction to "corporation" no exemption is granted to any mutual insurer under this section. Note the use of the word "corporation" in section 4(*g*) and the words "co-operative companies and associations" in section 4(*p*). If the word "association" means corporations or companies, why the particular selection of these terms in these sections?

3. As to section 4(*p*). Income War Tax Act—Co-operative Companies and Associations. *(for wording thereof, see Appendix "A" attached hereto).*

(*a*) There has always been considerable doubt with respect to the meaning of this sub-section. See excerpt in the comments of the Royal Commission (attached hereto as Appendix "C"), contained on pp. 39 and 40 of the Report. Perusal of these comments show the difficulties noted by the Royal Commission in construing the following words: "like", "co-operative", "organized and operated on a co-operative basis", "market the products", "obligation", "members", "non-members", "organized for the purpose of financing operations".

(*b*) Such doubt has existed with respect to the purport of this section that eventually the Western Wheat Pools were assessed to income tax. From that assessment an appeal was taken to the Exchequer Court of Canada. The hearing of the case however was delayed due to the appointment of the Royal Commission.

(*c*) It was admitted on behalf of the Pool Insurance Company, a Joint Stock insurer, that it had not paid income tax, claiming exemption under sub-section 4(*p*):

> In due course income tax returns were filed claiming total exemption as a co-operative. In the month of January 1941, the company was assessed for the income of the year 1939, the Department holding the company's surplus to be taxable. In February 1941, the Company filed a Notice of Appeal against assessment. The next step in the appeal must be taken by the Department and as yet nothing has been done in connection therewith. (Brief presented to the Royal Commission by Pool Insurance Limited and Pool Insurance Company.—par. 6, pages 2 and 3 thereof.)

(*d*) The position as to assessment to tax of the Co-operative Fidelity & Guarantee Company, a Joint Stock Company, created under the laws of Saskatchewan, by virtue of part XI(*a*)—Co-operative Insurers—Saskatchewan Insurance Act, R.S.S. 1940, cap. 121, is most uncertain since this company did not appear before the Royal Commission and information on this point is therefore not available to us.

4. As to section 2(*f*), Excess Profits Tax Act, 1940.

While the draftsmen of the Excess Profits Tax Act created no problem of interpretation in this respect, they did not cure the patent defects in either the draftsmanship or interpretation of the Income War Tax Act; they simply adopted the defects as they stood, doing so by the following words:

> 2*f*.—"profits" in the case of a corporation. "profits" in the case of a corporation or joint stock company for any taxation period means the amount of net taxable income of the said corporation or joint stock company as determined under the provisions of the Income War Tax Act in respect of the same taxation period.

The result of this enactment is that the discrimination otherwise existing was expanded and the competitive position of the joint stock insurer was worsened.

With such uncertainty in taxing statutes, discrimination is bound to exist.

C. *Ministerial Discretion*

It is submitted that the confusion becomes more confounded when added to such uncertainty in the wording and the interpretation of statutes, wide discretionary powers are granted to the Minister to be exercised by his deputies and subordinates.

The Committee has had before it a very full brief filed by the Income Tax Payers' Association, a copy of which has been secured. The reasoning and recommendations of that body, particularly on the questions of:

(i) Restoration of taxing powers to Parliament—(p. 5 et seq.);
(ii) Administrative procedure—(p. 11 et seq.);
(iii) Appeal procedure—(p. 15 et seq.);
(iv) Secrecy of rulings and decisions—(p. 19);
(v) Equality in the imposition of income tax—(p. 19 et seq.);

we adopt as ours and content ourselves with dealing only with what has occurred with respect to the sections under discussion

1. As to Competitors and Competition.

In a highly competitive business, and insurance is*; operating on a narrow anticipated underwriting profit, and insurance does**; and engaged in a business that is subject to great fluctuation of hazards, as insurers are***, the power of a minister to exempt from tax is as vicious in effect as is ministerial power to impose tax. The direct power of the Executive to impose taxation without consent of the governed was the cause of long and bloody turmoil even in as young a country as Canada. The effect of power in the Executive to tax is not necessarily more serious to the citizen than the effect of power to exempt from taxation. This is particularly so when the level of taxation is inordinately high and the field of competition particularly close.**** Neither the level of taxation

* See Appendix "D" which shows the number of insurers exclusive of Lloyds Underwriters operating in the Provinces of Ontario and Quebec.

** See Appendix "E" which shows underwriting profits of the Fire Insurance business from 1869 to 1940.

*** See Appendix "F" for graph showing annual loss ratio of the Fire Insurance business from 1870 to 1943.

**** See Appendix "D" for information on the extent of the competition in the Fire, Automobile and Casualty field.

nor the intenseness of competition affect the principle but only makes more conclusive the ultimate disastrous results for those suffering from the discrimination.

It will be appreciated that a taxpayer complaining of ministerial discretion favouring his competitor is handicapped in making his vioce heard since a mandamus does not run against the Crown. In such a plight he is faced with making complaints to the Minister and/or his deputies or trying to have the minister responsible challenged on the floor of the House. Members of this committee will well appreciate how futile and unsatisfying either effort is likely to be.

2. Re: section 4(*g*), Income War Tax Act—Mutual Corporations. (*For wording thereof see Appendix "A" attached hereto.)*

(*a*) Ministerial discretion or oversight left the Joint Stock Mutuals free of the impositions of the Act up until 1940 since these companies patently did not come within the exempting section as they have "capital represented by shares". Such companies apparently converted from mutual corporations to joint stock companies under division IV, sect. 27-29, Quebec Insurance Act. R.S. Que. 1925, cap. 243.

(*b*) Ministerial discretion certainly has left all other mutuals free of the impositions of the Act up to date although it has been drawn to the attention of the Department of National Revenue by us on numerous occasions that:

(i) mutuals do have income;

(ii) that such income must inure to the profit of the members, whether such income is distributed to members, put to their credit or into a reserve account; and

(iii) that these facts took them outside the exemption of said section 4(*g*).

This contention that the mutuals can and do earn income has now been established by the findings of the Royal Commission on Co-operatives.

We are of the opinion that mutuals can and do have income which is subject to tax. This income results from investments and operating gains which are free from the claims of policyholders. (p. 65 of the Report of the said Commission).

(*c*) The loss to date thus suffered by the Consolidated Revenue of the Dominion of Canada must have been and is considerable.

(*d*) From the standpoint of the joint stock companies the favourable competitive position in which the Mutuals, Reciprocals and Co-operatives have been placed has been most detrimental to the interest of joint stock insurers who have, without complaint as to the amount of the taxation imposed upon them, made their contribution to the cost of the war, a war that was waged in the interest of all Canadian institutions whether founded on the joint stock or mutual basis. It is fair therefore to say that while the war was waged on behalf of all, the cost thereof has been and is being paid for not by all but by some in spite of the capacity of others to bear their proportionate share.

Exemption from taxation by virtue of ministerial discretion can only add to the discrimination already existing by virtue of the uncertainty of the application of the Statutes.

RE: REPORT OF THE ROYAL COMMISSION ON CO-OPERATIVES

(a copy of which the Committee undoubtedly has before it.)

D. *The Committee's attention is first directed to the finding of the Commission:*

We are of the opinion that mutuals can and do have income which is subject to tax.

To the extent that this finding is correct, and we unfeignedly believe it to be so, we submit that the failure to properly interpret the exemption under section 4(*g*) of the Income War Tax Act has meant:

1. great loss to the Consolidated Revenue of Canada over a long period of years;*

2. an inordinately high level of taxation on all tax-payers during the war in order to compensate for such loss of revenue;*

3. that the mutual and reciprocal competitors of the joint stock companies have been unduly favoured and that the joint stock insurers have been put at a distinct competitive disadvantage.

E. *Re: First recommendation of the Royal Commission*

Next the Committee's attention is directed to the first recommendation of the said Commission's Report (p. 65) reading as follows:

1. That the Income War Tax Act and the Excess Profits Tax Act (1940) be amended to provide for the taxation of mutual organizations carrying on the business in Canada, of fire, casualty and automobile insurance, in accordance with the recommendations which follow.

Insofar as the recommendation urges amendment of the said Acts to effect equality of treatment, we support the recommendation but we desire leave to comment hereinafter on the qualifying words "in accordance with the recommendations which follow".

*F. Re: Second and Third Recommendations of the Royal Commission*

Next the Committee's attention is directed to the second and third recommendations of the said Commission's report (p. 65), reading as follows:

2. That dividends on, or refunds of premiums to policyholders, whether paid in cash or applied against renewal premiums, together with any unabsorbed premiums or premium deposits returned to or payable to policyholders, and any other amount credited to a policyholder or subscriber in such a way that it is exigible by him on giving such notice as may be deemed reasonable, be allowed as a deduction in computing taxable income."

3. That joint stock companies and other insurers writing fire, automobile and casualty insurance, which pay dividends or make refunds of premiums to policy holders be allowed to deduct such dividends or refunds in computing taxable income.

1. If the granting of wide discretionary powers in the hands of a minister in matters of taxation is open to question, how much more unsound is this proposition that places in the hands of the citizen the ultimate discretion to determine whether he will or will not be a taxpayer. The citizen having ascertained the profit for the year, it is now suggested should be allowed full discretion to determine how much if any he pays to the Crown and how much, if not all, he returns to his customer.

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* See Submission made to this Committee by Professor J. L. McDougall, M.A., Queens University, on behalf of Income Tax Payers Association of Canada, as to amount of tax revenues lost through exemption, statutory or discretionary and the effect thereof on the taxpayers of Canada.

2. It is submitted that under any such practice the taxpayer would have an irresistible tendency to nurture his public relations with his customers at the expense of the Crown rather than to bear his reasonable share of the cost of administering the country.

3. To the extent that competition in the payment of dividends for the securing of business curtails a natural and laudable inclination to build up resources as against the bad years or catastrophic loss*, to that extent the suggestion of the Royal Commission is open to question as to whether in the last analysis it is in public interest.

*G. Re: A Portion of the Conclusions Reached by the Royal Commission*

Next the Committee's attention is directed to the following excerpt from the conclusions of the Royal Commission (p. 65):

> at the same time we consider that mutuals in certain specialized fields are rendering a service which is not provided by other organizations notably in insuring farm and other unprotected rural risks.

1. It is submitted that the above conclusion is far from being an understatement. Reference is hereafter made to the report of the Superintendent of Insurance for the Province of Ontario for 1943 business, as only that report supplies figures in a way that would indicate the facts.

2. The submission of the Farm Mutual Insurance Companies of Ontario to the Royal Commission in Exhibit "C" thereof discloses that those companies in 1943 wrote $1,723,000 with respect to which they state on the first page of their submission:

> Our Association consists of all farm mutual fire insurance companies in Ontario (65 in number) whose business is over 90 per cent rural.

3. The said report of the Superintendent of Insurance for the Province of Ontario, page 260, appendix III, discloses that the net farm fire premiums written by companies other than the farm mutuals amounted in 1943 to $946,000, or approximately one-third of the total net fire premiums with respect to farm property in Ontario.

4. It must be borne in mind that the Royal Commission's reference to "mutuals in certain specialized fields" undoubtedly has reference only to the farm mutuals. The fact is that these mutuals are limited by their licence so that they serve the farmer only in the field of fire insurance and render no service to the farmer in the field of automobile or other classes of insurance.**

5. There are no figures however to show exactly to what extent the insurance needs of the farm community are met by the several types of insurers, but the above figures would indicate that the findings of the Royal Commission on this point may be somewhat exaggerated because while the Farm Mutuals in Ontario service approximately two-thirds of the fire insurance market for farmers they provide no facilities for other insurance needs foremost amongst which would be automobile insurance, hail insurance on crops and other classes so that it is just as true to say about the competitors of the Farm Mutuals that they (the competitors of the Farm Mutuals) "in certain specialized fields are rendering a service which is not provided by other organizations", i.e. by the Farm Mutuals themselves.

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*See Appendix "F" for graph showing annual loss ratio from 1870 to 1943, indicating the deep fluctuations in loss ratios and the effect thereon of conflagration losses such as the Toronto fire of 1904 and the Haileybury fire of 1922.

**It is to be noted that in addition to the said 65 Fire Mutuals there are in Ontario two Mutual companies licensed for weather insurance whose combined premiums in this class were $78,255 in 1943.

H. *Re: Fifth Recommendation of the Royal Commission*

Next the Committee's attention is directed to the fifth recommendation of the Commission, (p. 65 et seq.) reading as follows:

> 5. That the income of any insurer, mutual or otherwise, shall not be liable to taxation when in any year the net premium income in Canada is derived, to the extent of not less than 50 per cent thereof, from the insurance of farm property and other property not protected by municipal or other fire fighting organizations, or is derived wholly from the insurance of churches, schools, or other religious, educational and charitable institutions.

Reference is again made to section 13(*b*) of the Special War Revenue Act, the wording of which is almost in the exact wording of the Commission's recommendation.

1. Upon reference to appendix "A", it is to be noted that said section 13(*b*) purports to suggest the exemption of purely mutual corporations in respect of any year in which the net premium income in Canada of such mutual corporation is,

(*a*) to the extent of not less than 50 per cent thereof derived from the insurance of farm property; or

(*b*) wholly derived from the insurance of churches, schools or other religious educational or charitable institutions.

2. The Commission, however, has recommended:

(*a*) that relief from taxation on this basis should be extended to insurers other than mutuals; and

(*b*) the inclusion along with farm property of a classification which it calls "other property not protected by municipal or other fire fighting organizations"; and

(*c*) that a company having so qualified itself in any year the exemption would continue thereafter

3. The suggested extension of the exemption to insurers other than mutuals is consistent with the Commission's effort to avoid discrimination between mutual and joint stock insurers. We are in accord with this objective of eliminating discrimination in taxation on the mere basis of a difference in profession of faith as between the profit motive and the salvation of mankind by the co-operative movement*, particularly in the light of the finding of the Commission that irrespective of the profession of unselfishness and altruism of mutual organizations they "can and do have income".

4. We strongly disagree, however, with the principle that certain property merely because of its use or ownership should qualify an insurer to tax exemption.

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* "Stock Fire Insurance is an indisputable necessity to the public." (Illinois Fire Insurance Commission to the Senate and House of Representatives, Senate Joint Resolution No. 24, dated January 4, 1911, p. 23.)

"The Government have no intention of interfering with the transaction of insurance business by private enterprise save to the limited extent to which insurance at home may be affected by the existing proposals relating to personal social insurance and industrial injuries. (Sir Stafford Cripps, President of the Board of Trade, British Hansard, November 12, 1945, p. 1827.)

"I also welcome the statement which the right hon. and learned gentleman has made and which I think I may translate into my own language by saying that he has no intention of nationalizing the insurance companies. (Mr. Oliver Lyttelton, former President of the Board of Trade, British Hansard, November 12, 1945, p. 1836.)

5. It is submitted:

(a) that if certain citizens or certain properties are to be favoured by the State they should be favoured directly by tax exemption or subsidy and not indirectly by an exemption of taxation to insurers since:

(i) the cost of such consideration can then the more easily be ascertained;

(ii) all falling within such classification would receive the benefit of relief from taxation whereas under the suggestion;

(a) only those who are insured have a chance to benefit and

(b) of those, only the ones who happen to insure in a company writing at least 50% of its business on the prefered class actually qualify to receive the benefit of exemption as reflected in the cost of their insurance, and

(c) then only receive it at the discretion of the Board of Directors who may or may not decide to pay a policy dividend.

(b) That the suggestion creates an insoluble problem in drafting because of the evident difficulty in defining terms, e.g.

(i) "Farm property". When does a garden become a farm or a farm deteriorate to a garden? Is a non worked or unworkable farm still a farm? Does a farm help to qualify for the tax exemption, irrespective as to whether it is owned by the man who works it or by a large corporation holding it as investment or by an estate waiting to dispose of it or by a mortgage company which happened to reposse it?

In fine, is it the property itself and the use to which it has been, is or may be put that is the deciding factor irrespective of who owns the property, the occupation or the interest of the owner.

(ii) "Other property not protected by municipal or other fire fighting organizations". This is an additional qualification suggested as a basis for tax exemption by the Royal Commission in addition to those provided under section 13 (b) of the Special War Revenue Act.

Again as noted in the comments contained in paragraph "G" hereof, dealing with the conclusions of the Royal Commission as to the services rendered the farming community by the Farm Mutuals, it is suggested that:

1. The Royal Commission in making this suggestion overlooked the fact that it was dealing with more than fire insurance. Dominion licensed companies in Canada in 1943 wrote, according to the Report of the Superintendent of Insurance for the Dominion of Canada, the following volumes:

| | |
|---|---|
| Fire | $47,153,094. (p. vii) |
| Other than Fire and Life | $52,325,898. (p. xx) |

2. Surely it was not contemplated for example that Burglary, Plate Glass, Automobile, or Hail risks written on "farm property" or "property not so protected" would help to qualify an insurer for tax exemption. If there be any virtue in the suggestion; the test in Burglary, Plate Glass, Automobile insurance or Surety and Guarantee Bonds, would be police protection rather than fire protection and the test for Hail insurance would be the moral standard of the community to safeguard it from the wrath of nature.

3. Can an automobile owned by a farmer be said to be property protected or "not protected by municipal or other fire fighting organizations", since by its

very nature it is movable from place to place and if it does take fire it may as well be parked outside a fire hall in town as some place else.

4. Under the suggestion, would the writing of e.g. Burglary, Plate Glass, Automobile or Hail risks on property not so "protected" help an insurer to qualify for tax exemption or merely increase his difficulties in obtaining the required percentage needed to qualify for freedom from taxation.

5. What in fact is meant by "municipal or other fire fighting organizations" which may mean, we presume, anything from a "bucket brigade" to an extensive sprinkler and alarm system coupled with both a municipal fire department and a plant fire fighting organization.

Within the limit of most municipalities there will be areas that might be said "to be protected by municipal or other fire fighting organizations", but so remote from water supply that the protection would be most limited, i.e. municipalities do not of necessity extend water mains to their boundaries or lay water mains adequate to reasonably serve all rapidly growing areas within their limits.

May I say, Mr. Chairman, that in our system of rating, risks are not protected unless they are within 500 feet of a hydrant. That is what we call protected.

The only complete measuring stick for the fire fighting protection of municipalities is that issued by the National Board of Fire Underwriters, New York, and known as "Standard Schedule for Grading Cities and Towns of the United States with Reference to their Fire Defences and Physical Conditions". So exacting is this classification that those in Canada and elsewhere interested in such classification have not been able to use it withiut considerable modification.

Insurance rating organizations have modified it insofar as was necessary for their purposes of rating since it must be appreciated that the extent of the fire waste of any community is not determined entirely by the quality of the fire protection provided. The closeness with which the fire loss graph follows the business cycle, eloquently attests to the effect that prevailing business conditions have on the frequency of fire. Fire departments primarily control only the spread of fire and can have only slight control over the origin of fire.

Mr. Chairman and honourable senators, will you please look at the graph. I was able to secure a chart prepared by the Cleveland Trust Company which showed the periods of prosperity and depression from 1870 up to 1938, and superimposed upon that a graph showing the ratio of loss of premium. You will note the peak of loss ratios are invariably opposite a depression. That is, as we go into periods of depression, the fire loss ratio goes up.

Hon. Mr. CRERAR: Is that because people fire their property?

Mr. HAM: That is true in some cases, but I think that when a man is making money out of his property he is most concerned that his housekeeping be the best, and he wants to be sure that he continues to make money out of his property. In periods of depression he tends to be careless and does not care much whether the property goes or not. The one exception to that is, if you will look at the late lamented depression from 1929 on you will see the loss ratio dropped very suddenly, starting about 1932, and while the depression was still in effect.

This is purely an assumption on my part, but there were two factors entered into that situation. First, by that time the owners had very little equity left in their property but it was yielding them a little; they were getting their three meals a day, and getting a living out of it, and they knew if they had a fire their creditors would get the insurance money and they would be on the street.

Hon. Mr. CRERAR: That is towards the end of the depression?

Mr. HAM: Yes, starting in 1932 it dropped very suddenly. This depression had been in effect so long the equity had been squeezed out of the property. The other factor and perhaps the more important one, was that we had from 1919 on an inflationary period, values had gone up, so that the amount of insurance carried had also gone up. Then in 1929 the depression came along and deflation set in very rapidly.

Hon. Mr. HAYDEN: Are those synonymous terms, "inflation" and "values going up"?

Mr. HAM: I think they are. At least I use them as synonymous terms.

Hon. Mr. HAIG: Our Hebrew friends think they are.

Mr. HAM: When inflation set in we had much more insurance for a period of time, and collected insurance premiums nearer the value. I thought those remarks might be of interest to you, to show that firefighting does not have much effect on the fluctuation of loss ratio.

Each individual underwriter uses his own judgment as to the value of the fire protection provided by cities and towns and prevailing business conditions of the community when fixing his retentions of risks and his cessions of re-insurance.

The Fire Marshal of each province has his own ideas as to what is adequate or inadequate protection or no protection at all with respect to communities in his province.

Finally for the purposes of statistics and for statistics only, insurers and the Dominion Superintendent of Insurance have agreed on certain named towns as being protected. This agreement while used for statistics would not satisfy rating organizations, fire marshals or individual underwriters and in fact would not meet the views generally speaking of the citizens of these or other towns, especially if on such an opinion, was to depend an exemption from taxation. With such confusion arising out of the impossibility of finding a measuring stick to determine the existence or to gauge the adequacy of fire protection, what can the meaning be of this suggestion?

6. It is submitted that the suggestion, if adopted, would have a tendency to encourage municipalities to refrain from involving themselves in taxation for expenditures for fire fighting equipment if to do so was to increase their taxation or the taxation of their insurers and therefore the cost of their insurance.* It is urged with great earnestness that before any such principle is translated into law the opinion of the Fire Marshals of the several provinces of Canada should be sought as to the effect that it would have upon their efforts to reduce the enormous fire waste in Canada.

6. Re: Quebec—An Act to provide for the Prevention of Fire (R.S. 1925, cap. 180).

It should be readily admitted that the fire waste amounting to $41,922,790. in Canada for 1944† has a decided effect on the cost of living and the standard of living in Canada.

The above Act is admittedly designed to encourage measures that curtail that waste and loss to the community and to that end provides grants to municipalities that may interest themselves in the matter. Section 13 of the said Act reads as follows:

> 13. It shall be lawful for the Lieutenant-Governor in Council to grant, out of the moneys voted annually, for that purpose, by the Legislature,

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* "It requires no argument to convince any one that all items of tax upon insurance companies become a part of the general premium charge. . . ." (Illinois Fire Insurance Commission to the Senate and House of Representatives, Senate Joint Resolution, No. 24, dated January 4, 1911).

†1944 Statistical Report of Fire Losses in Canada issued jointly by Association of Canadian Fire Marshals and the Dominion Fire Prevention Association.

premiums to municipalities which efficaciously protect themselves against fire, to the satisfaction of the commissioner.

Thus we see the Crown in right of the Province providing funds to encourage fire prevention measures on the one hand and the suggestion that the Crown in right of the Dominion by tax exemption should discourage such measures.

We are informed by the Fire Commissioner's Department of Quebec that out of 1541 municipalities, less than 500 have fire protection of any merit in the opinion of his Department.

7. Re the phrase: "or is derived wholly from the insurance of churches, schools or other religious educational and charitable institutions".

It is unnecessary to repeat the arguments with respect to the difficulties that will be encountered with the use of these words since the problem is similar to that dealt with when considering the term "farm property".

(*a*) These terms are not defined. There are many schools that are operated for profit; there are church properties that are rented for gain and the necessity of the passing of the War Charities Act indicates the difficulty in determining what is a charitable institution. One of the more extensive activities of Better Business Bureaux is the protection of the community from the ravages of pseudo charitable institutions.

(*b*) Again who is to determine what churches, what schools, what other religious educational or charitable institutions an insurer is to treat as such for the purposes of securing freedom from taxation.

(*c*) Does the term "school" include schools of the dance, drama and music? Does the term "religious institutions" include properties of the Witnesses of Jehovah, or the Theosophical Societies? And finally, to what extent does an organization have to pursue the objective of benevolence to qualify as a chartiable institution; what, for example, relation must the out patient department of a heavily endowed hospital have to bear to the private and semi-private accommodation in order to fall within the ambit of the term "charitable institution"?

(*d*) The uncertainty with regard to these terms is bad enough in itself but when the discretion is left with the taxpayer to classify his risks to determine his liability to taxation this uncertainty can and undoubtedly will be used to defeat the just claims of the tax gatherer*.

## I. *RE: CONCLUSIONS OF THE ROYAL COMMISSION AS CONTAINED IN THE LAST PARAGRAPH UNDER THE HEADING IN THE SAID REPORT.*

The Committee's attention is directed to the said paragraph (p. 65), reading as follows:

> Considering the situation as a whole, we are of the opinion that the income tax should not be imposed on mutuals without a review of the varying rates of existing premium tax under the Special War Revenue Act, the taxation of investment income of British and foreign insurance companies and the position of marine insurance companies.

1. It is readily admitted as axiomatic that if Joint Stock Insurers and Mutuals receive identical treatment under the Income War Tax Act and Excess Profits Tax Act, they both should receive identical treatment under the Special War Revenue Act.

* Note the action of Northern Alberta Dairy Pool Ltd. which by By-Law declared all customers to be "members" with the effect that the 20 per cent limitation on non-member business was defeated and exemption from taxation secured. *See* reply of Mr. Stanley to counsel, p. 934, and to the Chairman of the Royal Commission, p. 936, Vol. III, Official Reports of the Proceedings of the Royal Commission on Cooperatives.

2. As to "varying rates of existing premium tax under the Special War Revenue Act". It is submitted that under the present conditions, these differences are justified,

(*a*) in the case of the Deposit Premium Mutuals and Reciprocals because: for the purpose of calculating net premiums the Joint Stock Insurers use gross premiums less cancellations and refunds and on this figure pay 2 per cent premium tax, whereas the Deposit Premium Mutuals and Reciprocals report for taxation purposes gross premium less cancellations, refunds and dividends—(see section 13*f*, Special War Revenue Act)—making the following difference in amount:

Net premium income of Deposit Premium Mutuals for 1943, according to Report of Superintendent of Insurance (i.e. excluding dividends) ..... $1,112,201

Premium income admitted (i.e. including dividends)—(pp. 6427-28, Vol. XXII Proceedings of Royal Commission) $2,263,337

and when one takes the taxes actually paid by the Deposit Premium Mutuals for that year of $44,364 (which amount includes Special War Revenue tax and various local taxes and provincial license fees) it will be found to amount to slightly less than 2 per cent of the net premiums as calculated by Joint Stock insurers for Government purposes.**

It is maintained that this artificial distinction as to what is "net premiums" for all insurers other than Deposit Premium Mutuals and Reciprocals and what is net premiums for them can only be justified where there is a comparable differentiation in the rate of premium tax since irrespective of the contentions to the contrary the amount received by the insurer in either case is the "consideration" for the contract and has all the other characteristics of "premium".

(i) See Appendix "G" attached hereto for both text book and statutory definitions of the word "premium".

(ii) Every premium quoted is an estimate of the cost of carrying the risk; premium rates quoted by rating bureaux can be nothing but an estimate. It is not uncommon for underwriters to ask and receive premiums in excess of the rate promulgated by a bureau, the excess so charged does not change the nature of the "consideration" from "premium" to something else. It is an indisputable fact that no insurer can even ascertain in advance the actual cost to it if carrying any particular risk.

(iii) Similarly, it is submitted that this practice of Deposit Premium Mutuals and Reciprocals of making the consideration relatively high does not of itself change the "consideration" to something other than "premium".

Normally insurance purchased for other than standard periods of one or three years, is not purchased at pro rata of an annual or triennial rate, but at a cost in excess of it; e.g., the pro rata charge for Fire and Automobile policies for one month would be 8-$\frac{1}{3}$ per cent of the annual premium. The fact is that it is the practice to charge 20 per cent (short rate table). This surcharge of nearly 150 per cent over the pro rata rate does not change the nature of the "consideration" to something other than "premium".

It is common in certain classes of bonds, for example: contract, probate, insolvency, court, public administrator; succession duty

** *See* deposition of Mr. A. Hurry on this point, pp. 6457, 6458 and 6496-6505, Vol. XXIII, Proceedings of the Royal Commission.

and fidelity bonds, to charge the full first annual premium irrespective of what period short of this that the bond runs, i.e. underwriters say the premium is the same whether the bond is for one month or twelve months just as the Deposit Premium Mutuals and Reciprocals say the premium is the same whether for one year or more.

"The initial premium deposit is the same for all policy terms".

(Factory Mutual or Deposit Premium brief, p. 10, as submitted to the Royal Commission).

The "consideration" for such a contract does not become something other than "premium" because the premium is the same for one month or twelve.

(iv) That if "consideration" is not the "premium" the application of statutory condition 10 (See Appendix "B" attached hereto), and comparable statutory condition of the other provinces produces an absurdity.

If the Deposit Premium Mutuals, Reciprocals, Canadian Cash Mutuals, American Cash Mutuals or any other type of Mutual, taking a cash premium in advance is not said to be upon the "cash plan" or the "consideration" for the contract is said not to be "premium", then statutory condition 10 requires no refund upon cancellation where the policy is cancelled mid-term by the insurer.

If it is said to be on the "cash plan" where a cash premium is taken in advance, sub-paragraph (*b*) of Statutory Condition 10 provides, in the event of cancellation by the insured, for the refund of "the excess of premium actually paid by the insured beyond the customary short rate for the expired time".

(v) If it is argued that the cash "consideration" for the contract is not "premium," then statutory condition 10 does not require the insurer to refund any part of the "consideration".

This is reductio ad absurdum, since:

(1) If such mutual business is said to be not on the "cash plan", the insurer can cancel by fifteen days' notice and make no refund whatever of unearned premium.

(2) If it is on the "cash plan" but the whole of the cash "consideration" is not "premium" and an insured sees fit to cancel, the insurer need not refund short rate of the total cash "consideration" but only short date of that portion of the cash "consideration" considered to be premium".

(3) If the "consideration" is not "premium," the said statutory condition has no application and an insured of a mutual company has no statutory right to a refund upon cancellation of the policy, either by himself or the insurer. This fact is of more importance when the "consideration" is said to be 8 to 20 times "the net cost of insurance for one year". (Factory Mutual or Deposit Premium Mutual brief, p. 8, as submitted to the Royal Commission).

(*b*) As to the other mutuals, the difference between the 3 per cent exigible from them and the 2 per cent exigible from Joint Stock insurers is readily explainable. Prior to 1942 the Dominion Government assessed the premiums of all insurers 1 per cent and the various Provincial Governments assessed these premiums varying percentages which averaged approximately 2 per cent. In 1942 (effective 1941) the

Dominion Government took over the collection of all such premium taxes consolidating them under an agreement to indemnify the Provinces.

There are no complications attached to the assessment to premium tax on behalf of the provinces and one may put aside consideration of this and consider only the 1 per cent Special War Revenue tax levied by the Dominion for its own account prior to the Dominion Provincial Agreement. When originally imposed in 1917, and until the Act was amended in 1942, the Dominion's Special War Revenue assessment of 1 per cent on premiums operated as a minimum tax on profits payable whether or not a company was subject to income tax and whether or not it actually made a profit, so that a "mutual" company paid 1 per cent of its premiums while a stock company paid either 1 per cent of its premiums or income tax on its profits whichever was the greater.

When the Special War Revenue Act was amended in 1942 this provision that Stock Companies could "set off" the 1 per cent tax on premiums against their greater liability for income and excess profits tax if any was withdrawn. The right of set off taken away from Joint Stock insurers was estimated to be approximately 1 per cent and the premium tax was adjusted so that while Joint Stock insurers paid 2 per cent, Lloyds and the Mutuals other than Deposit Premium Mutuals and Reciprocals paid 3 per cent, thus maintaining their relative positions under the amendment.*

It would be interesting to ascertain whether the said Pool Insurance Company and the said Co-operative Fidelity & Guarantee Company, both Joint Stock companies, assume the mantle of a Joint Stock insurer for the purpose of the lower premium tax under the Special War Revenue Act and at the same time claim exemption under the Excess Profits Tax Act and the Income War Tax Act under section 4(*p*) of the latter statute.

3. As to "the taxation of investment income of British and Foreign Insurance Companies"

This situation might well "be reviewed" but in explanation of the present exemption the Committee's attention is directed to certain facts.

(*a*) Investment income would form part of the taxable income of British and Foreign Companies under the laws of the state in which such companies have their domicile.

(*b*) There is no necessity for any such insurer to maintain investments in Canada on which income might be earned since investments held as reserves against Canadian business may and in many cases are held by the fiscal agents of the Dominion Government resident outside of Canada.

(*c*) Under the present system no allowance as expense is permitted such companies as regards head office expense such as is allowed the Canadian companies.

(*d*) This submission is filed on behalf of 45 Canadian Joint Stock Companies who are not objecting to the treatment of their competitors of British or Foreign origin and of course the same principle should likewise be applicable as between mutuals, Canadian and foreign.

I wish to point out, sir, that that paragraph has been amended. The amended paragraph appears in the brief as distributed here today, but it is not in the copies of the brief that were distributed before.

* See deposition of Mr. A. Hurry on this point, pp. 6455-6457, Vol. XXIII, Proceedings of the Royal Commission.

The brief goes on:

(e) The adoption of a policy of double taxation on investment income, i.e. by Canada and by the country of domicile would likely lead to similar taxation being imposed on Canadian Companies, Joint Stock or Mutual, operating in such foreign countries.*

4. As to the position of Marine Insurance companies.

As I stated earlier, Mr. Chairman, I do not represent all marine companies. I represent the companies writing automobile, fire and casualty business, some of whom write marine insurance.

The brief goes on:

It need only be pointed out that the marine market being an international and an open one does not lend itself readily to the absorption of taxes** in any country since the citizen of Canada wishing to effect cover on a shipment to or from Canada or to or from any other place in the world, has innumerable premium tax free markets in which to secure the cover by letter, telephone or cable, e.g. London, New York, Lisbon, Rio de Janeiro or any other sizeable port in the world. The underwriting information is just as available to underwriters in the shipping centers of the world as it is to underwriters in Canada.

A tax to be collected on marine business would have to be imposed on the insured since the insurer may be anywhere and the property to be insured cannot be said to be in Canada. An applicant for insurance could easily have his foreign agent place the cover and by this means avoid the tax.

It seems reasonable to suggest that indirectly Canada benefits through the large volume of marine premiums paid in Canada from which agents and staffs are compensated and who as individuals contribute to the National Revenue. It is submitted that that condition is preferable to the drying up of this source of income only to benefit agents and staffs in other countries and the cable companies whose wires would be used to place business outside Canada.***

## Re: Non Marine Underwriters at Lloyds

### *J. RE: THE POSITION OF LLOYDS UNDERWRITERS*

Consideration of the tax position of persons "carrying on business in Canada" under the designation of Lloyds did not fall within the scope of order-in-council 8725 and therefore was not considered by the Royal Commission. It would appear, however, pertinent to draw the attention of the Committee to this situation. That the matter is imporant is evidenced by the fact that this group of insurers writes a relatively substantial volume of business in Canada as the following figures will indicate:

| | Premiums |
|---|---|
| Reciprocals | $ 623,426 |
| Deposit Premium Mutuals | 1,112,201 |
| Stock Mutuals | 1,894,804 |
| Lloyds | 4,443,724 |
| Other Mutuals | 11,736,206 |
| Joint Stock | 84,530,878 |

* See deposition of Mr. A. Hurry on this point, pp. 6458-6474, Vol. XXIII, Proceedings of the Royal Commission.

** This problem is referred to with respect to taxation on shipping as distinct to taxation on marine insurance by Mr. C. Fraser Elliott, C.M.G., K.C., in his evidence before this Committee —Proceedings of Special Committee No. 1, p. 20. From a taxation standpoint, whether a ship enters a port is an easily ascertainable fact but whether an offer and acceptance of a premium for a marine contract was made would be most difficult to establish.

*** See deposition of Mr. A. Hurry on this point, pp. 6514-6521, vol. XXIII, Proceedings of the Royal Commission.

*(Figures for Lloyds from table on page xx and on page xxv of the Report of the Superintendent of Insurance for the Dominion of Canada for the year 1943 and the figures for all other insurers from table on page lvii of the same volume).*

The term Lloyds as used to designate insurers is not the name of an insurer but is a term that designates a state of affairs. Lloyds as an insurer does not exist, it cannot sue or be sued as an insurer. (Prudential of London et al. vs. Courey, 3 I.L.R. 1936, p. 448).

Hon. Mr. LEGER: Has not that been reversed to some extent?

Mr. HAM: No, sir.

Hon. Mr. LEGER: It seems to me that some action has been taken.

Mr. HAM: Not against Lloyds as such, sir. The action is taken against the individual underwriters.

Hon. Mr. HAYDEN: You sometimes find eighty or ninety names on a writ.

Mr. HAM: As a matter of fact, I have a copy of a Lloyds policy here, and there are three pages of names on it.

Hon. Mr. MCRAE: There is a provision that if it is necessary to take action, some one may be sued?

Mr. HAM: For purposes of legal suits, action is taken against Mr. Stevenson here.

The CHAIRMAN: Can the underwriters be sued severally or collectively?

Mr. HAM: Not collectively, sir. Each Lloyds underwriter states that he insures for himself and not for the other underwriters. In theory, the judgment is against only one underwriter, but in practice it is like a test case.

The remaining part of that paragraph dealing with Lloyds is as follows:

As an insurer it has no legal entity, no assets, no liability. It is a collective noun used to describe a number of individual traders in insurance contracts in the same manner as the term "Winnipeg Grain Exchange" is used to describe a group of individual traders in grain contracts and the term "Montreal Stock Exchange" to describe a group of individual trades in contracts commonly known as stocks and bonds.

Each underwriter at Lloyds will have his own experience on his underwriting just as each grain or bond trader will have. He is actuated entirely by the profit motive and if successful he should be liable to taxation on the same basis as the grain or bond trader or joint stock insurer. He should not be able to offset his profits with losses of a fellow member of Lloyds any more than one grain or bond trader should be able to find immunity from taxation because a fellow trader has had an unfortunate year.

It is a fact that each Lloyds underwriter on a policy specially states that he insures for himself and not for the other Lloyds underwriters. In dealing with a claim of an insured, the underwriter at Lloyds does avail himself of this self-imposed restriction of liability. In dealing with a claim of a taxing officer for taxes on the profits, he avails himself of a set off for the losses made by some other individual underwriter. What is the nature of an arrangement between those who pursue their competitive way not only with outsiders such as the Joint Stock companies, the Mutuals and Reciprocals, but also with each other that entitles a member of Lloyds as a taxpayer to set off against his profits the losses of a fellow competitor.

It is submitted that the relationship between competing insurers at Lloyds is little different from the relationship existing between members of so-called Insurance Associations of Joint Stock insurers or between Mutual members of the Association of Farmer Mutual Insurance Companies of Ontario. So little different is the relationship that it is impossible to appreciate any reason for a difference in treatment.

It is unquestionable that the rapid growth in the sale of Lloyds contracts in spite of evident disadvantages of a Lloyds contract is in a substantial part due to the favourable treatment they have received from the standpoint of taxation and premium reserve requirements.

Mere difficulty in the ascertaining of the amount of profit or income is for the ordinary taxpayer no excuse for non payment of taxes, and it, it is submitted, is not a valid excuse when taxpaying citizens are thereby prejudiced.

## Conclusions

1. Insurance is one of the foundations of the commercial and financial structure of the community* and because of its necessity in the economic organism any taxation on insurance operations, payable as it must be out of premiums charged** is a levy on the cost of living of the community, which statement is not submitted as an argument against any taxation of insurers but only that the fact should be borne in mind in determining the level at which insurance operations should be taxed.

2. Fire like other economic waste is a loss to the community, whether or not loss is covered by insurance. It is paid for in any event by the community at large by an increase in the cost of living or by a reduction in the standard of living.

3. Insureds and the community make the premium rates of insurance by their loss experience. Underwriters by ascertaining the losses and comparing the premium merely reflect the change in loss experience by an appropriate change in rate.*

4. The average fire rate per $100. in the last forty years has declined from $1.60 in 1905 to 65c. in 1943 indicating two things: physical improvement in risks and fire protection arising out of inspection services of insurers†, and consideration in premium rate for such improvement and secondly the competition which assures a reflection of improved conditions in the cost of insurance.

5. There is intense competition in the insurance business that assures a reasonable price, there being apart from Lloyds Underwriters 606 insurers in the Province of Quebec and 348 in the Province of Ontario. (See Appendix "D" attached hereto).

6. All insurance is in a sense mutual, i.e. "paying the losses of the few out of the premiums of the many", thus spreading the burden rather than allowing the loss to lie where it falls.

7. There is no ground for distinguishing by way of tax exemption between risks on account of their nature, their ownership or the purpose to which they may be put. It is submitted that it is an erroneous principle that is found in that section 13 (b) of the Special War Revenue Act and that is suggested by recommendation 5 of the Royal Commission. Whether the object damaged or

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* "The business of fire insurance is of such commercial importance that it ranks with banking, railway, express and telegraph service, and public interests demand that any legislation proposed should preserve the institution and increase its usefulness rather than impair its capacity for efficient public service." (Illinois Fire Insurance Commission to the Senate and House of Representatives—Senate Joint Resolution No. 24—dated January 4, 1911).

** "It requires no argument to convince any one that all items of tax upon insurance companies become a part of the general premium charge. . . ." (Illinois Fire Insurance Commission to the Senate and House of Representatives—Senate Joint Resolution No. 24—dated January 4, 1911).

† "The inspection of properties and schedule rating, by which defects are brought to the attention of property owners, tends, in the long run, to effect a considerable betterment of the physical conditions which are largely responsible for the extent of our losses by fire." (Mr. Justice Maston, Ontario Insurance Commission 1916-1918, dated January 18, 1919.)

destroyed is a farm, a school, a religious or charitable institution or an industrial plant employing thousands, or the Parliament Buildings themselves, the loss falls in the first instance on the buyers of insurance if the risk is insured, and in the last instance, and in any event, on the whole community.

8. Recognizing:

(*a*) the rule of interpretation of statutes that the courts construe taxing statutes against the Crown,

(*b*) the faulty principles of exemptions attempted by these statutes under discussion, and

(*c*) the difficulty of the draftsmen to express clearly such principles,

it can be readily understood why there is found between the citizen and the protection of the courts wide ministerial discretion, and appeal therefrom to the person exercising that discretion and the heavy costs of litigation in the Exchequer Court of Canada.

9. Taxation statutes should be

(*a*) clear and definitive (which is not now the case‡ nor would it be possible under recommendation 5 of the Royal Commission);

(*b*) free as possible from uncertainty due to ministerial dicretion¶ which is not now the case under the said Acts; and

(*c*) certainly free from discretion of the taxpayer himself as to whether he will pay taxes at all and if he does just how much that will be* (which would be the case under recommendations 2 and 3 of the Royal Commission).

To quote the words of the Honourable Senator who moved the resolution that brought this Committee into being: "No taxing statute should be left in that indefinite form".

10. And finally and most unequivocably, it is submitted that public interest is best served when a taxing statute is so worded as to eliminate discrimination between competitors whether they be the state, a person, a firm or a corporation and irrespective of the nature of the ownership of the corporation, or whether its objective is alleged to be the salvation or the ruin of humanity.

All of which is respectfully submitted on behalf of the aforementioned Joint Stock Companies, the names of which are attached hereto as Appendix "H".

A. LESLIE HAM,
*Counsel for said Joint Stock Insurers.*

Montreal, 31st January 1946.

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† "No one can more than guess at how many millions of dollars of fire damage would have resulted if we had not had the wholehearted co-operation of the underwriters' associations." (Hon C. D. Howe, Minister of Munitions and Supply, as quoted in the Montreal *Daily Star* of November 19, 1945.)

‡ ". . . a statute which today is quite incapable of interpretation by any lawyer or accountant, or by any other professional man who may be called upon to advise in regard to its application. In many particulars it is simply unintelligible." (Senator G. P. Campbell, Debates of the Senate, Vol. LXXXIV, p. 77.)

¶ "The Government should not sponsor legislation which will vest in an individual or any group of individuals power to tax the subject and take away his property. This power should be vested in and should be exercised by Parliament alone." (Senator G. P. Campbell, Debates of the Senate, Vol. LXXXIV, p. 77.)

* ". . . there is nothing in the nature of things,.....to say that when an income has been actually earned and received by any person or corporation, Her Majesty's right to be paid a tax on it, in the least degree depends upon what they are to do with it afterwards, except in certain excepted cases such as charitable trusts and some others. (Mersey Dock Harbour Board *vs.* Lucas, 8 A.C., p. 891.)

The CHAIRMAN: Thank you, Mr. Ham. We usually have Mr. Stikeman lead the questioning. Mr. Stikeman, have you any questions to ask?

Mr. STIKEMAN: There is some doubt in my mind, Mr. Chairman, whether the subject-matter of this brief comes properly within the terms of our reference, and before I make any comment on it I think some consideration should be given to this point.

The CHAIRMAN: I have already pointed that out to the witness, but I thought that possibly there might be some things in the brief that come within our purview. If so, perhaps you would like to ask him some questions.

Mr. STIKEMAN: There are a few points on which I thought I could question Mr. Ham.

Hon. Mr. HAYDEN: I do not want to take any part in this discussion, Mr. Chairman, for reasons which may be more or less well known to some of those present here. But large portions of this submission purport to analyse recommendations of the Royal Commission and to point out that that Royal Commission was in error in reaching certain conclusions. I am wondering whether it is any part of our duty—in my own mind I am clear that it is not—to act as a sort of referee or court of appeal from the recommendations of the Royal Commission, because those recommendations relate to questions of policy which are before the Government at the present time. Then there is the difficulty I see that all these questions were thrashed out before that Royal Commission, where all the interested parties that have been referred to in this submission were present and took their respective parts. Now, are we, starting with this brief, going to accept a series of briefs from all the other interested parties on questions of policy, which obviously are outside the scope of this Commission? It seems to me that that is what we are opening the door to.

The CHAIRMAN: No, Senator Hayden. Perhaps you misunderstood what I said to Mr. Stikeman. My thought was not that he should question the witness on matters of policy or the recommendations of the Royal Commission; but rather that if there is anything in the brief which comes within our jurisdiction on which Mr. Stikeman desires to ask any questions, he might proceed. Are there any such questions?

Hon. Mr. HAYDEN: Might I point this out? I am afraid we shall get ourselves in this position. Having heard this brief, which very clearly deals with questions of policy, from one group, in fairness to the other groups who appeared before the Royal Commission, should they wish to make answers to this Commission they should be entitled to do so. Our official record has a certain circulation which may make it necessary for us to allow the other groups to file briefs on matters which obviously are outside the scope of our reference.

The CHAIRMAN: I imagine about the only companies that might wish to make representations in reply to what Mr. Ham has given us are the mutual companies, such as the Mutual Fire Insurance Companies. They have had notice of this brief for some time, and I am informed that they do not desire to make any representations. Can you say anything as to that, Mr. Stikeman?

Mr. STIKEMAN: Not yet, Mr. Chairman.

The CHAIRMAN: That does not alter what I have said. If there is anything in the brief which Mr. Ham has presented which has nothing to do with policy or with the proceedings or recommendations of the Royal Commission, I think Mr. Stikeman might very well proceed with questions. If he has no such questions to ask that closes the matter so far as I am concerned.

Hon. Mr. CRERAR: I should like to make this observation. I think the brief represents a great deal of study on matters which are quite beyond the powers of this committee to deal with. Our powers should be kept clearly in

mind; they are related to the administrative methods and defects in those administrative methods, and the correcting of injustices, if there are any, in such administrative methods. The brief, admirable as it is, relates wholly to other matters. Indirectly here and there there are references, for instance, to the exercise of discretionary powers and that sort of thing, which might conceivably be within our ambit, but those references are very limited. I agree with Senator Hayden that we do not wish to get ourselves into the position of being a court considering and dealing with matters which are purely matters of policy.

The CHAIRMAN: I agree with you.

Hon. Mr. LAMBERT: I should like to point out that this whole question was taken into account when the proposal was before us to hear the brief of the Montreal Stock Exchange. At that time it was definitely decided that those who wanted to be heard should be informed that we had no authority to deal with representations as to matters outside the terms of our reference, but if they desired they could attend and present their briefs. I do not think there is much use discussing the possibility of our receiving further briefs at this stage. We are not establishing a precedent.

The CHAIRMAN: We are dealing with this just as we did with other briefs.

Hon. Mr. LAMBERT: At that time I pointed out what is now being pointed out and it was decided to take a chance.

Hon. Mr. HAYDEN: I do not think we are establishing a precedent. I say we may be leaving ourselves open to receive briefs which are beyond the scope of our functions.

Mr. HAM: Mr. Chairman, might I be permitted to make this observation? I believe our problem arises out of the wording of 4 (*g*)

> The following incomes shall not be liable to taxation hereunder;
>
> (G) Mutual corporations—The income of mutual corporations not having a capital represented by shares, no part of the income of which inures to the profit of any member thereof, and of life insurance companies—

Our view is that mutual insurance companies do make income. If they make income it does inure to the profit of their members, but for years mutuals have not paid any tax. Therefore they must have escaped taxation by virtue of the exercise of discretion, or through an oversight.

Hon. Mr. CRERAR: Your case may be perfectly good, Mr. Ham; I do not dispute that; but under our reference we have no power to deal with the point.

Hon. Mr. HAYDEN: You do say, though, that in your opinion the exercise of discretion should not as a general principle carry with it a right of taxation?

Mr. HAM: Either a right to exempt or to impose.

Hon. Mr. HAYDEN: That is, there should be a statutory liability underlying any exercise of discretion: is that right?

Mr. HAM: That is my view.

Hon. Mr. HAYDEN: And that statutory liability should be clear?

Mr. HAM: Yes.

Hon. Mr. HAYDEN: We have had quite a number of briefs here that say the same thing.

The CHAIRMAN: Have you any further questions, Mr. Stikeman?

Mr. STIKEMAN: No, Mr. Chairman.

The CHAIRMAN: Does any other member of the committee desire to question Mr. Ham? Thank you very much, Mr. Ham, for coming here and presenting us with this brief.

Mr. HAM: May I express to you my client's appreciation for the courtesy extended to me.

The CHAIRMAN: Gentlemen, we have with us the Canadian Chamber of Commerce, represented by the Chairman, Mr. Elwyn. Mr. Elwyn, if you are ready, you may proceed.

Mr. GEORGE B. ELWYN: Mr. Chairman and honourable senators, perhaps I should first of all explain the nature of the Canadian Chamber of Commerce. It is, as you perhaps are aware, an association of upwards to some 200 Boards of Trade and Chambers of Commerce and other business associations across the country, including upwards of 800 individual members who are firms and associations of one sort and another.

Hon. Mr. HAYDEN: What is the purpose of your organization?

Mr. ELWYN: Simply to centralize in the field of national interests the activities of these chambers and boards, and to give voice to the ideas of business in the dominion field. The Chambers of Commerce and Boards of Trade throughout the country have provincial associations, and there is the Canadian Chamber of Commerce, of which we are the representatives, and its function is to co-ordinate and co-relate the activities of all these members of boards of trade and business associations of various sorts right across the country, and to give voice to their ideas and thoughts.

Hon. Mr. HAYDEN: Is that a broader grouping than is represented by the Canadian Manufacturers Association?

Mr. ELWYN: It is a somewhat similar grouping, except the M.F.A. consists of Canadian manufacturers, and the Canadian Chamber of Commerce embraces all businesses and professions.

The brief in question, gentlemen, was prepared by the Taxation Committee of the Canadian Chamber, and who are present to-day. It was submitted first in the form of a questionnaire, and subsequently in its draft form to all members across the country, and was concurred in by the majority, and by a limited number in writing by reason of the shortness of time. The brief represents views which have been expressed by our subordinate organizations and our associations on many previous occasions. With your permission, Mr. Chairman, I will now read the brief.

To the CHAIRMAN and MEMBERS,

The Special Committee of the Senate
on the Provisions and Workings of the
Income War Tax Act and The
Excess Profits Tax Act, 1940.

## I. INTRODUCTION

The need for a complete revision of the tax structure of Canada designed to distribute equitably among all classes of taxpayers the heavy burden of present-day taxation is one which The Canadian Chamber of Commerce has emphasized on many occasions. Hence the Chamber welcomes the setting up of the Special Committee of the Senate which, according to its terms of reference, has been "appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment and collection of taxes thereunder and to report thereon".

In its annual Policy Statements for the past 15 years the Chamber has urged the elimination of duplicatory taxation and the simplification of the Canadian tax structure. In addition, the Chamber made a submission to the Royal Commission on Dominion-Provincial Relations in 1938 urging that: "The Chamber believes that Canadian business enterprise is unnecessarily

hampered by such factors as (*a*) a want of tax uniformity and co-ordination, (*b*) discriminatory taxes and (*c*) tax regulations generally". The Brief continued: "To avoid this duplicating taxation and to eliminate the need for corporations to file a multiplicity of returns based on varying calculations, the Chamber recommends that the power of imposing a corporation tax on profits should be vested solely in the Dominion, notwithstanding any division of revenue from this tax may be made among the provinces."

In 1943, the Chamber gave further emphasis to this policy in the presentation of a "Program for Reconstruction" to the Special Committee of the Senate on Economic Re-Establishment and the Special Committee of the House of Commons on Reconstruction.

In 1945, the Chamber submitted recommendations to the Royal Commission on Taxation of Co-operatives, and the Royal Commission on Taxation of Annuities and Family Corporations, regarding a more equitable application of taxation to the forms of enterprise under study by these Commissions.

The present submission to this Special Committee of the Senate does not represent an inclusive statement of all the problems which arise from the application of the Income War Tax Act and The Excess Profits Tax Act, 1940, but is intended to draw attention to certain fundamental features of our tax legislation which are, in our opinion, in urgent need of amendment.

## II. Need for Equitable Taxation of all Forms of Enterprise

The basis of the Chamber's approach to the problem of taxation, as expressed in the above representations and elsewhere, is that fair and equitable taxation for all forms of business enterprise regardless of the nature of the ownership, and based on ability to pay, is essential to a sound economy. The present system of tax exemptions for various forms of public and co-operative enterprise penalizes all tax-paying business to the advantage of tax-free competitors. The high wartime taxation rates have greatly aggravated the situation and constitute discrimination against private enterprise in favour of public enterprise.

It is therefore recommended that,

(*a*) the Income War Tax Act be amended to provide for uniform taxation of all forms of business enterprise;

(*b*) the Income War Tax Act be amended to provide for an integration of the individual personal income tax and the corporation tax in order to eliminate double taxation of corporate earnings;

(*c*) The Excess Profits Tax Act, 1940, be abolished.

The Chamber noted with satisfaction the recognition by the Minister of Finance in his Budget Speech in October 1945 that a thorough overhaul of the income tax structure was needed. It is hoped that this will be undertaken soon, and that an early and satisfactory conclusion will be reached in the negotiations which are underway between the Dominion and the Provinces looking toward a solution of constitutional and other difficulties in the levying of taxes in Canada.

## III. Reduction in Discretionary Powers of Minister

Consideration of the provisions of the Income War Tax Act and of The Excess Profits Tax Act, 1940, should recognize the fact that both Acts were drafted under wartime circumstances, and were designed primarily to raise quickly huge sums of money to meet abnormal demands on the national treasury. In addition, the imposition of The Excess Profits Tax Act, during the second World War, and the making of important amendments to the Income

War Tax Act, were dictated by the very proper desire of Government to limit corporate profits arising out of wartime operations, to forestall inflation and to control purchasing power. It is submitted that tax legislation drafted in such circumstances and with such objectives is inevitably unsuited to peacetime needs. It does not encourage the growth of private business, and it retards rather than stimulates employment.

Indeed, we find in the Acts under review a delegation of powers from Parliament to the Minister of National Revenue which is akin to the delegation of emergency powers to wartime governments. Not only is the Minister given power to make regulations, but, in addition, many sections of the Acts give him a broad power to exercise discretion in making tax assessments. In some sections there is an obvious intention to preclude appeals from the Minister's decision, this intention being expressed in phrases which refer to the Minister's decision as "final and conclusive". We submit that no Minister of the Crown should, in fairness to himself and in equity, be asked to exercise such wide discretionary power without a right of appeal to the judiciary or some special body created for the purpose of assuming it, and that tax legislation should be so drafted as to minimize the necessity for the delegation of discretionary power and with greater regard for the fundamental principles of democratic government.

Moreover, the reference to these powers in so many sections of the taxation Acts has resulted in many of the decisions of the Exchequer Court being made not with regard to matters of principle or fact in the interpretation of income tax legislation, but simply with regard to whether the Minister has properly exercised his discretionary powers. It is believed that such decisions contribute little to the building up of a body of income tax law which might be made available for the guidance of the taxpayer, a matter which is discussed more fully in Part V of this Brief.

It is recommended, therefore, that the discretionary powers of the Minister be reduced to a minimum. Where such power remains, we believe that it should be subject to appeal to the Exchequer Court or to an independent board as described in Part IV of this submission.

It is also recommended that the tax Acts be amended to provide for a greater certainty of taxation, that is, that an individual should be able to determine, under all but the most extraordinary circumstances, how much tax he will be liable for. In particular, Section 6 (1) (*a*) of the Income War Tax Act, which disallows as a deduction from income for tax purposes any disbursement not expended for the purpose of earning the income, may be used inequitably to cover items not mentioned elsewhere in the Act. Sections 6 (2) and 32 (A) also leave the taxpayer with no certainty as to the nature of expense or transactions which may properly be set against income in calculating tax liability.

## IV. Board of Review for Appeals

In view of the high rates of present-day taxation and the increasing extent to which the discretionary powers of the Minister of National Revenue are being exercised, we believe that the machinery for appeals from the Minister's decisions, under the Income War Tax Act and The Excess Profits Tax Act, is entirely inadequate. This is especially true today since some two million taxpayers in the lower income groups have been added to the rolls and are subject to the formidable provision, 61 (1), of the Income War Tax Act requiring the posting of a sum of $400 as security, apart from other expenses, for any appeal to the Exchequer Court from a decision of the Minister. The potential extent to which appeals by individuals might be made may be judged from the figures already given to the Senate Committee by the Deputy Minister of National Revenue (p. 67 of the Proceedings) showing that some $23,000,000 was assessed

on individual taxpayers in the fiscal year ending March, 1945 over and above the amounts which the taxpayer had declared. Corporations were assessed an additional $15,000,000 over their declarations, making a total of $38,000,000 raised in extra assessments. It is reasonable to suppose that many individuals and businesses contributing to this huge sum would have liked to have had easier access to an impartial body to review their assessments than was provided under the Income War Tax Act.

To remedy this situation, we wish to repeat a recommendation, already made in a submission to the Minister of Finance in February, 1944 on behalf of the National Board of Directors, that a Board of Review be established to which appeals from assessments might be referred.

Our recommendation is that,

(*a*) a Board of Review be established with power to review the exercise of the Minister's discretionary powers;

(*b*) the Board should hold hearings during the year in various parts of the country, at which taxpayers could appear either in person or by representative;

(*c*) the decisions of the Board should be made public so that a body of evidence and decisions could be built up, a compilation which would be of great assistance both to taxpayers and the Department of National Revenue;

(*d*) the Board should be empowered to assist the Minister in administering the Income War Tax Act and other tax Acts under the Minister's authority by considering any matters referred to it by the Minister for opinion or decision prior to the making of an assessment;

(*e*) the members of the Board should serve on a full-time basis, should be highly qualified for the work involved and be fully representative of business and the professions.

## V. Consolidation of Income Tax Rulings

The efficient administration of income tax law in Canada is seriously affected by the lack of any official collection or consolidation of the rulings of the Minister of National Revenue and his numerous officials, or of the evidence or reasons upon which such rulings have been based, to which business men, accountants or lawyers, can refer in order to advise or decide matters of income tax assessment and collection. In England a body of income tax law has been built up which forms a basis for making uniform rulings on income tax questions and for making decisions in the light of established and readily ascertainable principles.

An important factor contributing to the lack of uniformity in Canadian income tax rulings and their dispersion through many Departmental offices in the country is that, in practice, ministerial discretion is actually exercised in the principal cases by the Deputy Minister and his officers in Ottawa, and in most cases by junior officials in income tax offices throughout the country. Except for general Departmental directives, the local officers in towns and cities appear to determine tax assessments to the best of their ability and without reference to any standard code or guide of income tax law or principles. Such procedure, and the knowledge by many taxpayers of inconsistencies and inequities in the application of the taxation Acts, only leads to confusion and indifferent co-operation by citizens with the administrators of the law.

It is recommended, therefore, that the official rulings and decisions relating to the application of Canadian income tax legislation be consolidated in a form which will be available to all interested persons.

If such a consolidation of income tax rulings is made and a Board of Review for Appeals is set up, we recommend that more authority be placed in the hands of local income tax officers to decide cases on the spot without applying to the National Revenue Department in Ottawa for rulings and thereby incurring considerable delays. We wish to commend, therefore, the trend which is already apparent toward a decentralization of administration in the Department.

## VI. Additional Recommendations

In addition to the foregoing, we wish to recommend the following matters to the attention of the Special Committee of the Senate in their study of the Income War Tax Act and The Excess Profits Tax Act, 1940:

It is recommended that,

### *Refund of Over-payments*

(*a*) prompt refund of involuntary over-payments on tax assessments be made and, in view of the high rate of interest applied by the Government on under-payments, it is believed to be equitable that the taxpayer should receive interest on sums which he is owed by the Government;

### *Limitation on Period for Assessments by the Department*

(*b*) the taxpayer be protected from retroactive tax collection and the right of the Department of National Revenue to assess or re-assess a taxpayer, except in cases of fraud, should be limited to a reasonable period of time after the due date of the assessment or the date on which the return was filed, and that interest charged on re-assessments should be allowed as a business expense for tax purposes;

Hon. Mr. Hayden: Two years has been suggested in another brief as a reasonable period. Do you agree with that?

Mr. Elwyn: That is a reasonable period, in our opinion.

Hon. Mr. Hayden: Two years from the time a man files his return?

Mr. Elwyn: Yes. Perhaps temporarily it might be extended to three years, to give the department an opportunity to catch up with the backlog, but two years would be our conception of a reasonable period.

Then the brief goes on:

### *Retention of Pay-as-You-Earn Principle*

(*c*) the principle of tax deduction at the source on wages and salaries be retained as contributing to efficiency, and, with present high tax rates, avoiding embarrassment to many taxpayers who have to find large sums of money to pay taxes at one particular time;

### *Elimination of "Standard Profits"*

(*d*) the concept in tax legislation, present or future, of "standard profits" as a basis for the assessment of corporate taxes be eliminated;

Hon. Mr. Hayden: Of course, they would go with the disappearance of the excess profits tax.

Mr. Elwyn: Yes, exactly.

The final recommendation in our brief is:

*Income Tax Department Personnel*

(*e*) in view of the commendable remarks of the Deputy Minister of National Revenue before the Special Committee regarding the need for trained and efficient personnel in the Department, and in view of the importance in the national interest of securing and retaining such personnel, the latter be given adequate remuneration comparable to that paid by order employers.

The brief is respectfully submitted.

The CHAIRMAN: Mr. Stikeman, have you any questions?

Mr. STIKEMAN: Mr. Chairman, there are one or two things that I would like to ask the witness. On page 7 of the brief it is recommended that "the Income War Tax Act be amended to provide for uniform taxation of all forms of business enterprise." Do you intend that to mean that partnerships and proprietorships should be taxed by the same methods as corporations, for example, Mr. Elwyn?

Mr. ELWYN: Primarily I think the feeling of our committee was that in the field or corporation taxes—we were dealing exclusively with that field—it was inequitable to have different types of tax approach to different types of organizations; for example, co-operatives as against privately owned businesses, and privately owned businesses as against publicly owned businesses. In Winnipeg there is an instance of that distinction made between the taxing of a privately owned enterprise and the taxing of a publicly owned enterprise. Perhaps Mr. Hayes would elaborate upon that.

Mr. HAYES: Perhaps what the Chamber had in mind was that the methods might not be uniform but the resulting taxation should be.

Mr. STIKEMAN: You do not believe that the present method of taxing corporations and partnerships results in a relatively equal amount of tax being taken today?

Mr. HAYES: Not in all cases.

Mr. STIKEMAN: The second recommendation on page 7 of the brief is perhaps a corollary of the one I have already mentioned. The second recommendation is that "the Income War Tax Act be amended to provide for an integration of the individual personal income tax and the corporation tax in order to eliminate double taxation of corporate earnings." Have you any suggestions as to how that might be effected?

Mr. ELWYN: Our disposition is to feel that something parallel in principle to the British system of deducting a reasonable rate of corporation tax and allowing that as a deduction against the personal income tax of the shareholder is the equitable way of taking care of the situation.

Mr. STIKEMAN: Whether or not a corporation dividend is declared and distributed, or only declared?

Mr. ELWYN: It has to be declared and distributed.

Mr. STIKEMAN: So there would be no credit built up unless the corporate surplus were distributed?

Mr. ELWYN: Definitely not.

Mr. STIKEMAN: The last paragraph on page 7 of the brief says: "The Chamber noted with satisfaction the recognition by the Minister of Finance in his Budget Speech in October, 1945, that a thorough overhaul of the income tax structure was needed." It is my impression that what the Minister said on that occasion had to do with an overhaul of the tax structure as it affects individuals.

Mr. ELWYN: Perhaps we interpreted that to cover more territory than it did. I have always felt it was the intention to have a complete overhaul of the Act.

Mr. STIKEMAN: On page 9 of the brief you recommend that "a Board of Review be established with power to review the exercise of the Minister's discretionary powers." On page 8 you suggest that that board should be independent, but there is nothing further said to this effect in your recommendations on page 9. Can we assume that by "independent" you mean entirely independent of the Minister of National Revenue?

Mr. ELWYN: Definitely.

Mr. STIKEMAN: In a separate department of the Government, such as the Department of Justice, for example?

Mr. ELWYN: Yes. We feel that it should be a quasi judicial body—I do not mean by that a board composed of members of the Judiciary, but a board having complete independence in the same sense that the courts have independence.

Mr. STIKEMAN: Not independence as in the case of the Board of Referees, but independence in a statutory sense?

Mr. ELWYN: Yes, quite.

Hon. Mr. HAYDEN: You mean that the Minister would have to accept the decision of the board?

Mr. ELWYN: Yes, I would say so.

Hon. Mr. HAYDEN: A finding by the board would not be in the form of a recommendation to the Minister?

Mr. ELWYN: No; it would have to be final.

Mr. STIKEMAN: Would you permit taxpayers to take appeals to that board only after assessment, or would you permit them to go to that board before assessment?

Hon. Mr. HAYDEN: Or ask for a determination of tax liability in the event of a certain scheme being carried out?

Mr. ELWYN: Our feeling is that if that were allowed it might defeat the purpose of the board. The board, we think, would be more effective if it confined its activities to ruling upon actual assessments or cases.

Mr. STIKEMAN: You would have the statute provide that the taxpayer could go to the board as of right once he had received his assessment, within a reasonable period of time?

Mr. ELWYN: Yes.

Mr. STIKEMAN: Would you provide that the board should have authority to substitute its opinion for that of the Minister in all discretionary matters or questions of fact?

Mr. ELWYN: If it were a board of review it would presumably review the Minister's discretion or decision, and it would presumably base its finding upon a review of the facts, after having heard both sides. We visualize over a period the development of a body of rulings with respect to principles. In time the findings of the board would be concerned primarily with matters of fact, because the principles would have been enunciated and set forth in precedents. There would be a body of jurisprudence to guide both the taxpayer and the department.

Mr. STIKEMAN: I raised that question merely to ascertain how much amended legislation might be required. As you are aware, the Exchequer Court today cannot consider the substance of the discretion exercised by the Minister; it can only consider the form. You would therefore provide that

this board could also consider the substance and could vary the exercise of discretion, if it saw fit?

Mr. ELWYN: That is of the essence.

Mr. STIKEMAN: I just wanted to be clear on that.

Hon. Mr. HAYDEN: Then, once an assessment was made, the taxpayer would have a right of appeal to this board, and the board could review every element that entered into the determination of the assessment, whether there was ministerial discretion or not?

Mr. ELWYN: I would say so, yes.

Mr. STIKEMAN: In the opinion of the Chamber of Commerce, how many members would be required on that board to make it efficient and to prevent it from becoming a bottle-neck?

Mr. ELWYN: I would think a minimum of three, one of whom should be a member of the bar, one a chartered accountant and one a business man or engineer.

Mr. STIKEMAN: Do you feel that three members would be able to handle the volume of appeals?

Mr. ELWYN: You could have any multiple of that combination that might be necessary, as shown by the experience of the board.

The CHAIRMAN: Do you think it should be a travelling board?

Mr. ELWYN: Yes. I may say that we have not given very much thought to the membership of the board, but we felt the board should have a minimum of three members, of whom one should be a member of the legal profession, another should be a member of the accounting profession and the third should be a business man or engineer.

Mr. STIKEMAN: On page 10 of the brief you recommend "that the official rulings and decisions relating to the application of Canadian income tax legislation be consolidated in a form which will be available to all interested persons." If your proposed board were established and gave reasons for its decisions, would it be necessary to have publication of the departmental rulings as well? If the board's decisions on questions of fact and discretion were published, might there not soon be built up a body of precedent, binding upon the department and the taxpayer, which would make departmental rulings purely administrative directives as to how district offices should be run?

Mr. ELWYN: Perhaps that would be the effect, but there still would be many disputes between taxpayers and the department concerning matters of fact, and the board would have to apply the proper principle to each particular case.

Hon. Mr. HAYDEN: And in those circumstances the finding of the board would be much more effective and authoritative than an administrative ruling by the department?

Mr. ELWYN: Definitely.

Mr. STIKEMAN: Would you not find that administrative rulings tended to become more and more formal and less and less substantive as the body of precedent was built up by the board and gradually replaced the rulings?

Mr. ELWYN: In other words, you are asking whether over a period of time the Act would be so interpreted that we would not have any difficulty with it.

Mr. STIKEMAN: That I understand to be one of the purposes of the proposed board. I was merely wondering whether you wished to continue with your suggestion that the departmental rulings should be codified.

Mr. ELWYN: I suppose that, as a starting point, the existing rulings would have to be codified.

Hon. Mr. HAYDEN: They might rapidly disappear.

Mr. ELWYN: Yes.

Mr. STIKEMAN: On page 10 of the brief you say that you "wish to commend the trend which is already apparent toward a decentralization of administration in the department." Can you give us an instance of the trend toward decentralization?

Mr. ELWYN: I cannot think of a specific instance, but in our own relations with the Department we seem to sense a growing ability on the part of the local officers to give decisions on points of dispute or uncertainty in our minds. That may be the result of experience on their part.

Mr. STIKEMAN: Would you give the local inspectors absolute authority on all questions, save matters of general policy?

Mr. ELWYN: I feel that is a matter of internal organization for the Department. In the large offices I would think the staff should have sufficient experience to rule on almost any point. I think the degree of discretion would have to be measured by the importance of the offices and the calibre of the staff. In the larger offices, such as those in Toronto and Montreal, the senior officers of the Department should be very adequate individuals and quite able to decide most cases.

Mr. STIKEMAN: As you say, that is becoming increasingly so?

Mr. ELWYN: Yes, there is a very excellent trend in that direction.

Mr. STIKEMAN: On page 11 of your brief you state, "the latter"—speaking of the employees in paragraph (*e*)—"should be given adequate remuneration comparable to that paid by other employers." Have you any suggestions as to the range which might be established with respect to the various grades of employees throughout the Department?

Mr. ELWYN: No, we have no specific suggestions to offer. We feel it could be easily ascertained by a canvass of the practice in industry.

Mr. STIKEMAN: Thank you very much.

The CHAIRMAN: Any questions from members of the committee?

Hon. Mr. CRERAR: In that latter observation, Mr. Elwyn, would you not aim at building up in the administration a capable force of inspectors, particularly of the higher officials competent to make deciisons?

Mr. ELWYN: Definitely, sir.

Hon. Mr. CRERAR: And in order to reach that desired end the remuneration paid to them would naturally have an important bearing.

Mr. ELWYN: We feel that if the Department is going to recruit adequate men it necessarily must meet the conditions of business, having due regard to pensions and so forth in the public service.

Hon. Mr. CRERAR: That is especially important in relation to your other suggestion that local inspectors might be given more authority.

Mr. ELWYN: Exactly. If they are going to have more authority they must of necessity have more experience and be men of large judgment and educational qualifications.

Hon. Mr. CRERAR: I am not quite clear in regard to your recommendation in section (*d*):

> the Board should be empowered to assist in administering the Income War Tax Act and other tax Acts under the Minister's authority by considering any matters referred to it by the Minister for opinion or decision prior to the making of an assessment;

Mr. ELWYN: Our feeling in respect to that, sir, was simply that it might be advantageous to the Minister and the administration of the Act generally

if the Minister felt the need of going to the Board and saying, "We have a problem of discretion, not in respect of a specific instance but in respect of a principle. On what principle should this be enunciated and how should it be followed?" We do not feel that the Board should prejudge the specific case which may be before the Department for assessment without the facts on both sides being laid before it by the principals in both instances. But we do feel that it might speed up the operation of the Act and avoid delays if the Minister had the right of recourse to the Board for advice as to how he should interpret a principle.

Hon. Mr. CRERAR: That would mean, would it not, if the Minister referred some particular matter to the Board, the Board would have to hear argument upon it?

Mr. ELWYN: We did not visualize that the Board would be trying a specific case. Our thought was that the Minister might say, "A point of discretion may arise under the Act. How should this be determined in equity and as a principle?"

Hon. Mr. CRERAR: Usually, if it were a matter of interpreting the Act, the Minister would seek an opinion from the Department of Justice. That is the ordinary procedure followed by Government Departments.

Mr. ELWYN: Yes. But it might involve a principle in methods of accountancy, for example, or some other factor then a matter of pure law.

Hon. Mr. CRERAR: Yes. It might, for instance, be a matter of administration, where the Minister wanted to get some light on whether certain principles should apply to depreciation in the filing of a return.

Mr. ELWYN: Quite so.

Hon. Mr. CRERAR: But would it not be better to have the return filed, and then get your decision in the ordinary way?

Mr. ELWYN: Of course, we have already enunciated that as a principle. This clause is put in the brief simply to say that the Minister should not be shut off from access to the Board if he chooses to exercise the privilege of consulting with them. For instance, he might wish to consult the Board as to the principle on which depreciation should be allowed with respect to a particular industry, not with respect to a particular taxpayer.

Hon. Mr. CRERAR: I should like to think that over. Frankly, I doubt the wisdom of that recommendation.

Mr. ELWYN: It is a moot point, senator. The motive behind it was simply to put the Minister in a position, if he felt it would be advantageous to him, to seek the advice of the Board on discretionary powers as to principle.

Hon. Mr. HUGESSEN: I am interested in your suggestion, Mr. Elwyn, as to the constitution of this Board of Review. I gather you think it should consist of three men?

Mr. ELWYN: Multiples of that combination of professions; in other words, a business man, an accountant, and a lawyer.

Hon. Mr. HUGESSEN: In reading over the material submitted to us in other briefs I find that in the United States, for instance, they have a tax court, the members of which are really equivalent to judges, whereas in Great Britain they have two commissioners sitting on appeals.

Mr. ELWYN: Yes.

Hon. Mr. HUGESSEN: Now, if you had a body of competent men appointed to this board for long-terms, would you think it necessary to have all three sitting on one case? I visualize that you might have two, three or four of these boards sitting all over the country, and if each board consisted of three members, it would mean the appointment of a large number of men. Would

not your suggestion be met if you had a number of qualified individuals appointed, who might sit either singly or in groups of not more than two all over the country?

Mr. ELWYN: I would say that as and when a body of such men with all the qualifications did develop, the practice might illustrate that it was quite suitable and adequate if one of the men sat.

Hon. Mr. HUGESSEN: I am thinking of your point of devolution in the particular area.

Mr. ELWYN: We visualize a travelling board, not a board which sits permanently in Montreal or Ottawa.

Hon. Mr. HUGESSEN: Yes; but it might be difficult to have three men moving around the country.

Mr. ELWYN: Yes. But at the outset we felt it might be difficult to get men with the experience and judgment necessary on points of law, accountancy, and business practice, and engineering factors, because when you get into engineering factors you get into the realm of depreciation, and the composition of the board including men from those three walks of life would tend to be best qualified to deal with such work. You have many instances of boards created during the war which did function very admirably.

Hon. Mr. HUGESSEN: Of course, there was a very much more restricted area to which appeals could be taken.

Mr. ELWYN: Yes. But the Wartime Depreciation Board did an admirable piece of work, and the Board of Review on the Excess Profits Tax Act also worked very satisfactorily. Their composition in each instance was a lawyer, an accountant and a business man.

Hon. Mr. HUGESSEN: I notice that in practically all these cases the members of the board sat in camera, although their findings were published.

Mr. ELWYN: That would be essential.

Hon. Mr. HUGESSEN: You feel that?

Mr. ELWYN: Oh, definitely.

Hon. Mr. HUGESSEN: There is another question on general principles that I want to ask you, Mr. Elwyn. Your brief, like that of a number of other bodies who have appeared before us, has emphasized two things. First of all, the vast body of discretion conferred on the Minister, as in the present Act, to which you object. Secondly, the desirability of setting up a Board of Appeal. I just wonder, if you had a Board of Appeal which could review the discretion of the Minister quite independently and arrive at its own conclusions subject to no appeal on questions of fact, whether that would not to a very large extent anticipate your fears of the ministerial discretion?

Mr. ELWYN: I think it might and probably would. But you would still get back to the fundamental fact that you would build up a jurisprudence which would tend to elucidate all the points of dispute which are constantly recurring in the present administration of the Act, and the need of appeal would become gradually less and less. You would then tend to have your case based primarily on questions of fact or interpretation. There would not be so much a question of principle involved as its application to a specific case.

Hon. Mr. HUGESSEN: As a body of jurisprudence was built up it would become clear throughout the country how ministerial discretion would be exercised?

Mr. ELWYN: Yes.

Hon. Mr. LAMBERT: I think there is a danger of going to the opposite extreme, of eliminating ministerial discretion entirely. This was all discussed thoroughly by Mr. Stikeman when we had a gentleman before us from the

United States, that is, the desirability of setting up local courts or appeal boards and the extent to which the Minister should be deprived of discretionary powers. We are tending towards the other extreme of establishing an independent board without any administrative responsibility at all. I can conceive of situations developing where it would be advisable for the Minister's discretion to be exercised. It is largely a question of the extent to which his discretion is applied in all cases. If you set up an appeal court which will deprive the Minister of the power of making administrative decisions, then that discretionary power disappears completely. But is it desirable, for example, to deprive the Minister of National Revenue of all discretionary authority?

Hon. Mr. CRERAR: Personally, it does not matter how much discretionary power the Minister has or how he exercises it, so long as it is subject to an impartial review. If he finds he is exercising it unwisely then he will stop.

Hon. Mr. LAMBERT: The thought I have is that the Minister theoretically is head of the Department in which the taxes are collected, and under our system of government as the head he is the responsible person. How far are you going to cut the painter, and say he has no authority?

Hon. Mr. HUGESSEN: Surely in this matter it is not a question of dispensing with the Minister's discretion. I would be in favour of leaving practically all of the ministerial discretions in the act. I think, as Senator Crerar has said, the trouble comes where the taxpayer considers he has not been fairly dealt with in the exercise of discretion. I think a board of review which could review those discretions should be set up.

With respect to cutting the painter, I was most interested to discover that in the United States, Great Britain, Australia and I think the Union of South Africa the ministerial discretions are very wide; but, unlike this country they are subject to an appeal to an independent tribunal.

Hon. Mr. CRERAR: Let us take as a practical example a small manufacturer. He or his accountant makes out his income tax return, and charges as an expense a certain amount for depreciation. The return goes to the Inspector of Income Tax, and in due course the assessor—and that is where the ministerial discretion permitting a ruling is gotten—says you can only have a quarter of that depreciation. That ruling to-day is final. But this man should be in a position to say, "No, you are not treating me fairly," and he would then take his case to a board or review composed of accountants and experienced business men. The board could then say, "That discretion was exercised unfairly, and we will allow you that depreciation, or we will allow you twice as much as the Minister in his discretion was willing to allow you." The whole subject as I see it is to have an appeal principle in the act. After all the taxpayer has rights as against the state and against the Minister, and it is part of a democratic system of government to protect those rights.

Hon. Mr. LAMBERT: The Minister is also responsible to the people who elect him, and for the actions of his department.

Hon. Mr. HAIG: The difficulty is that the present act gives discretionary power to the Minister to raise or lower taxes. We want that removed. The act should express exactly what the taxes are. I agree with Senator Hugessen and Senator Crerar that we should have a court of appeal. Our act lacks definiteness as to what is the law, and it leaves to the discretion of the Minister to say what the law is. We want that discretion taken out.

Hon. Mr. LAMBERT: I think the situation into which we are inquiring is not so much lack of organization, as lack of the law regarding income tax.

Hon. Mr. HAIG: Yes.

Mr. H. C. HAYES: Mr. Chairman, I do not know that my thoughts are very important, but our committee is very definitely of the opinion that there is a

large scale of discretion in any act. We do feel however there are a number of discretionary powers in this act which could be eliminated. We feel the most important are the sections which provide for the disallowance of certain expenses which are not wholly laid out for the purpose of earning the income, and the disallowance of certain or part of any other expenses which the Ministeer may consider to be excessive. These sections should be eliminated, and there should be an up-to-date definition of income. If this department disagreed with the taxpayer's return the matter of his income could then be decided under the act, rather than the disallowing of certain expenses.

The CHAIRMAN: We will then stand adjourned until 11 o'clock Thursday morning, at which time we are to hear The Toronto Board of Trade and the Certified Public Accountants. I understand their briefs will not be long. With the exception of the Canadian Electrical Association we hope to complete our public hearings on Thursday next.

Hon. Mr. HAIG: Mr. Chairman, I wish to submit a brief on Thursday.

The CHAIRMAN: We will then meet again on Thursday at 11 o'clock. May I say that I think it is desirable that the drafting committee appointed at the last meeting meet as soon as possible.

The Committee adjourned until Thursday, May 2, at 11 o'clock.

## THE CANADIAN UNDERWRITERS ASSOCIATION

APPENDIX "A"

*Income War Tax Act* (R.S.C. 1927, cap. 97).

Section 4, Incomes not liable to tax.—The following incomes shall not be liable to taxation hereunder:

(*g*) Mutual corporations—The income of mutual corporations not having a capital represented by shares, no part of the income of which inures to the profit of any member thereof, and of life insurance companies except such amount as is credited to shareholders' account;

(*i*) Farmers' associations—The income of such insurance, mortgage and loan associations operated entirely for the benefit of farmers as are approved by the Minister;

(*p*) Co-operative companies, and associations—The income of farmers', dairymen's, livestockmen's, fruit growers', poultrymen's, fishermen's and other like co-operative companies and associations, whether with or without share capital, organized and operated on a co-operative basis, which organizations

(*a*) market the products of the members or shareholders of such co-operative organizations under an obligation to pay to them the proceeds from the sales on the basis of quantity and quality, less necessary expenses and reserves;

(*b*) purchase supplies and equipment for the use of such members under an obligation to turn such supplies and equipment over to them at cost, plus necessary expenses and reserves.

Such companies and associations may market the produce of, or purchase supplies and equipment for non-members of the company or association provided the value thereof does not exceed twenty per centum of the value of produce supplies or equipment marketed or purchased for the members or shareholders.

This exemption shall extend to companies and associations owned or controlled by such co-operative companies and associations and organized for the purpose of financing their operations.

*Excess Profits Tax Act 1940.* (Statutes of Canada 1940, cap. 32)

Section 2.—(1) Definitions—In this act and any regulations made under this Act, unless the context otherwise requires, the expression

(*f*) "profits" in the case of a corporation—"profits" in the case of a corporation or joint stock company for any taxation period means the amount of net taxable income of the said corporation or joint stock company as determined under the provisions of the Income War Tax Act in respect of the same taxation period. . . .

*Special War Revenue Act,* (R.S.C. 1927, cap. 179).

Section 13. Definitions—In this Part, unless the context otherwise requires,

(*b*) "Company"—"Company" includes any corporation or any society or association, incorporated or unincorporated, or any partnership, or any exchange, or any underwriter, carrying on the business of insurance, other than a fraternal benefit society, a corporation transacting marine insurance, or a purely mutual corporation in respect of any year in which the net premium income in Canada of such mutual corporation

is to the extent of not less than fifty per centum thereof derived from the insurance of farm property or wholly derived from the insurance of churches, schools or other religious, educational or charitable institutions;

(*f*) "Net premiums"—"Net premiums" means, in the case of a company transacting life insurance, the gross premiums received by the company other than the consideration received for annuities, less premiums returned and less the cash value of dividends paid or credited to policyholders; and, in the case of any other company, the gross premiums received or receivable by the company or paid or payable by the insured less the rebates and return premiums paid on the cancellation of policies: Provided that in the case of a mutual company which carries on business on the premium deposit plan and in the case of an exchange "net premiums" means the actual net cost of the insurance to the insured during the taxation period together with interest on the excess of the premium deposit over such net cost at the average rate earned by the company on its funds during the said period;

## THE CANADIAN UNDERWRITERS ASSOCIATION

APPENDIX "B"

*The Insurance Act,* R.S.O. 1937, cap. 256.

Section 1. In this Act, except where inconsistent with the interpretation sections of any Part,—1934, c. 22, s. 2, part.

11. "Cash-mutual corporation" means a corporation without share capital or with guarantee capital stock subject to repayment by the corporation, in respect of which the dividend rate is limited by its Act or instrument of incorporation, which is empowered to undertake insurance on both the cash plan and the mutual plan.

42. "Mutual corporation" means a corporation without share capital or with guarantee capital stock subject to repayment by the corporation, in respect of which the dividend rate is limited by its Act or instrument of incorporation, which is empowered to undertake mutual insurance exclusively;

Section 106.—(1) The conditions set forth in this section shall be deemed to be part of every contract in force in Ontario. . . .

STATUTORY CONDITIONS

*Termination of Insurance* 10.—(1) The insurance may be terminated.

(*a*) subject to the provisions of condition 9, by the insurer giving to the insured at any time fifteen days' notice of cancellation by registered mail, or five days' notice of cancellation personally delivered, and, if the insurance is on the cash plan, refunding the excess of premium actually paid by the insured beyond the pro rata premium for the expired time;

(*b*) If on the cash plan, by the insured giving written notice of termination to the insurer, in which case the insurer shall upon surrender of this policy refund the excess of premium actually paid by the insured beyond the customary short rate for the expired time.

(2) Repayment of the excess premium may be made by money, post office order or postal note or by cheque payable at par and certified by a chartered bank doing business in the Province. If the notice is given by registered letter, such repayment shall accompany the notice, and in such case the fifteen days mentioned in clause

(*a*) of this condition shall commence to run from the day following the receipt of the registered letter at the post office to which it is addressed.

## THE CANADIAN UNDERWRITERS ASSOCIATION

APPENDIX "C"

*Excerpt from Report of the Royal Commission on Co-operatives (pp. 39 and 40) Re Interpretation of Section 4 (p) Income War Tax Act.*

The first difficulty encountered in construing this section is to understand to what the word "like" refers. It was suggested to us that it was used as an adverb and modified the words "organized and operated", i.e., to companies and associations organized on a like basis, that is, the co-operative basis. Contra, it was urged that it was used as an adjective and qualified "co-operative companies and associations" and limited those whose income was declared "shall not be liable to taxation", to such whose business and/or members was like that of farmers, dairymen, livestockmen, fruit growers, poultrymen, or fishermen. In the light of this doubt, the section can scarcely stand as it is.

Difficulty arises also as to the meaning to be ascribed to the words "co-operative" and "organized and operated on a co-operative basis". There is no definition of these terms in the Act. No unanimity was evident among the many persons who appeared before us as to what these terms mean.

Differences of opinion arose as to the meaning of the phrase "market the products". Competitors of co-operatives contended that the phrase was restrictive and that a company or association which engaged in processing or manufacturing their member's products and selling the processed or manufactured article were not engaged when so doing in marketing their member's products, and that those whose main business or a substantial part thereof consisted in processing and marketing the processed article could not be said to be within the section. On the other hand, it was argued that the point was of no importance.

Doubt was also expressed concerning the meaning of the term "obligation". Some contended that the term must be interpreted to mean a legal contract, definite as to time and amount, and strictly enforceable. Others contended that the term should be considered to refer to the sort of obligation typically imposed on the associations by the statutes under which they operate the agreements made with their members whether written or implied by usage.

Another uncertainty in applying the section as it stands, centres around the words "members" and "non-members", particularly as they relate to the "20 per cent" clause so-called. We found that some associations treated and recognized every patron or customer as a member, with no qualification for membership required other than that he be a patron or customer.

The last clause of the section, viz., "This exemption shall extend to companies and associations owned or controlled by such co-operative associations and organized for the purpose of financing their operations" is difficult to construe and apply for two reasons. First, what does "this exemption" mean? As already stated section 4 subsection (*p*) is not an "exempting" section. It is a section declaring that the incomes of certain specified persons and certain income are not to be liable to taxation. Second, what is the meaning of the words "organized for the purpose of financing their operations"? We found in a considerable number of cases, that companies and associations had caused to be organized subsidiary corporations, wholly owned and managed by them. It was difficult to understand how they were financing the operations of the co-operative associations.

As a result of the ambiguities of language and the difficulty of administering the section, and because we are of the opinion there is no general class or group of co-operative associations in Canada today whose income should be declared not to be liable to taxation, we are of the opinion that the section in its present form cannot survive the attacks made upon it.

## THE CANADIAN UNDERWRITERS ASSOCIATION

### APPENDIX "D"

*Licensed Insurers Transacting Business Falling Within the Classes of Fire, Automobile and Casualty Insurance*

| *Ontario | | **Quebec | |
|---|---|---|---|
| Farmers Mutuals | 67 | County Mutuals | 9 |
| Cash Mutuals | 12 | Municipal Mutuals | 77 |
| Factory Mutuals*** | 11 | Parish Mutuals | 234 |
| Other Mutuals | 14 | Factory Mutuals*** | 11 |
| Reciprocal Exchanges | 11 | Other Mutuals | 26 |
| Non-Tariff Stock Cos | 70 | Reciprocals | 9 |
| Tariff Companies | 163 | Non-Tariff Stock Cos | 74 |
| | | Tariff Companies | 166 |
| Total tariff and non-tariff companies excluding Lloyds Underwriters | 348 | Total tariff and non-tariff companies excluding Lloyds Underwriters | 606 |

It is submitted that, with approximately 250 Joint Stock Companies each competing with each other and each with the many underwriters at Lloyds and with the various Mutuals and Reciprocals, there is ample competition as is disclosed by the above figures.

### APPENDIX "E"

*Set Out Hereunder is a Statement of the Profits Made in the Fire Insurance Business from 1869 to 1940:*

| Period | Canadian Companies % | British Companies % | Foreign Companies % | All Companies % |
|---|---|---|---|---|
| 1869-78 | —15·01 | —17·56 | — 2·28 | —12·29 |
| 1879-88 | — 2·13 | 10·20 | 16·59 | 7·59 |
| 1889-98 | 0·52 | 3·84 | 0·85 | 2·65 |
| 1899-08 | — 1·65 | 5·43 | 9·06 | 4·62 |
| 1909-18 | 2·88 | 9·65 | 7·26 | 7·68 |
| 1919-28 | 1·65 | 5·60 | 4·71 | 4·70 |
| 1929-38 | 8·11 | 6·04 | 6·28 | 6·52 |
| for 70 years | 2·74 | 6·01 | 5·83 | 5·37 |
| 1939 | 11·50 | 13·22 | 12·59 | 12·57 |
| 1940 | 14·11 | 13·27 | 13·90 | 13·72 |
| 1941 | 9·25 | 4·47 | 6·19 | 6·30 |
| 1942 | 5·74 | 5·78 | 8·05 | 6·52 |
| 1943 | 10·28 | 2·46 | 5·53 | 5·64 |

Quoted from the Report of the Dominion Superintendent of Insurance for business of 1943—page L.

*The Following Figures show that while Insurance Premiums in 1944 have Increased over 1939 by 33·9%, the Losses in that Period have Increased by 37%.*

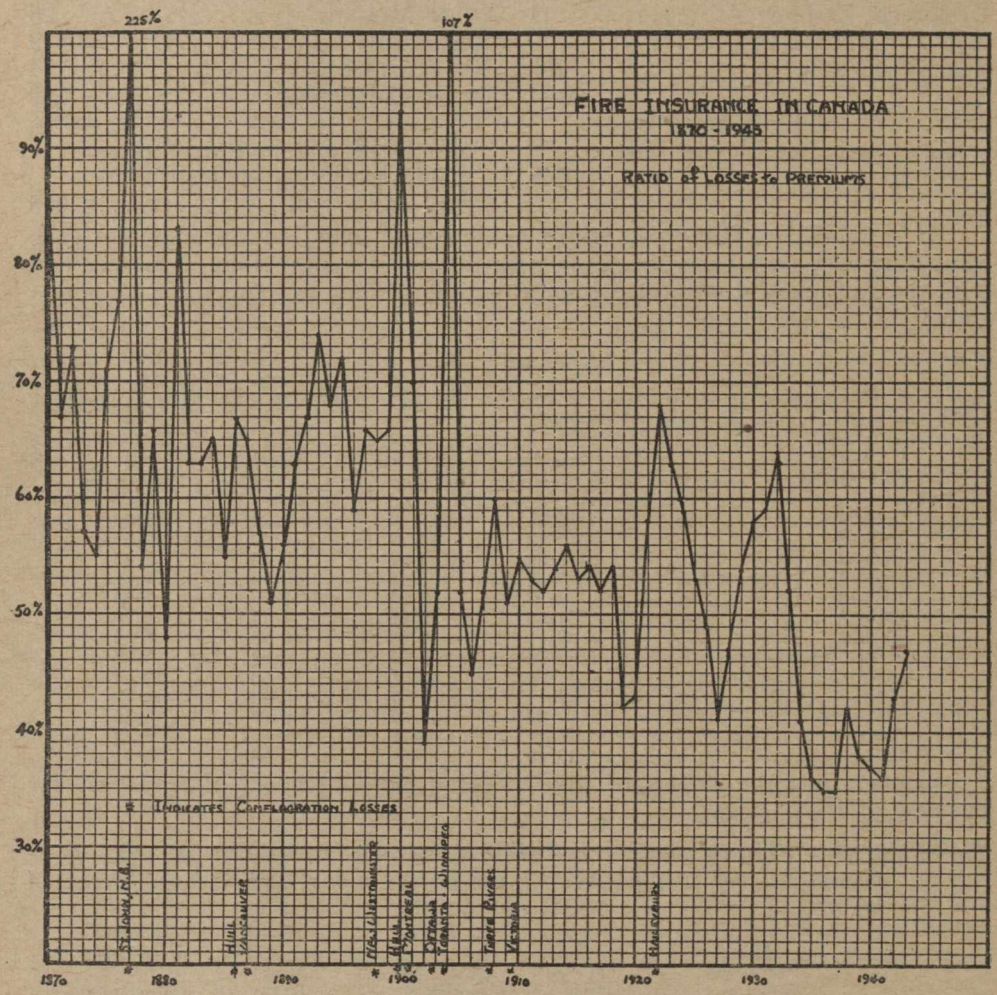
| Year | Net Premiums Written | % increase over 1939 | Net Losses increased | Loss Ratio | % increase over 1939 or reduction from 1939 |
|---|---|---|---|---|---|
| 1939 | $40,984,276 | — | $15,738,902 | 38·4 | — |
| 1940 | 41,922,312 | 2·3 | 15,444,927 | 36·8 | — 4·2 |
| 1941 | 49,305,539 | 20·3 | 17,814,322 | 36·1 | — 6·0 |
| 1942 | 47,272,440 | 15·3 | 20,360,534 | 43·1 | +12·2 |
| 1943 | 47,153,094 | 15·1 | 22,181,244 | 47·0 | +22·4 |
| *1944 | 54,902,183 | 33·9 | 28,869,700 | 52·6 | +37·0 |

Extracts from Table I of the Report of the Superintendent of Insurance of the Dominion of Canada for the years indicated.

*Source: 1943 Report of the Superintendent of Insurance for the Province of Ontario.
**Source: 1944 Report of the Superintendent of Insurance for the Province of Quebec.
***Or Deposit Premium Mutuals, so called.
*Obtained from the Superintendents' Memorandum re Advance Insurance figures, Table I.

## THE CANADIAN UNDERWRITERS ASSOCIATION

### APPENDIX "F"



## THE CANADIAN UNDERWRITERS ASSOCIATION

APPENDIX "G"

*A. W. Baker Welford—The Law Relating to Accident Insurance 1923*—p. 128:

The premium is the consideration receivable by the insurers from the assured in exchange for their undertaking to pay the sum insured in the event insured against. Any consideration sufficient to support a simple contract may constitute the premium in a contract of insurance. In particular, in the case of mutual insurance, the liability of each member of a mutual association to his fellow members to contribute to losses sustained by them is the premium for his own insurance. In the usual course of business, however, premiums are payable in money, and it is unnecessary to consider in detail any other form of premium.

*A. W. Baker Welford and W. W. Otter-Barry—The Law Relating to Fire Insurance, 1932*:

Chapter I—Page 1:

The "premium" means the consideration which is given by the assured to the insurer in return for his undertaking. It is generally money, but may be any other valuable consideration.

Chapter XIV—pages 183-184:

The premium is the consideration which the insurers receive from the assured in exchange for their undertaking to indemnify him against the loss by fire of the property insured. It is usually, though not necessarily, a payment in money; it may be some other liability than the payment of money, or any other consideration sufficient to support a contract. Thus, in the case of a mutual insurance association, the assured is, by the terms of the contract, liable to contribute a stated sum towards making good any losses which his fellow-members may sustain, and is entitled in his turn to have his own losses made good by them. His liability towards his fellow-members is therefore the premium for his own insurance. Premiums of this kind are, so far as fire insurance is concerned, rare and unimportant; and the only form of premium which requires a detailed examination is that which is in almost universal use, namely, a premium payable in money.

*F. J. Laverty—The Insurance Law of Canada, 1936*—page 119:

The consideration or price which the insured obliges himself to pay for the insurance, is called the premium. It does not belong to the insurer until the risk begins, whether he has received it or not.

The premium is necessarily closely associated with the risk, and has been defined as "a price paid adequate to the risk." This is one of the reasons forming the basis of the requirement that the insured shall fully and fairly represent every fact which shows the nature and extent of the risk.

*The Insurance Act, Province of Ontario*—page 2782, chap. 256:

50. "Premium" means the single or periodical payment under a contract for the insurance, and includes dues, assessments, and other considerations;

51. "Premium note" means an instrument given as consideration for insurance whereby the maker undertakes to pay such sum or sums as may be legally demanded by the insurer, but the aggregate of which sums does not exceed an amount specified in the instrument.

*The Civil Code of Lower Canada*—page 593, article No. 2469:

The consideration or price which the insured obliges himself to pay for the insurance, is called the premium. It does not belong to the insurer until the risk begins, whether he has received it or not.

## THE CANADIAN UNDERWRITERS ASSOCIATION

APPENDIX "H"

*THE NAMES OF THE COMPANIES ON WHOSE BEHALF THIS BRIEF IS FILED*

Acadia Fire Insurance Co.
Aetna Insurance Co.
Aetna Life Insurance Co.
Agricultural Insurance Co.
Alliance Assurance Co. Ltd.
Alliance Insurance Co. of Phil.
American Alliance Insurance Co.
American Automobile Insurance Co.
American Central Insurance Co.
American Credit Indemnity Co. of N.Y.
American Equitable Assce. Co. of N.Y.
American Insurance Co.
Anglo-Scottish Insurance Co. Ltd.
Atlas Assurance Co. Ltd.
Bankers & Traders Ins. Co. Ltd.
Baltimore American Insurance Co.
Beaver Fire Insurance Co.
Bee Fire Insurance Co.
Boiler Inspection & Ins. Co. of Canada
Boston Insurance Co.
British American Assurance Co.
British & European Insurance Co. Ltd.
British Canadian Insurance Co.
British Crown Assurance Corp. Ltd.
British Empire Assurance Co.
British General Insurance Co. Ltd.
British Law Insurance Co. Ltd.
British Northwestern Fire Insurance Co.
British Oak Insurance Co. Ltd.
British Traders Insurance Co. Ltd.
Caledonian-American Insurance Co.
Caledonian Insurance Co.
California Insurance Co.
Camden Fire Insurance Assn.
Canada Accident & Fire Assce Co.
Canada Security Assurance Co.
Canadian Fire Insurance Co.
Canadian General Insurance Co.
Canadian Indemnity Co.
Canadian Surety Co.
Car & General Insurance Corp. Ltd.
Casualty Company of Canada.
Central Insurance Co. Ltd.
Central Union Insurance Co.
Century Insurance Co. Ltd.
China Fire Insurance Co. Ltd.
Citizens Insurance Co. of N.J.
City of New York Insurance Co.
Columbia Insurance Co. of N.Y.
Commercial Casualty Insurance Co.
Commercial Union Assce Co. Ltd.
Commercial Union Fire Ins. Co. of N.Y.
Connecticut Fire Insurance Co.
Continental Casualty Company
Continental Insurance Co.
Cornhill Insurance Co. Ltd.
Dominion Fire Insurance Co.
Dominion of Canada General Ins. Co.
Drapers' & General Insurance Co.
Eagle Fire Company of New York
Eagle Star Insurance Co. Ltd.
Employers' Liability Assce. Corp. Ltd.
Ensign Insurance Co.
Equitable Fire & Marine Insurance Co.
Essex & Suffolk Equitable Ins. Soc. Ltd.
Eureka-Security Fire & Marine Ins. Co.
Federal Insurance Co.
Federal Fire Insurance Co. of Canada
Fidelity & Casualty Co. of N.Y.
Fidelity Insurance Co. of Canada
Fidelity-Phenix Fire Ins Co. of N.Y.
Fire Association of Philadelphia
Fire Insurance Co. of Canada
Fireman's Fund Insurance Co.
Firemen's Insurance Co.
First American Fire Insurance Co.
First National Insurance Co. of America
Fonciere Fire Insurance Co. of Paris
Franklin Fire Insurance Co. of Phil.
General Accident Assce. Co. of Canada
General Acc. Fire & Life Assce. Corp. Ltd.
General Casualty Co. of America
General Exchange Insurance Corp.
General Insurance Co. of America
General Security Ins. Co. of Canada
Girard Fire & Marine Insurance Co.
Glens Falls Insurance Co.
Globe Indemnity Co. of Canada
Globe & Republic Ins. Co. of America
Grain Insurance & Guarantee Co.
Granite State Fire Insurance Co.
Great American Indemnity Co.

Great American Insurance Co.
Guardian Assurance Co. Ltd.
Guardian Insurance Co. of Canada
Guildhall Insurance Co. Ltd.
Gibraltar Fire & Marine Ins. Co.
Hand-in-Hand Insurance Co.
Hanover Fire Insurance Co.
Hartford Accident & Indemnity Co.
Hartford Fire Insurance Co.
Home Fire & Marine Insurance Co.
Home Insurance Co.
Homestead Fire Insurance Co.
Hudson Bay Insurance Co.
Imperial Assurance Co.
Imperial Guarantee & Acc. Ins. Co.
Imperial Insurance Office
Indemnity Ins. Co. of North America
Insurance Company of North America
Law, Union & Rock Insurance Co. Ltd.
Legal & General Assce Society Ltd.
Liverpool & London & Globe Insurance Co. Ltd.
Liverpool-Manitoba Assurance Co.
Local Government Gtee Society Ltd.
London & County Insurance Co. Ltd.
London & Lanc. Gtee & Acc. Co. of Canada
London & Lanc. Insurance Co. Ltd.
London & Prov. Marine & General Insurance Co. Ltd.
London & Scottish Assce. Corp. Ltd.
The London Assurance
London-Canada Insurance Co.
London Guarantee & Acc. Co. Ltd.
Marine Insurance Co.
Maryland Casualty Co.
Maryland Insurance Co.
Mercantile Insurance Co.
Merchants & Manufacturers Ins. Co. of N.Y.
Merchants Fire Insurance Co.
Merchants Marine Insurance Co. Ltd.
Mercury Insurance Co.
Metropolitan Casualty Insurance Co.
Michigan Fire & Marine Insurance Co.
Milwawkee Mechanics' Insurance Co.
Motor Union Insurance Co. Ltd.
National-Ben Franklin Insurance Co.
National Fire Insurance Co. of Harford
Nationale Fire Insurance Co. of Paris
National Liberty Insurance Co. of America.
National-Liverpool Insurance Co.
National Protection Assurance Co.
National Provincial Insurance Co. Ltd.
National Security Insurance Co.
National Union Fire Insurance Co.
Newark Fire Insurance Co.
New Brunswick Fire Insurance Co.
New England Fire Insurance Co.
New Hampshire Fire Insurance Co.
New York Fire Insurance Co.
New York Underwriters Insurance Co.
Niagara Fire Insurance Co.
North British & Mercantile Insurance Co. Ltd.
North Empire Fire Insurance Co.
Northern Assurance Co. Ltd.
North River Insurance Co.
North West Fire Insurance Co.
Northwestern National Insurance Co.
Norwich Union Fire Ins. Society Ltd.
New Zealand Insurance Company Ltd.
Occidental Fire Insurance Co.
Ocean Accident & Guarantee Corp. Ltd.
Pacific Coast Fire Insurance Co.
Palatine Insurance Co. Ltd.
Patriotic Assurance Co. Ltd.
Pearl Assurance Co. Ltd.
Phenix Fire Insurance Co. of Paris.
Philadelphia Fire & Marine Ins. Co.
Phoenix Assurance Co. Ltd.
Phoenix Insurance Co. of Hartford
Pilot Insurance Co.
Pioneer Insurance Co. Ltd.
Planet Assurance Co. Ltd.
Providence Washington Insurance Co.
Provident Assurance Co.
Provincial Insurance Co. Ltd.
Prudential Assurance Co. Ltd.
Quebec Fire Assurance Co.
Queen City Fire Insurance Co.
Queen Insurance Co. of America
Queensland Insurance Company
Railway Passengers Assurance Co.
Reliance Insurance Co. of Canada
Royal Exchange Assurance
Royal Insurance Co. Ltd.
Royal Scottish Insurance Co. Ltd.
Rhode Island Insurance Company
St. Paul Fire & Marine Insurance Co.
St. Paul Mercury Indemnity Co.
Scottish Insurance Corp. Ltd.
Scottish Metropolitan Assce. Co. Ltd.
Scottish Union & National Ins. Co.
Sea Insurance Co. Ltd.
Security Insurance Co. of New Haven
Security National Insurance Co.
Sentinel Fire Insurance Co.
Southern Insurance Co. Ltd.
Springfield Fire & Marine Ins. Co.

State Assurance Co. Ltd.
Sun Insurance Office Ltd.
Svea Fire & Life Insurance Co. Ltd.
Toronto General Insurance Co.
Transcontinental Insurance Co.
Travelers Fire Insurance Co.
Travelers Indemnity Co.
Travelers Insurance Co.
Union Assurance Society Ltd.
Union Fire, Acc. & Gen. Ins. Co. of Paris.
Union Insurance Society of Canton Ltd.
Union Marine & General Ins. Co. Ltd.
United British Insurance Co. Ltd.
United Firemen's Insurance Co.
United Provinces Insurance Co.
United States Fidelity & Guaranty Co.
United States Fire Insurance Co.
United States Guarantee Co.
Wellington Fire Ins. Co. of Canada
Westchester Fire Insurance Co.
Western Assurance Co.
Westminster Fire Office
World Fire & Marine Insurance Co.
World Marine & General Ins. Co. Ltd.
Yorkshire Insurance Co. Ltd.
Zurich General Acc. & Liability Ins. Co. Ltd.

1946

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

## SPECIAL COMMITTEE

Appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon.

No. 8

THURSDAY, MAY 2, 1946

CHAIRMAN

The Honourable W. D. Euler, P.C.

WITNESSES:

Mr. J. S. Entwistle, Chairman, Toronto Board of Trade.
Mr. A. J. Little, Vice-Chairman, Toronto Board of Trade.
Mr. J. S. Entwistle, C.P.A., President, Certified Public Accountants.
Mr. F. T. Sudbury, C.P.A., Secretary, Certified Public Accountants.
Mr. Claude S. Richardson, K.C., Montreal, Quebec, representing Canadian Electrical Association.
Mr. F. E. H. Gates, C.A.
The Honourable Senator J. T. Haig.

CONTENTS



OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1946

## ORDER OF APPOINTMENT

*(Extracts from the Minutes of Proceedings of the Senate for 19th March, 1946)*

Resolved,—That a Special Committee of the Senate be appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon;

(2) That the said Committee be composed of the Honourable Senators Aseltine, Beauregard, Bench, Buchanan, Campbell, Crerar, Euler, Farris, Haig, Hayden, Hugessen, Lambert, Léger, McRae, Moraud, Robertson, Sinclair and Vien;

(3) That the said Committee shall have authority to send for persons, papers and records.

Attest:

L. C. MOYER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

THURSDAY, 2nd May, 1946.

Pursuant to adjournment and notice the Special Committee appointed to examine into the provisions and working of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, met this day at 11. a.m.

*Present:*—The Honourable W. D. Euler, P.C., Chairman; The Honourable Senators Beauregard, Bench, Buchanan, Campbell, Haig, Hayden, Hugessen, Lambert, Léger and McRae, 12.

In attendance: The Official Reporters of the Senate, Mr. H. H. Stikeman, Counsel to the Committee.

On Motion of the Honourable Senator Hayden, seconded by the Honourable Senator McRae, it was,—

*Resolved* to invite Mr. C. Fraser Elliott, G.M.G., K.C., Deputy Minister of National Revenue for Taxation, to appear before the Committee on Tuesday, 7th May, instant.

Mr. J. S. Entwistle, Chairman, Toronto Board of Trade, submitted a brief on behalf of that organization.

Mr. A. J. Little, Vice-Chairman, Toronto Board of Trade, was heard and was questioned by Counsel.

Mr. J. S. Entwistle, C.P.A., President, Certified Public Accountants, submitted a brief on behalf of that organization and was questioned by Counsel.

Mr. F. T. Sudbury, C.P.A., Secretary, Certified Public Accountants, was heard and was questioned by Counsel.

At 1 p.m., the Committee adjourned until 2.30 p.m., this day.

At 2.30 p.m., the Committee resumed.

Mr. J. S. Entwistle, C.P.A., President, Certified Public Accountants, was further examined by Counsel.

Mr. Claude S. Richardson, K.C., Montreal, Quebec, representing the Canadian Electrical Association, submitted a brief on behalf of that Association and was questioned by Counsel.

Mr. F. E. H. Gates, C.A., was heard and was questioned by Counsel.

The Honourable Senator Haig presented a brief and was questioned by Counsel.

A letter from Mr. A. F. Telfer, General Manager, Canadian Exporters Association, Toronto, Ontario, dated 12th April, 1946, together with a copy of Bulletin No. 85 of that Association, which had been forwarded to the Minister of Finance, was read by the Clerk of the Committee and ordered to be printed in the record.

At 4.25 p.m., the Committee adjourned until 10.30 a.m., Tuesday 7th May, instant.

Attest.

R. LAROSE,
*Clerk of the Committee.*

# MINUTES OF EVIDENCE

THE SENATE

WEDNESDAY, May 2, 1946.

The Special Committee of the Senate to consider the provisions and workings of the Income Tax Act, etc., resumed this day at 11 a.m.

Hon. Mr. Euler in the Chair.

The CHAIRMAN: Gentlemen, will you please come to order? When Mr. Fraser Elliott gave his evidence at the commencement of our sittings it was suggested that after all other witnesses had been heard he might appear again and be given an opportunity to comment upon their evidence; and at a meeting of the drafting committee yesterday it was felt that he should be invited to return to the committee on Tuesday morning next, at 10.30. If that is satisfactory I would like the consent of the whole committee to invite Mr. Elliott.

Hon. Mr. HAYDEN: I move that he be invited.

Hon. Mr. MCRAE: I second that.

The CHAIRMAN: Then it has been moved and seconded that Mr. Elliott be invited to appear before the committee next Tuesday at 10.30 a.m. Carried.

Hon. Mr. LEGER: Mr. Chairman, is the drafting committee meeting at 2.30 this afternoon?

The CHAIRMAN: No. It met yesterday afternoon.

Hon. Mr. HAYDEN: There has been some confusion as to the date of the drafting committee's meeting. I understood, as Senator Leger apparently did, that the meeting was to be at 2.30 this afternoon.

Hon. Mr. LEGER: Yes, that is what I understood.

Hon. Mr. HAYDEN: I was in my office yesterday afternoon, and could have been present at the meeting if I had known it was taking place.

The CHAIRMAN: I was somewhat surprised that neither Senator Hayden nor Senator Leger was at that meeting. Did you not get any notice?

Hon. Mr. LEGER: I got a notice, but I understood the meeting was set for 2.30 this afternoon.

Hon. Mr. HAYDEN: So did I.

The CHAIRMAN: Gentlemen, we have four organizations down for hearing on our agenda this morning. The first is the Toronto Board of Trade, represented by Mr. J. S. Entwistle, C.P.A., Charman of the Board's Taxation Committee and Mr. A. J. Little, Vice-Chairman of that committee.

Hon. Mr. HAYDEN: Mr. Chairman, when the Canadian Chamber of Commerce was before us yesterday we were told that its membership included boards of trade. Is that correct, Mr. Entwistle?

Mr. J. S. ENTWISTLE, C.P.A., Chairman, Taxation Committee, Toronto Board of Trade: I would not say so, Mr. Chairman. I know that members of the Canadian Chamber of Commerce did not come before our board.

The CHAIRMAN: Mr. Entwistle, I will now call upon you to read your brief.

Mr. ENTWISTLE: Mr. Chairman, the Board of Trade of the City of Toronto is an organization of business men with a membership of approximately four thousand persons engaged in all phases of business and professional activity and

concerned with trade not only in the City of Toronto but throughout the Dominion. The Board appreciates the opportunity of submitting to your Special Committee its views on certain aspects of taxation, which are contained in the following summary of recommendations. It is believed that all of these are relevant to your Committee's terms of reference.

1. *Discretionary power*

(*a*) An annual provision for depreciation of plant and equipment is well recognized as a proper charge in computing net income and in many manufacturing concerns it is the principal item of expense other than direct materials and wages. However, in the Income War Tax Act as presently constituted, "depreciation" is listed under section 6 as an expense item which shall *not* be allowed as a deduction, "except such amount as the Minister in his discretion may allow". The Board believes that "depreciation" should be listed positively under section 5 as an allowable expense not subject to ministerial discretion and so recommends. It also recommends that the rates at which depreciation may be claimed be included in the Act or in a schedule thereto.

(*b*) The foregoing remarks apply generally speaking, to the depletion of mines, oil and gas wells and timber limits. Although depletion is listed under section 5 as an allowable deduction the amount thereof in any particular case appears to be entirely at the discretion of the Minister. It is recommended that the allowance for depletion be made a positive item in the Act and that the basis upon which it will be computed should be set out either in the Act or in published rulings.

(*c*) The two examples given above are typical of the many sections of the Act which are subject to the exercise of discretion and they illustrate the great amount of discretionary power which is vested in the Minister of National Revenue but which in actual practice is exercised by the Deputy Minister, for Taxation, and in many instances by the Chief Assessors of local branches. The Board of Trade recommends that the amount of discretionary power vested in the Minister under the Income War Tax Act and the Excess Profits Tax Act be greatly curtailed.

2. *Legislation which is ambiguous, incomplete, etc.*

The Board thinks that a complete redrafting of the Tax Acts is desirable and that a principal objective of such redrafting should be the complete elimination of all ambiguity, and all wording which is so all-inclusive or sweeping in effect as to nullify other sections of the Acts. It also believes that the Income War Tax Act and the Excess Profits Tax Act should include all the legislation affecting the computation of tax and that it should not be necessary to refer to other Acts or Statutes. A few typical examples of sections which particularly need revision are referred to below:—

(i) Section 6 (1) (*a*), "Expenses not laid out to earn income—disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning income".

This paragraph of sub-section 1 of section 6 is an excellent example of phraseology so all-embracing and sweeping in effect that it negatives other sections of the Act and could not be strictly applied to modern business, and in actual practice is not applied. There are very many types of expenditure which it is prudent to make for sound practical business considerations, but which could not qualify strictly as "wholly, exclusively and necessarily laid out or expended for the purpose of earning the income".

(ii) Section 9B (special tax on interest, etc.) is an example of a section which is incomplete without reference to the Statutes of Canada for 1941 and 1942 which provide that certain sub-sections of section 9B only apply in part in respect of certain interest payments on Provincial bonds. There is no indication in section 9B that these particular interest payments are not fully affected by the section.

Another excellent example of omission is that there is no reference in the Income War Tax Act to the fact that a four per cent reduction in personal tax is effective for 1945 and a sixteen per cent reduction for 1946. This important information is contained in the 1945 Statutes of Canada but is not incorporated into the Income War Tax Act.

Hon. Mr. LEGER: It is only in the regulations?

The CHAIRMAN: If it was in the Budget resolutions, it would be law, would it not?

Hon. Mr. HAYDEN: It is actually in the Statutes of Canada for that year, but I think the witness is suggesting that it should be in the Income War Tax Act itself.

Mr. STIKEMAN: It is in the Act amending the Income War Tax Act.

Hon. Mr. BENCH: How could you have it in the Income War Tax Act itself unless you consolidated the act every year?

Hon. Mr. HAYDEN: I gather the witness is suggesting that that is what should be done.

Hon. Mr. CRERAR: Mr. Chairman, I would suggest that the witness be allowed to complete his brief before being questioned. At a meeting held yesterday it was explained by Mr. Emerson, Chief of the reporting staff, that this facilitated the getting out of the report of our proceedings.

The CHAIRMAN: I will ask that the witness be allowed to read his brief without interruption. That has been our practice.

Mr. ENTWISTLE: The brief goes on:—

(iii) Section 16 which deals with capital stock reductions and redemptions is offered as an example of a section which is ambiguous and one which the taxpayer cannot readily interpret. It is not clear, for example, whether the word "conversion" used in this section would apply to the splitting of a common stock into two classes or into additional shares and if the section applies to such a procedure then there is no way to determine what tax might be involved, if any. In such cases the Board understands that certain taxpayers have obtained letters from the Department indicating that no tax is payable but certain legal advisers have stated that they do not think that such letters could legally affect the operation of section 16.

(iv) Section 32A of the Act appears to convey very sweeping powers upon the Treasury Board and also appears to convey a considerable amount of discretionary power regarding the determination of the main purpose for which any particular transaction is carried out by a taxpayer. It is felt that the taxpayer alone is in the best position to determine the main purpose for which he carries out any particular transaction and a sweeping discretionary section such as this may well have the effect of discouraging some taxpayers from entering into perfectly proper transactions, which transactions may in fact actually be carried out by other taxpayers who place a different interpretation upon the meaning and intent of this particular section.

3. *Rulings and regulations*

(*a*) The uncertain position in which the taxpayer is placed by the discretionary powers referred to above is aggravated by the fact that many departmental rulings and regulations upon which the administration of the Act is based are not made available to the taxpayer. The Board recommends that the Income War Tax Act and the Excess Profits Tax Act should be redrafted and that where practicable, present rulings and regulations should be incorporated in the legislation.

(*b*) Insofar as rulings and regulations are concerned which may be issued in the future or which are not incorporated in the Act, the Board recommends that they be published in the *Canada Gazette* and that they should not be effective until so published.

4. *Taxation returns*

(*a*) The Board feels that it is highly desirable that the simplification of taxation returns and also the simplification of the actual method of calculating taxes continues to be an aim of the department. Although the personal return for use of individuals with incomes under $3,000 (T1-Special) has been simplified the Board believes that the majority of the taxpayers falling within this category find the preparation of such a form to be an onerous duty. It is recommended that the Department give consideration to the adoption of some method of tax collection which would render unnecessary the completion of such a form by a large body of taxpayers. It should be possible to establish a satisfactory scheme such as this where income is represented by salary or wages from one employer and where little or no investment or secondary income is involved.

(*b*) The Board understands that the T2-Questionnaire return for corporations was adopted during wartime with the object of reducing the work of the Assessing Departments. This return may be of considerable value to the Department but it does not seem to have achieved the purpose for which it was originally adopted. It is recommended that the income tax return itself, form T2, be amended to include any information questions which may be necessary and that the reporting upon this information by the company's auditors be dispensed with.

(*c*) It is also recommended that consideration be given to changing the size of the present tax return forms. In the United States personal tax returns and many other returns are standard letter size which facilitates typing and handling. In Canada some corporations and many individuals submit handwritten returns simply because these forms cannot conveniently be completed on a standard sized typewriter.

5. *Assessments and appeals*

(*a*) Many of the Board's members are critical of the long period of time which in many cases elapses between the date the Corporation or individual files a return and the date when the final assessment is issued. It is appreciated that this situation has been aggravated by wartime conditions but it is a situation which existed prior to the war to some extent. The Board recommends that appropriate steps be taken to speed up the assessment procedure.

(*b*) It is strongly recommended by this Board that a completely new procedure of Appeal from assessments be established so that the taxpayer does not in the first instance appeal to the same authority as the one which has issued the assessment. This might be accomplished by the appointment of a special Appeal Board somewhat similar to

the present Board of Referees which would deal with assessments and other problems relating to the administration of the Act and which, though having considerable authority, would have no part whatsoever in the original assessment of taxation returns.

(*c*) The taxpayers should enjoy the same privilege as the Department of National Revenue regarding the opening of assessments of prior years. As it now stands the Department may reopen an assessment to pick up adjustments which do not arise until later years but the taxpayer does not have this privilege.

(*d*) It is recommended that taxpayers be allowed to appeal to the courts in cases where they are dissatisfied with the standard profit awarded under the Excess Profits Tax Act.

6. *Interest.*

Considerable criticism is heard of the Departmental practice of charging interest when tax is underpaid but of not allowing interest when tax is overpaid. This situation has become more serious with higher rates of taxes, coupled with deductions at the source. In many cases the underpayment of taxes is the result of misunderstanding on the part of the taxpayer and perhaps is caused by the complexity of the tax structure and is not necessarily the result of bad faith on the taxpayer's part. If in such cases it is reasonable to charge an interest penalty then it would seem equally just to allow an interest credit when taxes are overpaid. The Board recommends that interest be allowed on overpayments of taxes at an equivalent or some other appropriate rate and also recommends that interest penalties charged be allowed as deductions in computing taxable income of the year to which such interest applied.

It is felt that the foregoing recommendations fall within the scope of the present inquiry. There are other taxation matters upon which the Board of Trade has made recommendations from time to time but which are more concerned with matters of policy or the weight of taxation. Attached hereto is a copy of a brief submitted by the Board to the Minister of Finance and the Minister of Reconstruction on 1st February, 1945, dealing with Canada's post-war taxation policy.

Respectfully submitted,

(Sgd.) H. M. TURNER,
*President.*

(Sgd.) F. D. TOLCHARD,
*General Manager.*

The CHAIRMAN: Mr. Entwistle, before we proceed with questions I think I should congratulate you upon the brief, in that it is confined pretty strictly to matters with which we have the right to deal. Perhaps in that respect it is in contrast with most of the briefs that have been presented to us.

Our practice, after the presentation of a brief, is that our counsel, Mr. Stikeman, should proceed with such questions as he might wish to ask, and then we enter into a general discussion.

Mr. ENTWISTLE: I should like to thank you for your comments, Mr. Chairman. A great deal of credit is due to my associate, Mr. A. J. Little, and he will be pleased to answer any necessary questions.

The CHAIRMAN: Does he wish to make a definite statement, or is he here to answer questions which might be put to him?

Mr. ENTWISTLE: Mr. Little has taken quite a part in the preparation of the brief.

The CHAIRMAN: But he has no brief of his own to present?

Mr. ENTWISTLE: No; unless you would care to have the concluding part of this submission to the Hon. Mr. Ilsley and the Hon. Mr. Howe.

The CHAIRMAN: That touches policy.

Hon. Mr. CRERAR: And is beyond our purview.

The CHAIRMAN: Mr. Stikeman.

Mr. STIKEMAN: I should like to ask the witness a few questions to clarify some of the statements in his brief, which otherwise is very clear.

In paragraphs (*a*) and (*b*) on page 1, I understand that you believe it is possible to narrow the field within which discretion may be exercised by means of legislating in specific terms under sections dealing with depreciation and depletion. Under paragraph (*c*) you state: "The two examples given above are typical of the many sections of the Act which are subject to the exercise of discretion." Are we to understand it is the opinion of your board that other sections dealing with discretion may also be legislated out of the Act in whole or in part?

Mr. LITTLE: That was our belief, Mr. Stikeman. We gave those two examples mainly as indicative of the type of thing to which we were referring, and we purposely dealt with discretion in rather a brief and general way, because as we are appearing somewhat late before your board we felt discretion had been dealt with more or less emphatically by others. The brief of the Institute of Chartered Accountants, for example, gave many instances of discretion which we would quite agree should be eliminated from the Act. Our thought was that generally speaking so far as possible the tax should be determinable by the Act itself and should not be left to discretion.

Mr. STIKEMAN: Do you subscribe to the recommendation on discretion of the chartered accountants' brief?

Mr. LITTLE: In answering that I would be speaking personally, because that brief was not presented or reviewed by the Board of Trade which I am representing.

Mr. STIKEMAN: This committee is interested in hearing all suggestions as to the handling of discretion by any means whatsoever. According to your intimation in paragraph (*a*) you feel you could legislate in the specific sections you mention for depletion and depreciation. Have you in mind any other sections in which you think it might be possible to deal with discretion?

Mr. LITTLE: We have not actually set them out in our brief, but we could submit a supplementary schedule of them.

Mr. STIKEMAN: Would you suggest under your paragraphs (*a*) and (*b*) dealing with depreciation and depletion that legislation would be satisfactory which merely contained the rates applicable to various classes of assets?

Mr. LITTLE: I think we would be satisfied, Mr. Stikeman, so far as depreciation is concerned, if it were listed in the Act as an allowable deduction rather than as not allowable. So far as rates are concerned, we think generally speaking that they could be covered by supplementary schedules to the Act. We do admit in certain special cases it will not be possible to legislate beforehand.

Hon. Mr. HUGESSEN: Have you any specific cases in which you object to the rates of depreciation that are now allowed?

Mr. LITTLE: In certain cases; generally speaking, no.

Hon. Mr. HUGESSEN: Generally speaking you think the present rates are not unreasonable?

Mr. LITTLE: There are certain rates in connection with machinery, trucks, cement mixers and that kind of thing. These depreciate very rapidly and are

not covered by any specific life. The machinery part would be 10 per cent and 20 and 25 per cent, which in our opinion is not nearly enough.

Mr. STIKEMAN: Do you think there is any objection to the Department determining value on the basis of cost to the owner?

Mr. LITTLE: No, we have no objection to that that I know of, Mr. Stikeman.

Mr. STIKEMAN: In No. 2 you state: "The Board thinks that a complete redrafting of the tax Acts is desirable and that a principal objective of such redrafting should be the complete elimination of all ambiguity." Is that intended to indicate that there should be a complete redrafting of the statute or that certain sections if necessary be rephrased?

Mr. LITTLE: We were not necessarily thinking that every section of the Act should be rephrased. We had in mind first of all that the sections might be rearranged in order, that certain sections should be reworded, and that the actual phraseology should be understandable to the taxpayer.

Mr. STIKEMAN: We have had a number of suggestions, particularly from the Bar Association, as to a possible rewording of section 6 (1):—

> a deduction shall not be allowed in respect to (*a*) disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income.

Are you familiar with the suggestions of the Bar Association in respect of that section?

Mr. LITTLE: No, sir.

Mr. STIKEMAN: Have you any ideas which you wish to put forward on behalf of the Board as to how certain of these sections might be rephrased?

Mr. LITTLE: In connection with 6 (1) (a), we did not attempt any phrasing, which to our mind is a legal problem; but our general feeling is that the wording should be in more general terms and should be brought up to date in accordance with modern business practice. There are many expenditures which it may be necessary to make from a sound business point of view but which could not be justified under the wording "wholly, necessarily and exclusively." For example, if I were running a business and one of my employees of long-standing died, and his widow was left with no funds, I would think it prudent to pay her some sort of pension, not only from a straight business point of view, but to encourage my other employees to continue in my employ.

Mr. STIKEMAN: Would you attempt to bring the Act more into conformity with business practice?

Mr. LITTLE: Yes.

Mr. STIKEMAN: You make suggestions in paragraph (*b*) of section 5 as to the desirability of an appeal board. That is another point of considerable interest to the committee. We should like your ideas on that in a little more elaborate form, if you could give them to us. For example, is it contemplated by your board that the appeal board should be independent of the Department of National Revenue, or be a sort of advisory committee to the Minister of National Revenue?

Mr. LITTLE: First, I should say our thought here is that we are objecting to the principle of appealing in the first instance to the same person or group of persons who made the assessment. Actually, we have not worked out what we think to be the most practicable solution so far as an appeal board is concerned. We had in mind, though, generally speaking, that the appeal board should be completely independent of the Department of National Revenue and should have no part in the original assessment.

Mr. STIKEMAN: You think it should be substantially a court, although you call it a board?

Mr. LITTLE: Yes, I think that word might be applied.

Mr. STIKEMAN: What jurisdiction do you feel this board should have; should it have power to review the exercise of discretion, and in that review to substitute its opinion for that of the Minister?

Mr. LITTLE: Yes, I think it should.

Mr. STIKEMAN: Do you feel that an appeal should be permitted from that board to the Exchequer Court?

Mr. LITTLE: Absolutely; by both the taxpayer and by the Department of National Revenue.

Mr. STIKEMAN: As I understand your contemplated set-up, an assessment would be issued and from the assessment an appeal would go to the board which might consider questions of discretion, questions of fact or questions of law; and that from the decision of that board, which you contemplate, further appeals could be taken to the Exchequer Court?

Mr. LITTLE: That is our understanding.

Mr. STIKEMAN: From your statement I take it that the appeal would be a matter of law only, or do you feel that the appeal to the Exchequer Court should be on every ground.

Mr. LITTLE: I would think that the appeal should be on every ground, sir.

Mr. STIKEMAN: Have you had an opportunity to consider the representations made by other witnesses before this committee respecting appeal boards?

Mr. LITTLE: Generally speaking, no. I have read the recommendations of the Dominion Association of Chartered Accountants, but I have not studied the other proposals.

Mr. STIKEMAN: I was wondering whether you were in agreement with the general principles concerning a board subscribed to in the representations of the Chartered Accountants Association.

Mr. LITTLE: Speaking personally, sir, the answer is "Yes". I should like to point out that that brief was not submitted to our board and has not been considered by the taxation committee of the board.

Mr. STIKEMAN: Their suggestion parallels very closely what you have outlined.

Mr. LITTLE: Yes, it does.

Mr. STIKEMAN: Are there any matters which concern your board which are not found in this very excellent brief?

Mr. LITTLE: I think not, Mr. Stikeman. I believe we have covered all the principal items which concern us.

While I am on my feet may I answer the question that was raised as to the 4 per cent deduction for 1945 and the 16 per cent for 1946. You will please correct me on this point if I am wrong, but it is my understanding that the statutes of Canada provide for this deduction as an entirely separate step, apart from the Income War Tax Act; in other words, the statute did not amend the Income War Tax Act. There is no section or schedule of the Income War Tax Act which is amended by that statute; it is necessary to take two different statutes in order to make a computation?

Hon. Mr. LEGER: It is an act by itself.

Mr. LITTLE: That is quite true.

Mr. STIKEMAN: That particular section has no amending effect in the Income Tax Act.

Mr. LITTLE: That is so. From time to time we have queries from other countries as to the effect of taxation in Canada, and if we submit to them a copy of one act it is not complete and does not tell them the whole story.

The CHAIRMAN: Mr. Little, have you any view on the propriety or advisability of asking for a deposit of $400 when the taxpayer appeals to the Exchequer Court? Do you approve of it or otherwise?

Mr. LITTLE: I have not considered it, sir.

The CHAIRMAN: Senator Hugessen, have you any questions?

Hon. Mr. HUGESSEN: I had one question, but it is perhaps in the form of an observation. I am interested in the part of your submission which appears in paragraph 2 (iii) on page 2 of your brief concerning Section 16 of the Income War Tax Act and the possible interpretation of that act in cases where companies are reclassified or subdivided. I am interested in that question for two reasons. Firstly, I had the same problem come up in my own pratice; and secondly, I recall that when the last amendment to that section was introduced three or four years ago I raised some question with the Commissioner of Income Tax when he appeared before the Senate Committee. May I suggest, Mr. Little, what the section really is intended to do, while it does not say so in quite the appropriate language, is that where there is a reorganization of the capital structure of a company which involves the distribution to shareolders of any part of undistributed income, that that distribution or dividend shall be taxed in the hands of the shareholders; but on the other hand, if it is simply a straight split of shares, and no distribution of indistributed income among shareholders, that that should be exempt. This section should be amended to make it clear.

Mr. LITTLE: I agree with your interpretation of what you think the original general intent of the section was, but we are quarrelling with the wording of the section, which to our minds is not entirely clear. For instance, if there is a split of common stock into classes A and B, no distribution would be made in such a case, but the fact that confusion has taken place indicates that presumably the transaction would come under section 16. The next step would be whether or not any questions of right had been received by any shareholder. It could be, I think, that where stock is split into two classifications, A and B, for instance, the right might be changed or altered in one section, and that in effect some intangible right might be received by some shareholder, but it could not be determined, and in my opinion it would be impossible to compute what tax if any might be involved. I think it is entirely a question of the wording confusing the issue.

Hon. Mr. HUGESSEN: But you agree with what I have said, that the section should be clarified by making it clear that the reorganization of the capital structure should not attract tax unless it involves some distribution amongst the shareholders of the earned surplus of the company.

Mr. LITTLE: Yes, I agree with you.

Hon. Mr. BENCH: Mr. Little, one of the features which seems to concern your board is the matter of delay in the making of assessments and their finalization. I notice in paragraph 5 (*a*) of your brief you say that, "The board recommends that appropriate steps be taken to speed up the assessment procedure." Can you assist this committee by advancing any suggestions as to what those appropriate steps might be?

Mr. LITTLE: We have not, Senator Bench, tried to set down specifically the steps which we think are appropriate and again I am speaking personally. I think perhaps that the assessing departments are for one thing understaffed. Secondly, in many instances, too much time is spent on individual assessments by the assessors. You will note that we recommend the T-2 questionnaire return be abolished. It was our understanding that that return would be made

use of by the assessing department, and that where the department had in the past been satisfied with the general form of returns filed by the taxpayer that the additional information submitted with the T-2 questionnaire would enable that return to be assessed without the spending of additional time by the assessor in the client's office. The practice does not seem to have been followed at all, so far as we can see. In some cases we think the assessors are now spending more time than formerly.

Hon. Mr. BENCH: Would you anticipate that the extension of the number of district officers, as now proposed, would likely result in some acceleration of the assessment procedure?

Mr. LITTLE: I should think that would be the natural result, because, presumably more staff would be required. I would think the same result would flow from additional staff in the present offices.

Hon. Mr. BENCH: Can you help us by suggesting what, in your opinion, would be a reasonable length of time to allow the department to study and assess first, the return of a private individual taxpayer, and second, the return of a corporate taxpayer?

Mr. LITTLE: I should think, sir, that two years from the date of filing would be an outside time limit, and that in most instances they should be put through in less time. However in cases where contentious problems arise a longer period might be necessary.

Hon. Mr. BENCH: Generally speaking you would say that the returns of all taxpayers, both private and corporate taxpayers, should be assessed within a period of two years?

Mr. LITTLE: Yes sir, I would think so.

Hon. Mr. BENCH: And would your board be in favour of some provision being inserted in the act to the effect that after a lapse of a period of two years the returns should be deemed to be final, except in cases of fraud?

Mr. LITTLE: Do you mean sir, that if no assessment is rendered within two years it should be taken for granted that a return is accepted as filed?

Hon. Mr. BENCH: Yes.

Mr. LITTLE: We had not considered that aspect of the situation, Senator Bench, and again I must speak personally. I do not see why such a provision should be necessary. I should think that the same general benefits, so far as the taxpayer is concerned, would result if after two years period had elapsed any interest penalties were stopped.

Hon. Mr. BENCH: You see, Mr. Little, I am trying to think through the recommendation which is contained in the last sentence of your paragraph 5 (*a*). I am attempting to work out in my own mind what might be the practical application of that recommendation. There must be some practical limitation of the time within which an assessment must be made to give effect to that request.

The CHAIRMAN: Otherwise you might still have a delay.

Mr. LITTLE: Yes.

The CHAIRMAN: The only benefit the taxpayer would then get is that he could not be charged with interest.

Mr. LITTLE: That is correct.

The CHAIRMAN: But the delay might be beyond two years.

Mr. LITTLE: Are you speaking of a penalty being placed on the department?

Hon. Mr. BENCH: No. I am not suggesting that at all. I am thinking of the expression that has just come from the Chairman, that the limitation of the time within which interest penalities might accrue really would not solve your problem at all.

Mr. LITTLE: Our problem would be solved by a general speeding up of assessments.

Hon. Mr. BENCH: But how do you get that? Do you propose to get it by saying that after a period of two years, or whatever time might be reasonable, if no assessment is made by the department on the return the tax as reported shall be deemed to be the amount to be paid by the taxpayer?

Hon. Mr. HAYDEN: That is in the absence of fraud.

Hon. Mr. BENCH: Yes, in the absence of fraud. Is there any other way you can do it?

Mr. LITTLE: I do not see why that is the only way it can be done.

Hon. Mr. BENCH: Will you tell me why you object to that limitation included in the act?

Mr. LITTLE: Personally speaking, I do not object at all. At the moment I am not speaking for the board. I am thinking of certain exceptional cases in which it might be difficult for the department to render an assessment within a certain specified time.

Hon. Mr. BENCH: I will not pursue it further. I suppose there has to be a limit somewhere. On the basis of what you have just said now, ten years might not be long enough perhaps. Am I right?

Mr. LITTLE: I think ten years would be an exaggeration, sir.

Hon. Mr. BENCH: You think, in any event that by and large two years is sufficient time for the review and final assessment of returns?

Mr. LITTLE: Absolutely.

Hon. Mr. LAMBERT: In paragraph (*a*) of section 4 of your brief you say:—

> It is recommended that the Department give consideration to the adoption of some method of tax collection which would render unnecessary the completion of such a form by a large body of taxpayers. It should be possible to establish a satisfactory scheme such as this where income is represented by salary or wages from one employer and where little or no investment or secondary income is involved.

Do you suggest that reference to investment income should be eliminated from the T-1 General form?

Mr. LITTLE: No, sir. At the present scale of exemption, tax returns must be filed by a large body of taxpayers who are not used to preparing such forms—who find it, as we say, an onerous duty. That could be corrected in one or two ways: either by increasing the exemption so as to drop out those people in the lower strata, or—and this is what we had in mind—by having the employer make a levy on the wages of employees receiving up to a specified amount per annum, say $2,000, for example, under some scheme similar to the present scheme for tax deduction at the source. Employees in that class would then not be required to file any tax returns.

Hon. Mr. LAMBERT: Taxation at the source is what you are suggesting there?

Mr. LITTLE: Yes, so as to be fair to a large body of taxpayers.

Hon. Mr. LAMBERT: Purely from the broad political viewpoint, do you think it would be a good thing to relieve that vast number of people from the responsibility of making out their income tax returns, leaving it to the employers to fix the taxation?

Mr. LITTLE: I personally think it is sound policy to have a large body of people paying a tax, no matter how small it is, because they all have a share in contributing to the cost of operating the country. But I think that for people

with a low level of income you can devise some means of taxing them at the source so that they would be saved the burden of preparing returns, and at the same time the department would be saved a lot of work.

The CHAIRMAN: In that way you would not be able to tax any additional income these people might have.

Hon. Mr. LAMBERT: I agree that the form should be simplified for people in the lower income brackets, but I am inclined to think it is a good thing for them to make out their own returns.

Hon. Mr. BUCHANAN: On page 2 of the brief you say:—

> There are very many types of expenditure which it is prudent to make for sound practical business considerations, but which could not qualify strictly as "wholly, exclusively and necessarily laid out or expended for the purpose of earning the income."

I was wondering what types of expenditure you had in mind as not being recognized.

Mr. LITTLE: There are not many that are not recognized by the department, but many of those which the department does recognize could be disallowed under a strict interpretation of those words "wholly, exclusively and necessarily laid out or expended." For instance, the Company may have a pension scheme for its employees, and the assessor may say: "It is not necessary to have a pension scheme in order to earn the income. The Y Company, which is in the same kind of business, has not got a pension scheme." To my mind it is prudent to have a pension scheme, for sound, practical business considerations, but it would be difficult to prove that the cost of the scheme was "wholly, exclusively and necessarily laid out or expended for the purpose of earning the income." The same thing may be said of advertising expenses, insurance payments, the contributions to employees' welfare programs, and so on.

Hon. Mr. BUCHANAN: You find that because of that wording certain expenditures are not being allowed as deductions?

Mr. LITTLE: Yes, sir.

Hon. Mr. McRAE: Mr. Little, on the first page of your brief you suggest that depreciation of plant and equipment should be listed positively in the Act as an allowable expense not subject to ministerial discretion. Do you think it is possible by legislation to cover all the depreciation allowances that might be required in business?

Mr. LITTLE: No, sir. My first thought is that depreciation should be listed in the Act positively as an item which is allowed, rather than as an item which is not allowed.

Hon. Mr. HAYDEN: You suggest it should be allowed as a matter of right?

Mr. LITTLE: Yes, sir.

Hon. Mr. McRAE: I agree with that.

Mr. LITTLE: In the second place, we think it would be possible to include in the Act or in a schedule thereto the scale of rates which, generally speaking, is to apply.

Hon. Mr. McRAE: If you had such a schedule, would it not become mandatory?

Mr. LITTLE: Well, I think it is mandatory now.

Hon. Mr. McRAE: Do you find much complaint about the depreciation allowances made by the taxing authorities?

Mr. LITTLE: No.

Hon. Mr. McRAE: I have not found any trouble in that regard. I think they pretty well recognize how long any equipment is going to last, and it seems to me their system works out fairly satisfactorily. Is that your experience?

Mr. LITTLE: Yes, sir.

Hon. Mr. HAYDEN: But there is also involved the question of the value for depreciation purposes.

Hon. Mr. MCRAE: You have to depreciation from the cost, not from a fictitious value.

Your brief refers to another matter, about which there has not been much said in our committee, namely depletion of mines, oil and gas wells and timber limits. In our province, as I understand it—and if I am in error, the committee's counsel will correct me—the depletion allowance for timber limits is based on the cost of the timber, regardless of when it was purchased. I know of one case where the timber cost $6 per thousand stumpage and the depletion allowance was $1.50. Because of the excess profits tax the company, in the interest of its shareholders, should have shut down after working eight months in the year, but operations were continued on account of the war. The oldest company we have in British Columbia purchased its timber limits half a century ago, and a couple of years ago it sold out, I presume at $6 a thousand stumpage. The depletion allowance to the new purchasers will be based on $6, whereas the allowance to the original owner was probably based on less than $1, the cost of the timber fifty years ago. I have no doubt that part of our lumber shortage in this post-war period is due to the fact that managers of lumber companies do not feel justified in sacrificing the assets of their shareholders by producing the maximum output of lumber.

The CHAIRMAN: A similar situation exists in other industries.

Hon. Mr. MCRAE: That is a serious matter, on which our committee should have some light. No doubt counsel can tell us what the present depletion allowance is.

The CHAIRMAN: I am told that some brick manufacturing concerns, with large deposits of valuable clay, are not producing now, because if they did produce they would have to pay out most of their profits in excess profits taxes; so they just allow the clay to lie there until such time as conditions are changed.

Hon. Mr. MCRAE: What do you think should be the basis for timber depletion allowance, present value or original cost?

Mr. LITTLE: I would think that the basis should be the same as for depreciation.

Hon. Mr. MCRAE: Timber is a wasting asset, just as a mine is. A man has only so much timber on his limit. If he goes on the market to replace his original holdings he must pay $6 to $8 a thousand stumpage. It seems to me that the depletion might well be based on the current price of timber. What do you say to that?

Mr. LITTLE: The desired effect might be obtained by applying to timber limits the system applied to mines, whereby depletion is based on a proportion of the annual income recovered from the operation. A gold mine is allowed a depletion rate of 33⅓ per cent of its otherwise taxable income. Under that system you might over a term of years recover your actual cost several times.

Hon. Mr. MCRAE: A mine is not the same as a timber limit. You never know how much or how little ore is under ground, but you can cruise a timber limit and ascertain just how much timber is there. I suggest that something approaching the current value of timber should be the basis for depletion allowance.

Hon. Mr. BENCH: Mr. Chairman, would that not be a matter of general policy as to taxation rather than one of administration? As I understand it, what this brief suggests is that the policy regarding depletion, whatever the policy may be, should be spelled out in some definite form in a schedule to the act. It does seem to me, with respect, that under the terms of our reference we

have no authority to consider or report upon the extent to which depreciation should be allowed.

Mr. LITTLE: We did not raise that question.

Hon. Mr. CAMPBELL: I should like to ask one or two questions with respect to depreciation. You say the chief objection to the present Act is the fact that the depreciation, as stated, is not allowable except when allowed by the Minister. You think there should be a positive section which would say that depreciation should be allowed to the extent that might be determined by the Minister: is that correct?

Mr. LITTLE: That is correct to the extent that it should be a positive item, sir. What we are dealing with in this particular section is discretionary power.

Hon. Mr. CAMPBELL: Are you familiar with the previous section, that is the section which was in force before the most recent amendment following the Pioneer Lumber case, which left it to the discretion of the Minister to determine the amount?

Mr. LITTLE: I am not familiar with the details, no.

Hon. Mr. CAMPBELL: Assuming that it was a positive section have you any particular complaints as to the method by which the Department determines the rate of depreciation?

Mr. LITTLE: No.

Hon. Mr. CAMPBELL: Or the basis upon which it is determined?

Mr. LITTLE: In most instances, no.

Hon. Mr. CAMPBELL: You are aware of the fact that it is determined on the basis of cost to the taxpayer?

Mr. LITTLE: That is correct, and the only question that ever arises is where a change of ownership has taken place. Then in some cases it is a question whether it is the cost to the present owner or the predecessor of the company.

Hon. Mr. CAMPBELL: Is that the case where you have a purchase by a stranger in which the vendor has no interest either through a company or associates, and the actual purchase price is in that instance taken as the cost?

Mr. LITTLE: That is my understanding.

Hon. Mr. CAMPBELL: You see no objection to that?

Mr. LITTLE: No, sir.

Hon. Mr. CAMPBELL: Then from the experience that you have had you do not find there is any arbitrary method used in determining the value upon which depreciation is granted?

Mr. LITTLE: No.

Hon. Mr. CAMPBELL: So your suggestion comes down to this, that the Act should be amended so it is an allowable item?

Mr. LITTLE: Yes, coupled with adding to the Act a schedule of rates that will be allowed.

Hon. Mr. CAMPBELL: Yes. Your suggestion is that the schedule might be put in stating the rates of depreciation as now being allowed in accordance with the practice of the Department?

Mr. LITTLE: Quite.

Hon. Mr. CAMPBELL: Might it not be difficult to do that as a matter of fixed rate in all cases?

Mr. LITTLE: It might be in some cases, but actually most of the rates are set out in rulings which have been made public through the *Canada Gazette*.

Hon. Mr. CAMPBELL: Have you considered the question of obsolescence at all?

Mr. LITTLE: No, sir, we have not.

Hon. Mr. CAMPBELL: Would you care to make any comments on it?

Mr. LITTLE: No, sir.

The CHAIRMAN: Are there any other questions?

Thank you very much, gentlemen, for your contribution.

The next brief is from the Certified Public Accountants Association of Ontario. Mr. Entwistle is again here as president to present the brief. Mr. Entwistle.

Mr. ENTWISTLE: This, Mr. Chairman, is the brief of the Certified Public Accountants Association of Ontario:

The Certified Public Accountants Association of Ontario is deeply appreciative of the invitation of the Committee to present its views.

With knowledge of the matters which have previously been brought before the Committee at some length, this brief is limited to a presentation of certain features which cause a considerable measure of dissatisfaction and annoyance and which the Association believes ought to be remedied as speedily as possible.

These features are condensed into the following summary; namely,

(1) Ministerial discretion.
(2) Operational memoranda (rulings and regulations).
(3) Tax computation.
(4) Ambiguity of Act.
(5) Delay in assessments.
(6) Double taxation.
(7) Interest.
(8) Denial of appeal regarding fixation of Standard Profits.

We present brief statements of explanation relative to each of the above features together with recommendations for curing the defects.

(1) Dissatisfaction arising because of the Minister's powers of discretion in rendering decisions which although technically and legally correct under his interpretation of the phraseology of the Act, may under peculiar circumstances prove inequitable from sound business and/or accounting view-points, and the fact that no appeal can be made from such decisions except to the Exchequer Court.

We believe that every effort has been made to render fair and just decisions under the discretionary powers vested in the Minister, and that it is impracticable to entirely eliminate such powers. However, we also believe that there are cases where discretionary power based solely on technical interpretations of the Act may prove inequitable.

At the present time there is no appeal from the decisions of the officials of the Department other than to the Exchequer Court. In matters involving the exercise of the Minister's power of discretion, the Court appears to restrict consideration to the question of whether or not the Minister was, in making the decision, acting within the powers vested in him. The Court does not appear to consider the reasonableness of the decision under the particular circumstances.

Notice of appeal to the Exchequer Court must be filed within one month from receipt of the Minister's decision, notwithstanding the fact that years may have passed before the Department completes assessment. A deposit of not less than four hundred dollars must be made.

*It is recommended*

That Regional Boards of Assessment Appeal be instituted in the principal cities throughout the Dominion and that the personnel of such Boards comprise

one or more (a) professional accountants, (b) solicitors, (c) business executives, and that taxpayers dissatisfied with the decisions of the Department regarding any assessment have free access to such Boards.

That to ensure consistency of the decisions of the Regional Boards, there be instituted a Central Board having a personnel similar to that of the Regional Boards. Decisions of the Regional Boards to be reviewed by the Central Board, and when confirmed by the Central Board to be binding upon both taxpayer and the Minister unless appeal to the Exchequer Court is made by either party within a stated time after the decision of the Central Board is handed down.

(2) Denial of unrestricted access to operational memoranda directed by the Deputy Minister to the District Offices.

Resentment has cumulatively developed on the part of taxpayers and their auditors by the persistent denial of free access to directives which have been described to the Committee as operational memoranda. A full and frank public disclosure of such directives would not only appease the general body of taxpayers but would bring to accountants and auditors a fuller knowledge of the attitude of the Department upon innumerable matters, promote co-operation, minimize arguments, and expedite settlements. The directives are not invariably interpreted accurately by officials subordinate to the Deputy Minister and the accountant or taxpayer is handicapped when he has not precise knowledge of the directives.

*It is recommended*

That all directives or operational memoranda issued by the Deputy Minister to District Offices be made readily and promptly available to the public if necessary at a nominal charge.

(3) The multiplicity of taxes within the collective term of Income Tax, and the complications in the process of computing tax liability.

Amendments to the Acts from time to time have cumulatively added to the mathematical operations required to determine the tax liability. At the present time it is necessary in the case of taxpayers with incomes of over $3,000. other than corporations, to compute separately the normal tax, the graduated tax, and the sur-tax, also in the case of those in business, the excess profits tax. It is also necessary in certain cases to compute and deduct the refundable portion of the tax. In the case of corporations separate computations have to be made for the income tax and the excess profits tax respectively. A problem has been injected into the computation of the relatively minor item of the amount allowable for charitable donations. It is contended that the multiplicity of calculations to be made and returns to be completed, constitute one of the sources of annoyance to taxpayers. The addition in 1942 of the return known at the T-2 Questionnaire, for the purpose of relieving the pressure of war-time conditions on officials of the Department, increased the tasks and expense of the corporate taxpayers. Simplification of the tax structure would result in desirable and extensive simplification of the required returns.

*It is recommended*

That the present normal tax, graduated tax and sur-tax be consolidated into one tax.

That the excess profits tax be immediately abandoned and the rate of income tax adjusted to meet necessary revenue requirements.

That future changes contingent upon revenue requirements be affected by increasing or decreasing the rate of tax, and that the injection of additional computations be avoided.

That the return known as the T-2 Questionnaire be eliminated, additional questions being added if deemed necessary, to the T-2 return of income.

(4) Ambiguity, obscurity, and impracticability of certain provisions of the law, and failure to include in one statute all applicable provisions.

Certain provisions in the Acts are confusing in their intricacy and complexity and in certain cases the inclusion of a series of interlocking provisos render the actual meaning ambiguous and/or obscure. Moreover, insufficient consideration appears to have been given many provisions as to their practicability in application.

Clause "jj" of subsection 1 of section 5 of The Income War Tax Act, relative to charitable donations of corporations, is a noteworthy example of those faults. Such complexity ought to be avoided in a statute applicable to the everyday transactions of the business world.

The amendment of 1944 authorizing the deduction of the refundable portion, and the amendment of 1945 reducing tax liability are examples of omissions from The Income War Tax Act.

*It is recommended*

That all future amendments, after drafting by the Law Clerks, and before presentation to the House, be subject to review by a Committee or Board, the personnel of which shall include a number of professional accountants commensurate with the total personnel of the body. The duty of such Committee or Board to be the reviewing of all draft amendments to the Acts, to consider the practicability of the provisions, and to seek in every possible way to simplify and lucidify the phraseology.

(5) Delay in making assessments.

Taxpayers, particularly those in business, may honestly estimate their tax liability, but until assessments are confirmed there exists a contingent obligation which is a source of annoyance and uncertainty. Interest on underpayments arising from subsequent adjustments of the Department officials, continues to accrue during such delays. Promptitude is demanded of taxpayers in the filing of returns and payment of tax, and taxpayers are justified in expecting reasonable promptitude in the confirmation of assessments.

*It is recommended*

That requisite arrangements be made to ensure reduction of the interval between filing of returns and confirmation of assessments.

That for the purpose of attracting and holding the services of skilled, efficient assessors and other officials, and to incite satisfaction and enthusiasm among the staff with a view to lessening the delay in confirming assessments, the rates of remuneration for certain classifications be substantially raised.

(6) Double taxation of corporation profits.

A long-standing feeling of injustice prevails regarding the taxation of profits of corporations and the duplicated taxation when such profits are distributed to shareholders.

*It is recommended*

That lawfully declared dividends of Canadian corporations be exempt in the hands of shareholders or deductible from income of the corporations of the taxation year in which the dividends are paid.

(7) The accruing of interest on underpayments during long periods of delay in confirming assessments, and failure to allow interest on overpayments of tax.

Delay in confirmation of assessments is not within the control of taxpayers and a sense of injustice is aroused when they are required to pay interest charges on any excess of the tax as determined by the Department after an

interval of several years, over the tax honestly estimated at time of filing returns. Likewise, being subject to interest on underpayments, the taxpayer has justice in his demand that he be allowed interest on overpayments.

*It is recommended*

That when taxable income determined by the Department exceeds the honestly reported income of the taxpayer resulting in underpayment of tax, interest on such underpayment shall accrue from the date of completion of assessments until the amount is paid.

That when through honest mistake the taxable income reported is in excess of the taxable income as determined by the Department, interest on overpayments of tax be allowed at the current bank, or other appropriate rate, from time of payment until time of repayment. Provided that no interest be allowed when tax payments are in excess of the estimated tax payable upon reported income.

(8) Denial of appeal from decisions of the Board of Referees, the Minister, and the Treasury Board under the provisions of Section 5 of The Excess Profits Tax Act, 1940.

Section 5 of The Excess Profits Tax Act provides that the Minister may refer to a Board of Referees appointed by him (*See* Sec. 13) the determination of Standard Profits. The decisions of the Board of Referees are not operative until approved by the Minister and when so approved become final and conclusive. If not so approved reference shall be made by the Minister to the Treasury Board and its decision is final and conclusive. Thus the taxpayer is deprived of any right of appeal and his case rests conclusively with the Department or the Treasury Board.

*It is recommended*

That taxpayers be expressly given the right of appeal to the Courts against decisions of the Board of Referees, the Minister, and the Treasury Board made under the provisions of Section five of The Excess Profits Tax Act, 1940.

*Conclusion*

The Association is of the opinion that the difficult task of administration, aggravated by six years of war conditions and emergent legislation, has on the whole been discharged efficiently. The curing of the defects hereinbefore enumerated are, we believe, most desirable if the goodwill and co-operation of the general body of taxpayers is to be retained. The taxing statutes have, by piecemeal amendments over a period of twenty-nine years, become unwieldy and confusing. We would finally recommend that the whole tax structure be studied by a special committee comprising officials of the Department, accountants, solicitors, and business executives, with a view to clarification, consolidation, and simplification of the law under the title "Income Tax Act".

*Respectfully submitted,*

THE CERTIFIED PUBLIC ACCOUNTANTS ASSOCIATION OF ONTARIO

The CHAIRMAN: Mr. Entwistle, I see that Mr. Sudbury, your Secretary's name, is appended to this brief. Is he here for the purpose of assisting you in answering questions, or has he something further to add to the brief?

Mr. SUDBURY: I have nothing to add.

The CHAIRMAN: Then perhaps Mr. Stikeman will proceed with his questions.

Mr. STIKEMAN: Mr. Entwistle, before dealing with the details of your brief, I think we would be interested in learning your opinion as to the relative value of some of these suggestions which you make for curing the defects listed on page 1. You state on page 2 that regional boards, comprised of accountants,

solicitors and business executives be constituted in principal cities throughout the dominion. When you speak of regional boards do you imply having a board in every district office?

Mr. ENTWISTLE: No, we do not, Mr. Stikeman. We have in mind a regional board say in the city of Halifax, that will travel through the maritime provinces; another regional board perhaps in the city of Montreal covering the province of Quebec; one in Toronto for the province of Ontario; one in Winnipeg for Manitoba and Saskatchewan; and perhaps one in Vancouver covering Alberta and British Columbia.

Mr. STIKEMAN: Would these regional boards be composed of a number of individuals, or just one individual of each classification, a solicitor, a businessman and an accountant?

Mr. ENTWISTLE: We do not recommend a board of more than three members. I think it is preferable to have a lawyer, an accountant and one other person on the board.

Mr. STIKEMAN: They would hear appeals directly from assessment.

Mr. ENTWISTLE: Yes, from assessment.

Mr. STIKEMAN: Would they have jurisdiction to consider questions of fact and discretionary questions?

Mr. ENTWISTLE: Yes, particularly questions where discretion arises.

Mr. STIKEMAN: You would have them substitute their decision for that of the minister?

Mr. ENTWISTLE: Yes; and we would go further than that and constitute essential boards in Ottawa, somewhat after the plan of the National War Labour Board which can review decisions of the local regional labour boards. Of course we would also recommend that the minister or the taxpayer be allowed to appeal on the decision of the national board at Ottawa.

Mr. STIKEMAN: So you would interject two appeals into the system as it now stands?

Mr. ENTWISTLE: Yes.

Mr. STIKEMAN: First you would go to the regional board, and from the regional board to the central board?

Mr. ENTWISTLE: Yes.

Mr. STIKEMAN: And you propose that both the regional boards and the central board should hear the facts anew and substitute their opinion anew for that of the minister?

Mr. ENTWISTLE: Yes. We think it is not a good principle to have an appeal heard by the same party who issued the assessment.

Mr. STIKEMAN: That has been almost the unanimous opinion of all witnesses appearing before this committee. Your suggestion has elements which distinguish it from the others and would make it very interesting. I started to question you with respect to boards for the reason that you list headings in your brief as being objectionable features which may be cured. In your opinion does not the fact of the establishment of a board as you suggest with the accumulation of decided opinions answer a number of these objections? I have in mind the fact that a board, such as you describe, might impose a suitable check upon the exercise of ministerial discretion. It also appears to me that the decisions of the board, if you contemplate their publication, might exercise a salutary influence upon the wholesale publication of an official departmental memorandum. Are you also of that view?

Mr. ENTWISTLE: Very definitely. We think that if the rulings with regard to the rate of depreciation and similar matters are published a number

of appeals would be avoided later on; in other words, in the first instance the professional accountants will know how to prepare financial statements and there will be fewer differences in the returns as filed and finally assessed.

Mr. STIKEMAN: Do you contemplate the decisions of both the regional board and the central board could be made public?

Mr. ENTWISTLE: We see no real objection to it. In some cases, I suppose, the taxpayer might object to its publication.

Mr. STIKEMAN: You need not mention the name of the taxpayer; he could be referred to numerically or alphabetically.

Mr. ENTWISTLE: So long as the name of the taxpayer was not given out there could be no objection to it.

Mr. STIKEMAN: Do you not think that their publication would be of the essence if this board is to be of any lasting value in curing some of the defects which you mention?

Mr. ENTWISTLE: It would be very helpful.

Mr. STIKEMAN: Therefore in your estimation one of the essential conditions of this board is that its decisions be published?

Mr. ENTWISTLE: Yes, we think the more the general public knows about taxation and how it applies the better it is for all concerned. Taxation should not be such a mysterious thing.

Mr. STIKEMAN: Would you permit the appeal, which you mention as item 8 on page 1, from the board of referees on standard profits to go to this board with all the other appeals now under the statute?

Mr. ENTWISTLE: We are hoping of course that it will not be necessary to have appeals made to the board of referees for a much longer period. That is really a matter that we had not considered in detail. Offhand I would say that we would be satisfied if the decisions of the board of referees were allowed to go before the Exchequer Court for review in cases where a taxpayer feels that he has been unfairly dealt with.

Mr. STIKEMAN: Since the decisions of the board of referees are administrative or discretionary, it would seem to be necessary to go to the board which had the power, as contemplated, to consider discretionary decisions, rather than to the Exchequer Court.

Mr. ENTWISTLE: Yes.

Mr. STIKEMAN: While on the subject of a proposed board, do you consider that the review to be effected by the central board should permit a rehearing and a reconsideration of all the facts, or merely a review of the file?

Mr. ENTWISTLE: I think the taxpayer, if he is not satisfied with the decision of the regional board, should have the privilege of going before the central board. Also I believe that the minister should have the same privilege.

Mr. STIKEMAN: So that, in effect, you would permit the re-arguing of the case before the central board?

Mr. ENTWISTLE: Quite so.

Mr. STIKEMAN: Do you not feel that it might result in a greater quantity of appeals being received by the central board from the regional boards than could be expeditiously handled by one panel of men?

Mr. ENTWISTLE: No, we think in the first instance, after the regional boards are set up, there will be fewer appeals, and more likelihood of the taxpayer and the Inspector of Income Tax getting together. We do not believe that the interested parties will be very anxious to go before these boards. We suggest the regional boards so as not to create a bottleneck at Ottawa. It

is also our opinion that there will be fewer appeals from the decisions of the regional boards.

Mr. STIKEMAN: You do not anticipate an initial spurt of appeals when these boards are set up?

Mr. ENTWISTLE: In all probability there will be.

Mr. STIKEMAN: But you feel that as the jurisprudence is built up to any degree that flow will subside?

Mr. ENTWISTLE: Yes.

Mr. STIKEMAN: And at the same time a salutory influence will be exerted upon local and head office officials with whom you may be dealing, because both would have an acceptable precedent?

Mr. ENTWISTLE: Yes.

Mr. STIKEMAN: When you referred at page 5 in your brief to the possibility of increased remuneration for certain classifications and departments did you have any particular classification or employee in mind?

Mr. ENTWISTLE: In the first place, we think that the salary paid to the Deputy Minister of National Revenue for Taxation is probably the most ridiculous salary in the Dominion of Canada.

Mr. STIKEMAN: What do you think it should be?

Mr. ENTWISTLE: We think it should be at least $20,000. It naturally follows that if the salary of the Deputy Minister is only $10,000, he cannot be expected to recommend that as much be paid to the Assistant Deputy Minister or to inspectors. We feel that the salary of the inspectors in the Montreal and Toronto districts, for example, should be at least $10,000.

Hon. Mr. HAIG: The maximum is now $7,200?

Mr. ENTWISTLE: Yes. We also feel that the salaries of the different grades of assessors are about 15 per cent below what they should be.

Mr. STIKEMAN: Is that based on your experience as a professional accountant looking over the field of average salaries paid for average services rendered, or is that particularly with regard to the accounting profession?

Mr. ENTWISTLE: It perhaps has more regard to the accounting profession, and our own ideas as to the ability of the men who are undertaking this work. We believe that one of the reasons for the delay in assessments is that the department has lost a good many of its best men.

Mr. STIKEMAN: You feel that 15 per cent is perhaps the average underpayment of all assessors in the department?

Mr. ENTWISTLE: Yes. In arriving at that we have considered some of the figures already published. I believe the figures were submitted by the department. Our view is that they are low by at least 15 per cent.

Mr. STIKEMAN: Have you any idea as to the salary ranges which might obtain among those officers exercising portions of the ministerial discretion—let us say assistant deputy ministers, certain members of the legal branch, the hierarchy between the assessors and the Deputy Minister?

Mr. ENTWISTLE: That would depend to a great extent on the amount of time involved. If it became a full-time position it should be worth at least $10,000 per annum.

Mr. STIKEMAN: You perhaps misunderstand me.

Hon. Mr. HAIG: They are full-time employees.

Mr. STIKEMAN: I am referring to departmental officials above the rank of assessors but below the rank of deputy minister.

Mr. ENTWISTLE: I think their salary should be somewhere in between the salary of the highest grade of assessor and the salary of the Assistant Deputy

Minister. In other words, if it were suggested that a salary of $12,500 would be more suitable for the Assistant Deputy Minister, that would give you a range between something like $5,000 and $12,500 for the others in between.

The CHAIRMAN: Would you include the inspectors of the various offices in that?

Mr. ENTWISTLE: Yes. We think the inspectors of the two largest districts are grossly underpaid.

Hon. Mr. HAIG: What about the smaller districts, where perhaps the income is not so large but the number of returns is very great?

Mr. ENTWISTLE: The inspectors there do a tremendous amount of work, but do you think they assume the same responsibility?

Hon. Mr. HAIG: I think they assume far more. I understand that in London, Ontario, one firm pays a third of the tax collected. In Winnipeg the number of returns filed is tremendous. It seems to me there is just as much difficulty connected with the assessing of a great number of forms as with the assessing of a much smaller number on which larger incomes are reported. The man in London is paid more than the man in Winnipeg.

Mr. ENTWISTLE: We certainly believe that, on the whole, the inspectors throughout the country are pretty much underpaid.

Hon. Mr. CAMPBELL: It is in the large centres, Toronto and Montreal, that the greatest volume of work arises?

Mr. ENTWISTLE: Yes.

Hon. Mr. CAMPBELL: Have you any records to show what the arrears of assessments are?

Mr. ENTWISTLE: No, we have no statistics, Senator Campbell. We are really just going by the experience of our members in public practice. We will say this, that one of the reasons for the delay in assessments is that the public accountants have been greatly understaffed, just as the department has. The fault is not all with the department. Often the department will have to wait months for information requested from a professional accountant, because he is understaffed.

Hon. Mr. CAMPBELL: That condition has existed during the past few years?

Mr. ENTWISTLE: Yes.

Hon. Mr. CAMPBELL: From your experience with the Toronto office, for instance, can you say how far they are behind in their assessments?

Mr. ENTWISTLE: It is very difficult to say. We have had a great number of assessments for 1943 and some for 1944, but on the other hand there are companies which have not been assessed since 1941.

Hon. Mr. CAMPBELL: Would you attribute that to the fact that the department's offices are understaffed?

Mr. ENTWISTLE: Yes, I would say understaffed, and also to the fact that the job of training personnel has been a terrific one. I do not think the department's experience is much different from the experience of the average public accountant who was quite short of trained men during the war and found that it took one to two years to train the staff he took on.

Hon. Mr. CAMPBELL: You say, as I understand, that delays in making assessments are a subject of complaint on the part of the tax-paying public and you feel that assessments should be speeded up some?

Mr. ENTWISTLE: Yes, they should be.

Hon. Mr. CAMPBELL: What do you think about a two-year limit?

Mr. ENTWISTLE: We think two years is too short a term altogether. We think the department should have at least three years.

Hon. Mr. CAMPBELL: A suggestion was made—I do not know whether in this brief or not—that interest should not be charged after the expiration of a three-year period.

Hon. Mr. BENCH: Mr. Little suggested that.

Mr. ENTWISTLE: I believe the recommendation of the Board of Trade was a little different from ours. Our recommendation is that the interest on the underpayment should accrue from the date of assessment until the amount is paid. In other words we suggest that the department should not commence to charge interest until it makes the assessment.

The CHAIRMAN: That would tend to speed up the assessments.

Hon. Mr. CAMPBELL: If a large taxpayer was short of working capital, might it not be to his advantage to claim a greater rate of depreciation than that to which he was entitled, and so have the use of extra money for perhaps three years?

Mr. ENTWISTLE: I can readily see that possibility, senator, and although it is not in our brief I believe we would recommend that a penalty be imposed for underpayment, a penalty of perhaps 5 per cent.

Hon. Mr. CAMPBELL: Rather than an interest charge?

Mr. ENTWISTLE: Yes, a penalty of 5 per cent on underpayments, and the interest rate to commence from the date of the assessment.

Hon. Mr. CAMPBELL: On page 2 of your brief, dealing with discretionary powers, you say: "However, we also believe that there are cases where discretionary power based solely on technical interpretations of the Act may prove inequitable." Have you any illustrations in that respect?

Mr. ENTWISTLE: Yes. We have particularly in mind the decision of Mr. Justice Thorson in Nicholson Limited v. Minister of National Revenue, in which he said, in part:—

> The Court may not therefore substitute its own opinion as to the correct amount of expense to be allowed for the amount determined by the minister in his discretion under section 6 (2). The amount so determined is not open to review by the Court. The right of appeal to the Court conferred by the Act does not carry with it any right of appeal from the minister's determination in his discretion under section 6 (2).

Hon. Mr. CAMPBELL: If I understand you correctly, you are suggesting that in some cases the minister exercises his discretion to interpret the statute. Is that what you mean there?

Mr. ENTWISTLE: Yes, I think that is so.

Hon. Mr. CAMPBELL: Surely where there has been an interpretation of the statute the discretion is reviewable by the Court? I am wondering what particular sections you had in mind when saying that technical interpretations of the act may prove inequitable. Certain sections have been quoted to us as being sections in which the minister is given discretion, and it has been suggested that they should be changed to eliminate the discretion in those cases. The depreciation section, for instance, is one. But is not the chief complaint about ministerial discretion based upon the fact that the discretion is not necessarily exercised in the same way in all cases?

Mr. ENTWISTLE: Yes, that is quite so. We had one instance where a doctor received a single man's exemption in one income tax district, because his wife was also practising as a doctor, whereas in another income tax district he was allowed a married man's exemption. He appealed in the case where he was declared to be entitled only to a single man's exemption, but he was assured that there was no use in appealing.

Hon. Mr. CAMPBELL: Do you not feel that if an appeal from the exercise of the ministerial discretion could be made to a board, these questions could be reviewed and dealt with properly?

Mr. ENTWISTLE: Yes, they could be. In the first place, it would be helpful if in as many cases as possible the minister's discretion could be withdrawn.

Hon. Mr. CAMPBELL: The point you make is this: an accountant may know of cases where the Minister has exercised his discretion in a certain way in one instance and, although presented with the same circumstances, he may not follow the same course in another instance?

Mr. ENTWISTLE: Yes. That is sometimes due to the special ruling that has come out in the meantime.

Hon. Mr. CAMPBELL: There is a flagrant disregard of the discretion exercised in the one case, and you contend there is no appeal from the improper exercise in the other case?

Mr. ENTWISTLE: Yes. Though I must say we have very little knowledge of that discretion having been exercised in a flagrant manner.

Hon. Mr. CAMPBELL: You feel it is uniformly exercised, do you?

Mr. ENTWISTLE: Not entirely, but on the whole it has operated fairly well.

Hon. Mr. CAMPBELL: The point I am trying to make is that every person who comes here attacks the Act in respect to ministerial discretion and say this ministerial discretion should be eliminated from the Act, others say it should be eliminated from certain sections, and others again say that it should be subject to review by a board. What is your conclusion?

Mr. ENTWISTLE: We believe that in some cases the Minister's discretion should be withdrawn entirely.

Hon. Mr. CAMPBELL: Have you any of those cases? That is the point.

Mr. ENTWISTLE: These are just a few cases where we think it could be withdrawn entirely and made part of the Act: Section 13 (2), where a dividend may be deemed to have been distributed and the shareholders taxed accordingly. We think that should be put right into the Act, that is, the terms under which a shareholder can and should be taxed should be in the Act, and not left to the Minister's discretion. Section 47. I should like to read the entire section. It is short, but most important.

> Return or Information not binding on Minister 47. The Minister shall not be bound by any return or information supplied by or on behalf of a taxpayer, and notwithstanding such return or information, or if no return has been made, the Minister may determine the amount of the tax to be paid by any person.

Hon. Mr. CAMPBELL: You say that should be left out of the Act entirely?

Mr. ENTWISTLE: We think so. We do not think it should be left to the Minister at all to tell any individual how much tax he should pay.

Hon. Mr. CAMPBELL: Do you know of any cases where the Minister has taxed under that section?

Mr. ENTWISTLE: No; but still we do not see any necessity for the section; he has the power.

Hon. Mr. CAMPBELL: I agree with you.

The CHAIRMAN: Mr. Entwistle, our counsel has just brought to my attention this judgment by Judge Thorson of the Exchequer Court:—

> The basis of taxability is fixed by the Act, and section 47 does not, in my judgment, give the Minister any power to depart from it. Such a power would have to be conferred in clear and explicit terms before effect could be given to it, and no such terms can be found in section 47.

> The view that the Minister may, under such section, permit a taxpayer to file his income tax returns on an accrual basis and assess him for income tax accordingly, notwithstanding the specific provisions of section 3 and section 6 (a), is, in my opinion, quite untenable.

Are you aware of that?

Mr. ENTWISTLE: No. I am very glad to hear that citation, Mr. Chairman.

Hon. Mr. BENCH: Would not that indicate something like this: a person might make no income tax return during his lifetime, and his liability would not be shown until he died and the succession duty return was filed? This has happened in my own professional experience. Then surely the Department is in the position of having to determine in some way what that now deceased taxpayer should have paid. Certainly you cannot get a return from him, but you might get one from his personal representatives, though usually they are not competent to give the information upon which to make a return. Was not that the reason section 47 appears in the Act, to enable the Minister to make an assessment upon an individual who does not file a return or who files a false return?

Mr. ENTWISTLE: We do not know why this particular wording was used. We readily say that the Minister should have power to make the assessment where no return is made or where a return has been made improperly. In such event the Minister should certainly have power to increase the amount to a proper assessment, but we think that the Minister should have good grounds for increasing the assessment.

Hon. Mr. BENCH: You agree that the Minister requires to have such power, but you do not like the form in which it is now given in section 47?

Mr. ENTWISTLE: No. I am very glad to have the interpretation which has just been read by the honourable chairman given by Mr. Justice Thorson; but to a layman this simply means that in spite of the fact our returns go in according to the best of our ability the minister can tax us any amount he feels like taxing us.

Hon. Mr. HUGESSEN: Is there not some possible value in retaining that section in the Act? I recall its being invoked under very peculiar circumstances which were not covered by any section of the Act at all so far as anybody could tell. In that case the Deputy Minister based himself on section 47 by saying, "There is nothing in the Act which states definitely what the tax shall be, but I exercise my discretion under section 47 and say that the tax must be so and so." Is it not possible that there may be isolated cases of that kind which would give value to that section?

Mr. ENTWISTLE: Yes, I am sure you are quite correct, Senator Hugessen. We believe, of course, that from the Department's point of view they have a very good reason for every section of the Act, but from the point of view of the taxpayer we think it should be clarified.

Hon. Mr. HUGESSEN: As I remember, the taxpayer was just as anxious as the Department was to arrive at some basis in that case.

Mr. ENTWISTLE: Yes.

The Committee adjourned until 2.30 p.m.

The Committee resumed at 2.30 p.m.

Hon. Mr. CAMPBELL: When we adjourned for lunch Mr. Entwistle was answering some questions I had asked dealing with provisions in the act which he felt might be changed by eliminating the discretions vested in the Minister. Would he please proceed.

Mr. ENTWISTLE: Under Section 5 (i) (*b*) the minister has power to allow a reasonable rate of interest on borrowed capital used in the business. We believe that that power should be eliminated.

Hon. Mr. CAMPBELL: How would you deal with a matter of that kind? Is that section not intended to enable the minister to say that a rate, for instance, of 10 per cent was unreasonable?

Mr. ENTWISTLE: Yes.

Hon. Mr. CAMPBELL: How could it be dealt with apart from ministerial discretion?

Mr. ENTWISTLE: If the company is under contract to pay 10 per cent it should pay it, notwithstanding the minister's discretion. Under the minister's discretion the difference between what is considered to be a reasonable rate and the amount paid would be disallowed for taxation purposes; notwithstanding that, whoever receives the 10 per cent would pay income tax on that amount.

Hon. Mr. CAMPBELL: But is not that section put in to prevent persons stipulating high and abnormal rates of interest?

Mr. ENTWISTLE: I do not know why the section was put in there.

Hon. Mr. HUGESSEN: I can quite see why the section is there. For instance if a borrower and lender were not at arms length but under the same control and for tax purposes they wanted to put more income into the hands of the lender and take it out of the hands of the borrower, they could do so. Surely that section is put in to deal with cases of that kind, taking money out of one pocket and putting it into another.

Mr. ENTWISTLE: No doubt it was intended to take care of attempts to evade taxation but as it reads if a firm borrows money at 4 per cent on say a two and a half million dollar issue of bonds, the minister has the power to say that the rate of interest is too high and that he will allow only 3 per cent.

Hon. Mr. CAMPBELL: If the Act provided for an appeal from the decision of the minister, do you not think it would suffice?

Mr. ENTWISTLE: This seems to be one of those cases where the Minister has sole discretion. If an appeal board such as we discussed this morning were set up, no doubt quite a number of discretionary powers could remain in the Act.

Hon. Mr. CAMPBELL: The chief objection of the taxpayer is that the Minister's discretion is final?

Mr. ENTWISTLE: Yes, that there is no appeal.

Hon. Mr. CAMPBELL: And the exercise of that discretion results in the imposition of a higher tax?

Mr. ENTWISTLE: Yes.

The CHAIRMAN: Have you ever had such an extreme case as that of a company which had issued 4 per cent bonds and the Minister allowed only 3 per cent?

Mr. ENTWISTLE: No. We have had an instance, though, where the department declined to recognize any interest at all on advances of another company which happened to have one or two shareholders with some interest in the parent company. I may say that after quite a bit of negotiation the department eventually allowed that, but under this section there is the power to disallow it.

The CHAIRMAN: While the power may not have been used unfairly, still the power is there?

Mr. ENTWISTLE: Yes.

Hon. Mr. CAMPBELL: And there is no appeal from the exercise?

Mr. ENTWISTLE: Quite so.

Hon. Mr. CAMPBELL: A number of witnesses have said in a more or less general way that these discretionary powers should be eliminated. I feel it

would be helpful to have on record a statement of difficulties that have been encountered because of these discretionary powers.

Mr. ENTWISTLE: Under section 6 (2) the Minister has power to decide that any expense is in excess of what is reasonable or normal for the business carried on by the taxpayer.

Hon. Mr. CAMPBELL: Have you any alternative suggestion?

Mr. ENTWISTLE: We prefer the wording of the English Act. In effect that allows expenses laid out in connection with the particular trade or calling of the taxpayer. There is no restriction to expenses "wholly, exclusively and necessarily laid out or expended for the purpose of earning the income."

Hon. Mr. CAMPBELL: Is it not a fact that the department does go beyond the provisions of the Act in allowing many expenses which properly are not allowable under the Act as it is now drafted?

Mr. ENTWISTLE: Yes, that is undoubtedly true.

Hon. Mr. CAMPBELL: And you feel the Act should be amended so as to state what is really intended?

Mr. ENTWISTLE: Yes. The committee has already had attention called to the fact that fire insurance premiums cannot be said to have been laid out for the purpose of earning the income, yet they are allowed as deductible expenses. Perhaps unnecessary advertising is another item in the same class. It is rather difficult to say how much income, if any, is earned through an expenditure on advertising.

Hon. Mr. HAIG: If you do not advertise, your business disappears.

Mr. ENTWISTLE: Not necessarily.

The CHAIRMAN: Brewers and distillers have been publishing advertisements having nothing to do with their own businesses but calling attention to historic events and so on, and the only thing in the way of advertisement of the company is derived from mention of the company's name.

Hon. Mr. HAIG: That is known as goodwill advetising.

Hon. Mr. HUGESSEN: That may be, but the cost of the advertisement is not expended for the purpose of earning the income.

Hon. Mr. HAIG: No. Any business that depends on goodwill needs to advertise. The automobile people, for instance, ran a series of advertisements during the war, and I think they were justified in that. My experience has been that the department will not disallow an expense of this kind unless it looks suspicious, and whenever I have come across anything like that I have advised my client that the claim could not be sustained.

Mr. ENTWISTLE: We find considerable dissatisfaction arises from the manner in which the Minister's discretion is being exercised under section 6 (2), with respect to unincorporated businesses. We have cases where a proprietor is making, say, between $20,000, and $30,000, not in a war business at all, and just because he has been in the habit of drawing only $2,500 or $3,000 and plowing all the other profits back into the business, the Minister, through his officials, allows only a very low salary. We feel it is unjust to unincorporated businesses to limit their salaries to a maximum of $5,000. The departmental officials cannot allow more than that, and in many cases they allow considerably less. In a majority of the cases the salaries allowed to proprietors of unincorporated businesses are altogether too low, and much dissatisfaction is caused on that account.

Hon. Mr. CAMPBELL: That is only affected by the excess profits tax, not by the income tax.

Mr. ENTWISTLE: No, it is not affected at all by the income tax, but very seriously affected by the excess profits tax.

The CHAIRMAN: I suppose that if the proprietor, in an attempt to escape that, incorporates his company, he becomes subject to double taxation?

Mr. ENTWISTLE: Yes, but in the meantime if he carries on the same policy of plowing his profits back into the business he will not be taxed until such time as he distributes his earned surpluses. This one section is having the effect of creating a great many corporations. The proprietor of an unincorporated business can incorporate and go back to the department and receive a higher salary allowance than he got before.

Hon. Mr. CAMPBELL: Is that not one of the best examples of the exercise of ministerial discretion in a way that discriminates between one taxpayer and another? A partner in a grocery business, for example, may be allowed a salary of only $2,500, but a man carrying on the same business through an incorporated company may be allowed a much larger salary? Have you found in your practice that that does exist?

Mr. ENTWISTLE: It definitely does exist. And there are some classes of business that cannot be incorporated. I have in mind, for instance, members of the Montreal Stock Exchange and Toronto Stock Exchange. They also are limited to what is very often a ridiculously low salary in the circumstances, $5,000 for each partner.

Hon. Mr. CAMPBELL: Their constitution does not permit them to carry on business as an incorporated company?

Mr. ENTWISTLE: No. Then there is the right given to the Minister, under section 6 (1) (*n*), to determine the amount of depreciation that may be allowed. We think that every taxpayer should be entitled to a reduction for depreciation, and that this should not be within the discretion of the Minister. Also, section 6 (1) (*o*) gives the Minister the right to allow provincial taxes as a deduction in determining taxable income. We feel that provincial taxes allowable as a deduction should be stipulated in the act, and that such provincial taxes as are not allowable as a deduction should also be stipulated in the act.

Hon. Mr. CAMPBELL: Have you any suggestions to make to the committee with respect to allowances for obsolescence?

Mr. ENTWISTLE: Under the act as it now reads, if a firm is able to make a capital profit on a fixed asset, such capital profit is not taxable. Now, it is perhaps a little too much to expect the department to allow a capital loss, due to obsolescence, when a capital gain on the sale of an asset is not taxed. No doubt there are instances where the rates of depreciation and the rates of depletion are not sufficient to cover obsolescence, but unless capital gains on the sale of assets are taxed it would seem unreasonable to allow for obsolescence beyond the rates generally allowed for depreciation and for depletion.

Hon. Mr. MCRAE: Mr. Chairman, the representative of one of the stock exchanges suggested to us that insurance premiums on the life of the senior member of a firm should be allowable as a deduction, as covering what I might call physical depletion. What is your opinion in regard to that, Mr. Entwistle?

Hon. Mr. CAMPBELL: Particularly with respect to accountants and lawyers.

Mr. ENTWISTLE: We think that business life insurance premiums should not be allowed as a deduction when the amount eventually recovered is not taxed. If business life insurance premiums were allowed as a deduction for taxation purposes from year to year, it would be perfectly reasonable for the department to tax the principal sum when it was paid to the beneficiary.

Hon. Mr. HAIG: That applies to individuals too, I suppose?

Mr. ENTWISTLE: Yes. I do not think the taxpayer can expect to have it both ways. He cannot expect to be allowed to deduct the premiums paid

from year to year, if the principal amount payable to the beneficiary is to be free of taxation.

The CHAIRMAN: Are there any further questions? If not, we will call the next witness. I wish to thank you, Mr. Entwistle, on behalf of the committee for your excellent presentation.

The next brief is from the Canadian Electrical Association and will be presented by Mr. C. S. Richardson, K.C. Will you come forward, Mr. Richardson?

Mr. RICHARDSON: Mr. Chairman and honourable members, I understand you would like to have the brief read.

The CHAIRMAN: Yes.

Mr. RICHARDSON: Associated with me, Mr. Chairman, are Colonel J. K. Wilson, President of the Canadian Electrical Association, and Mr. Frank Gates, C.A.

## BRIEF OF THE CANADIAN ELECTRICAL ASSOCIATION TO THE SPECIAL COMMITTEE OF THE SENATE OF CANADA APPOINTED TO EXAMINE INTO THE PROVISIONS AND WORKING OF THE INCOME WAR TAX ACT AND THE EXCESS PROFITS TAX ACT

### PURPOSE OF THE BRIEF

The Canadian Electrical Association represents practically all of the privately owned electric power utility companies doing business in Canada.

This Association submitted a brief in 1937 to the Royal Commission on Dominion-Provincial Relations, pointing out that the application of the Income War Tax Act resulted in discrimination through the commercial activities of governments which were exempted from nearly all of the taxes paid by private companies engaged in identical activities. This condition still pertains.

While the Association requests the Committee to take cognizance of the submissions made by the Association in 1937, this brief is concerned solely with the disallowance, for income tax purposes, of bond discount and premium and expenses incurred in connection with the issue of bonds and other forms of funded debt.

The Income War Tax Act has been interpreted as disallowing, as deductions for Income Tax purposes, the amortization of discount, premium and expenses incurred in connection with bonds, debentures and other forms of funded debt (herein referred to as "Bonds"). The Association requests that the Act be amended so that such items may be allowed as proper deductions in determining taxable income.

Discount, premium and related expenses fall into two main categories:—

(*a*) Original Issues
(*b*) Refunding Issues

In connection with *original* issues and *refunding* issues, the following factors arise:—

(i) Discount or premium representing the difference between the principal amount and the proceeds derived from the sale of the bonds.
(ii) Expenses incidental to the issue of such bonds.

In the case of *refunding* issues, all the foregoing factors are found with the following additional factors:

(iii) Unamortized discount, premium and expense on the refunded issue.
(iv) Premium paid on redemption of the refunded issue.
(v) Expenses incidental to redemption of the refunded issue.

It is generally recognized and the best accounting practice has established that such factors form part of the cost of borrowing and should be amortized over the life of the original or refunding issue, as the case may be, for the purpose of determining the net income for any fiscal period.

### Nature of Bond Discount or Premium

When bonds are issued, it is usually necessary to make an adjustment for the difference between the stipulated rate of interest payable on the bonds and the effective rate of interest (the rate at which the bonds could be sold at par) for the type of security so issued. This adjustment is made by means of a discount or premium representing the difference between the principal amount of the bonds and the proceeds received when they are sold.

By amortizing the discount or premium over the term of the bonds, the effective interest applicable to each fiscal period is established.

Trust deeds covering an issue of bonds almost invariably provide for redemption of the bonds before maturity upon the payment of a premium. When such an issue is refunded, any premium paid on its redemption is amortized over the term of the refunding issue and forms part of the effective interest of that issue.

### Expenses Incidental to Original and Refunding Issues

The expenses incidental to *original* issues are:—

(*a*) Underwriters' commission
(*b*) Printing Trust Deed and engraving bonds
(*c*) Trustees' fees
(*d*) Legal, Auditing and Notarial fees
(*e*) Registration fees
(*f*) Redemption expenses of refunded issue
(*g*) Balance of unamortized expenses in conection with refunded issue.

It is the accepted accounting practice to amortize such expenses over the term of the refunding issue. Another item of expense frequently encountered is the over-lapping of interest—paid from the date of issue of refunding bonds to the date of call of refunded bonds—which might be charged against the current year's income or amortized over the life of the refunding issue.

It is not possible to borrow through the medium of bonds without incurring some or all of the expenses referred to above.

### Relative Tax Legislation and Jurisprudence

(*a*) *Legislation*

The sections of the Income War Tax Act which apply specifically to this subject are sections 3, 5 (1) (*b*) and 6 (1) (*a*).

Section 3 defines "Income" and, to the extent considered relevant to this Brief, reads:—

> Sec. 3. "Income"—1. For the purposes of this Act, "income" means the annual net profit or gain or gratuity, whether ascertained and capable of computation as being wages, salary or other fixed amount, or unascertained as being fees or emoluments, or as being profits from a trade or commercial or financial or other business or calling, directly or indirectly received by a person from any office or employment, or from any profession

or calling, or from any trade, manufacture or business, as the case may be whether derived from sources within Canada or elsewhere; and shall include the interest, dividends or profits directly or indirectly received from money at interest upon any security or without security, or from stocks, or from any other investment, and, whether such gains or profits are divided or distributed or not, and also the annual profit or gain from any other source including . . . .

Section 5 (1) (*b*) reads—

Sec. 5. Exemptions and deductions.—1. "Income" as hereinbefore defined shall for the purposes of this Act be subject to the following exemptions and deductions:—

(*b*) Interest on borrowed capital.—Such reasonable rate of interest on borrowed capital used in the business to earn the income as the Minister in his discretion may allow notwithstanding the rate of interest payable by the taxpayer, but to the extent that the interest payable by the taxpayer is in excess of the amount allowed by the Minister hereunder, it shall not be allowed as a deduction and *the rate of interest allowed shall not in any case exceed the rate stipulated for in the bond, debenture, mortgage, note, agreement or other similar document,* whether with or without security, by virtue of which the interest is payable.

Section 6 (1) (*a*) reads—

Sec. 6. Deductions not allowed.—1. In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of

(*a*) Expenses not laid out to earn income.—Disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income;

(*b*) *Jurisprudence:*

Two Canadian cases are of interest in this connection:—

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|---|---|
| Montreal Light, Heat & Power Consolidated and Minister of National Revenue (1944) | Canada Tax Cases, 94 |
| Montreal Coke & Manufacturing Company and Minister of National Revenue (1944) | Canada Tax Cases, 94 |

In the case of Montreal Light, Heat & Power Consolidated, the Company had in 1936 over $27,000,000 principal amount of outstanding 5 per cent bonds payable at the holder's option as to principal and interest in Canadian, United States or English currency. The Company decided, in order to reduce the heavy annual charges for interest and exchange, to issue new bonds at 2½ per cent and 3½ per cent for a total amount of $15,000,000. The balance of funds necessary for retirement of the original issue was provided by the sale of certain of the Company's investments. The transaction effected a saving of approximately $300,000, thus increasing the Company's taxable income per annum. The Company claimed as deductions from income the expenses incurred in such operation, which included the premium and foreign exchange paid on calling in the old bonds, the discount on the sale of the new bonds and certain incidental expenses. The total claimed was approximately $2,250,000, which the Company proposed to amortize over the life of the new bonds. In addition, an expenditure of approximately $80,000 was claimed in respect of the same year—1936—representing the overlapping interest for a period of sixty days paid on the refunded bonds and the refunding bonds.

The question arose as to whether the refunding expenses were allowable deductions for income tax purposes. The Exchequer Court held that the expenses were not deductible under Section 6 (*a*) as expenses incurred for the purpose of earning the Company's income and accordingly they were disallowed. The Exchequer Court decision was upheld upon appeal by both the Supreme Court of Canada and the Judicial Committee of the Privy Council.

The same questions were dealt with in the Montreal Coke case with the same result.

### Comments and Recommendations

Set forth in the Appendix annexed hereto are quotations from publications of recognized authorities in the field of accounting of Canada, the United Kingdom and the United States which confirm the statements expressed as to accounting practice referred to herein. The Association is not aware of any authorities which do not hold similar views.

The result of the present interpretation of the Act in regard to these matters is that corporations are permitted to deduct, as expenses in arriving at taxable income, a purely nominal rate of interest as stated on the face of the bond.

Very few bonds are sold by the issuer at par, which would be the condition if the effective rate of interest and the bond rate of interest were identical.

As example: A company could issue a 4 per cent bond at a premium, while another company in similar circumstances issues the same amount of 3 per cent bonds at a discount. The difference in the sale price is governed solely by the coupon interest rate.

In comparing the two Companies, the first gets one-third greater interest deduction for tax purposes and a tax-free profit from the premium while the second company is permitted less interest expense and incurs a discount loss which is not allowed for tax purposes. Specifically, on a $10,000,000—20 year issue made on a market supporting a 3½ per cent rate, the first company is permitted $400,000 interest deduction in establishing taxable income as well as obtaining a non-taxable cash profit from the premium of $715,000 while the second company would be entitled to charge only $300,000 interest per annum for tax purposes and would have a cash loss on the discount of $715,000 non-deductible for tax purposes.

This situation would permit companies to make substantial non-taxable profits when their bonds are sold at a premium.

A company could sell bonds at a coupon rate high enough to justify their sale at a premium, sufficient to cover underwriters' commissions and expenses of issue and at the same time give the purchaser a yield equal to or greater than a lower interest bearing bond sold at a discount. The borrowing company would consequently be relieved of issue costs and such costs, while buried in the interest, would be an allowable deduction in determining taxable profits. This type of financing is not generally adopted because the investing public and non-investment corporations are taxable on the higher interest rate with no allowance for amortization of premium. Consequently, they prefer the lower interest rate with the difference between cost and maturity value not being taxable. Such conditions favour the investor at the expense of the debtor. The incentive of corporate management to effect economies in interest expense under favourable markets is discouraged because of the disallowance, for tax purposes, of the call premiums, discounts and expenses. The interest savings are substantially offset by the increased taxes.

In the case of redemptions at a premium, in the hands of individuals and of most companies, the tax regulations call for the treatment of this premium

as income in the hands of the holder while the premium is not allowed as an expense item of the issuer.

Refunding operations are ordinarily undertaken by a corporation in a market of falling rates for the sole purpose of reducing annual expenses—thereby increasing its taxable income. It, therefore, seems fallacious to disallow as a deduction from income the annual amortization of bond discount or premium and expenses incidental to refunding operations.

With regard to expenses of issue and selling commissions, such items for the most part constitute taxable income in the hands of the parties to whom they are paid and their present disallowance for tax purposes against the debtor company results in double taxation.

The present practice of disallowing the amortization of bond premium or discount and expenses incidental to funding and refunding operations as a deduction from taxable income discriminates against the taxpayer which finances its business by issuing bonds as compared with one which finances through bank loans, mortgages or private loans. In the latter case, the full interest cost is allowed as an expense but for the former only the nominal or coupon rate is allowed.

The Association accordingly recommends that there be allowed as deductions for the purpose of determining taxable income.—

(*a*) The effective interest on bonds consisting of the nominal or stipulated rate and the amortization of bond premium or discount.

(*b*) In respect of refunding issues, there also be allowed the amortization of any premium paid on redemption of the refunded issue together with the amortization of the balance of unamortized discount or premium relating to such refunded issue.

(*c*) All expenses, other than those referred to above, incidental to either original issues or refunding issues.

THE CANADIAN ELECTRICAL ASSOCIATION

MONTREAL, April, 1946.

The CHAIRMAN: Thank you, Mr. Richardson.

Hon. Mr. CAMPBELL: Your point there is, not what you do but how you do it under the Act?

Mr. RICHARDSON: That is right, Mr. Campbell.

The CHAIRMAN: Mr. Stikeman.

Mr. STIKEMAN: On page 5 of your brief, Mr. Richardson, you say:

> In the case of redemptions at a premium, in the hands of individuals and of most companies, the tax regulations call for the treatment of this premium as income in the hands of the holder while the premium is not allowed as an expense item of the issuer.

I notice you close your brief without any specific recommendation with respect to premiums upon redemption. Is it your view that there is sound authority for the taxation of premiums upon redemption?

Mr. RICHARDSON: I do not know, Mr. Stikeman, that I would be prepared to answer on behalf of the Association. We were thinking there particularly of the section of the Income Tax Act, I think section 18.

Mr. STIKEMAN: Section 17.

Mr. RICHARDSON: Yes, section 17.

Mr. STIKEMAN: That refers only to preferred shares.

Mr. RICHARDSON: Yes, but I understand that in recent years the practice of the Department has been to tax similarly premiums upon the redemption of bonds.

Mr. STIKEMAN: You have had experience in that connection?

Mr. RICHARDSON: I believe so.

Mr. STIKEMAN: And would you be prepared to extend your brief to say that premiums be not taxable upon redemption of bonds?

Mr. RICHARDSON: I do not know that I am prepared to say that on behalf of the association.

Mr. STIKEMAN: It is my understanding that the basis for the departmental regulation is found in two English cases, about which I spoke earlier and the names of which I now have. They are Lomax vs. Peter Dixon and Son, Limited, 1943 T.R. 221; and the other is the Commissioners vs. Thomas Nelson and Sons. The reason I mention these two pieces of jurisprudence is to ascertain whether in your experience the department has ever made any distinction between taxation of the premiums upon redemption and the taxation of premiums when the bonds are not redeemed directly but are purchased through a broker.

Mr. RICHARDSON: Not in my experience.

Mr. STIKEMAN: From these two cases there were two different outcomes. In one case the premium was taxed by the English authorities and the taxation was upheld by the courts; in the other case it was not upheld. The reason being, as I understand it, the one was purchased on the open market and the other was redeemed by the company. I believe that is the basis for the departmental regulation, and I was therefore interested to find whether your association desired a ruling to the effect that premiums be or be not taxable.

Hon. Mr. HAYDEN: You do ask that the premiums as paid by the company be an item of expense?

Mr. RICHARDSON: That is right. It would seem reasonable that it should be similarly taxed in the hands of the recipient.

Hon. Mr. HAYDEN: Then are you going to stick him with the incomee tax?

Mr. RICHARDSON: I am not prepared to answer on the question of administration there.

Hon. Mr. HAIG: The only way you can beat that is to sell it on the market before it redeems. That is the way we did with the Winnipeg Electric.

Hon. Mr. CAMPBELL: It is not what you do, it is the way you do it.

Hon. Mr. HAIG: We did it the right way.

Mr. STIKEMAN: Am I correct in my understanding, Mr. Richardson, that your brief entails the necessity of amending Section 5 (*a*)?

Mr. RICHARDSON: That is quite correct. The association, with its representatives, Mr. Gates, myself and others, really thought that we might, with a measure of propriety, suggest to you some amendments. Unfortunately by the reason of pressure of other matters we have not had the opportunity to do so. However before you finish your report, Mr. Chairman, we may be able to send you some such amendment. I am sorry that we have not got it here today.

Mr. STIKEMAN: I am sure your suggested amendments would be of interest to the committee. I gather the line such amendment would follow would be to grant greater parity of treatment of financing in the nature of bonds than that of bank loans or inter-company accounting.

Mr. RICHARDSON: That is correct.

Hon. Mr. HUGESSEN: To follow that same line of thought, if a company was financed by issuing shares at a discount, would you allow the discount as an expense?

Mr. RICHARDSON: Do we issue many shares at discount?

Hon. Mr. HUGESSEN: Par value shares under the charter of the company are allowed to be issued at a discount.

Mr. RICHARDSON: I believe you are thinking largely in the field of mining shares.

Hon. Mr. HUGESSEN: Not necessarily. You may have $100 preferred shares, and they may be issued at a discount of 2 or 3 per cent. Under those circumstances would you say that that discount should be treated as a reduction?

Mr. RICHARDSON: I do not know that I am prepared to go that far. I am sure Mr. Chairman and honourable senators will appreciate that in the question of shares of a company there is a proprietary of interest, whereas under the other circumstances it is a question of creditors. I think that may explain the distinction.

Hon. Mr. HUGESSEN: I am speaking from the point of view of what is a proper charge against income for expenses for financing, and it seems whether it be by way of shares or bonds the premium would be the same.

Mr. RICHARDSON: That may be quite right, but in my mind the difference would be quite apparent—one would be a shareholder rather than a creditor.

The CHAIRMAN: The shareholders need never be bought out; the company never redeems its shares, but it must redeem its bonds.

Mr. RICHARDSON: Or retire them.

Mr. STIKEMAN: To return to the point of your projected amendment, Mr. Richardson, of section 5 (*a*), do you feel that any amendment to section 5 (*a*) would ensure an immunity to the various expenses disallowed under section 6 (*a*)? Would it not be necessary to amend section 6 (*a*)?

Mr. RICHARDSON: I think probably one would have to go further and amend section 6 (*a*).

Mr. STIKEMAN: Have you considered such an amendment?

Mr. RICHARDSON: We have.

Hon. Mr. CAMPBELL: We would like to have the amendments.

Mr. RICHARDSON: I am sorry we have not got them here today, but we will forward them to Mr. Stikeman.

Hon. Mr. CAMPBELL: We feel that section 6 (*a*) requires some revision.

Mr. STIKEMAN: To go a step further do you not feel it would also be necessary to amend section 3?

Mr. RICHARDSON: As a matter of fact, I think you should amend the whole act.

Mr. STIKEMAN: But, speaking only on this point.

Mr. RICHARDSON: Confining myself to your question, my answer is yes.

Mr. STIKEMAN: Do you have a suggested amendment of section 3?

Mr. RICHARDSON: I appreciate the onerous duties that fall upon this committee, and I should like to take a hand in them.

The CHAIRMAN: Provided it does not go to further sections?

Mr. RICHARDSON: If you confine it to these three sections.

Mr. STIKEMAN: Your brief has confined it for you.

Mr. RICHARDSON: That is right.

Mr. STIKEMAN: In amending section 5 (*a*) would you remove the wide discretionary powers which the minister has under that section, or would you leave these discretionary powers and merely extend the field of his discretion to all kinds of funded indebtedness?

Mr. RICHARDSON: If I might speak for myself for a moment, in the limited practice I have had before the department I have no complaint with regard to discretion exercised. For some clients, I think I have not got all I wished

or asked for; however I do think that in many cases you must have supervised discretion. In answering your question directly, I would be satisfied, and I am sure the association would be, with a measure of discretion. The point that we confine ourselves almost entirely to is the question of fairness. We believe that bond discount and bond premiums should be regarded as expenditures and allowed for the purpose of ascertaining taxable income.

Hon. Mr. HAYDEN: If as you say these items on refinancing should be allowable expenses for tax purposes, then there is no question of discretion involved. It is just a statement of principle.

Mr. RICHARDSON: To that degree, that is quite correct.

Hon. Mr. HAYDEN: Maybe that would be the safest way to put it.

Mr. RICHARDSON: Our association would be pleased to put it that way.

Mr. STIKEMAN: You said, Mr. Richardson, in answer to my question that you had had no experience of an objectionable nature in the exercise of discretion. Should that answer be limited to the exercise of discretion under section 5 (*a*) or throughout the act?

Mr. RICHARDSON: Largely to section 5 (*a*) and fairly generally throughout the act.

Hon. Mr. HAYDEN: What do you mean by "objectionable"?

Mr. STIKEMAN: That was my word. I meant objectionable to the interest of the taxpayer.

Hon. Mr. HAYDEN: If he did not get all he asked for I think it would be objectionable.

Mr. STIKEMAN: No, I think "objectionable" would be a discriminatory exercise.

Mr. RICHARDSON: I think I understand what Mr. Stikeman meant—something that was obviously beyond what a fair and reasonable man would regard as equitable.

Hon. Mr. CAMPBELL: Surely that is not the experience of everybody, otherwise the people would be entirely satisfied with the method under which discretion has been exercised, and there would not be a clamour for appeals. I know many members of the profession who say that if they had an opportunity of going to a board of review they felt they had made out a case that would be considered in a different manner by such a board.

Mr. RICHARDSON: I am bound to confess that dealing with some of the sections, other than section 5 (*a*) there have been cases where I would have liked to go to a board. There is no doubt about that.

Hon. Mr. CAMPBELL: Mr. Richardson, I have not read the appendix to the brief, but I gather from what has been said that the accounting authorities recognize the advisability and necessity of amortizing the cost of refunding.

Mr. RICHARDSON: May I, with your consent, allow Mr. Gates to explain that. He is a chartered accountant with wide experience and can answer the question more directly than can I.

Mr. GATES: That is true of all the accounting authorities that we have reviewed and it certainly is the current practice to amortize such expenses in the manner as set out in the brief.

Hon. Mr. CAMPBELL: They are expenses which must be written off; they cannot be capitalized in any way.

Mr. GATES: Yes, they are deferred and written off.

Hon. Mr. CAMPBELL: Your whole submission is that, as well as the opinion of the authorities, it should be an item of expense and amortized over the period of the issue and charged in income?

Mr. GATES: That is right.

Hon. Mr. CAMPBELL: It has to be treated that way, from the standpoint of sound accounting practice, so far as the corporation is concerned?

Mr. GATES: That is so, for the purpose of determining the income of the corporation—in fact for all purposes.

Hon. Mr. HAYDEN: Do you amortize it against taxable income or against income on which taxes have already been paid?

Mr. GATES: The present practice is to amortize it against income.

Hon. Mr. HAYDEN: Is it against taxable income or against income that has already been taxed?

Mr. GATES: It has been disallowed for tax purposes.

Hon. Mr. HUGESSEN: I think it would be of assistance to the committee if we knew what disposition other countries make of this expenditure. For instance, do they allow it in the United States or in England?

Mr. GATES: I am not familiar with the United Kingdom. In the United States I understand they allow it as an expense. I am speaking solely with respect to Canada.

Mr. RICHARDSON: On that point, Mr. Chairman, may I cite a case concerning the practice in the United States. I am referring to Coke and the Montreal Light Heat and Power case, 942, Canada Tax Cases, pages 14 and 15. The then Mr. Justice Rinfret had this to say: "The learned president"—referring to the president of the Exchequer Court—"further stated that the law in England is different and 'English decisions could have no application here . . . . In the United States, expenses incurred in connection with the refunding or retirement of bond issues are governed by a set of rules issued by the Treasury Department in 1938, and it is probable that there, under such rules, the disbursements here would be allowed as deductions.' "

I do not know whether that regulation has been changed since, but it would appear from that case under a ruling of the treasury of the United States that such disbursements would be deductible.

The CHAIRMAN: It is only in the regulations; it is not in the statutes. You would like to see it in the statutes.

Hon. Mr. HUGESSEN: Perhaps the committee would like to know what the rules are in the United States.

Hon. Mr. HAYDEN: Have you got them, Mr. Stikeman?

Mr. STIKEMAN: Not on that point. I understand that in England the department relied on these two cases.

Mr. RICHARDSON: We shall try to find those United States rules, Mr. Chairman.

I want to make one other observation, which is perhaps pertinent in respect to Senator Campbell's question to Mr. Gates. This does not appear in the brief. We obviously have no quarrel with the jurisprudence followed by the department, particularly the two cases so aptly cited by Mr. Stikeman; but it seems to us, gentlemen, that if the Board of Directors of any company in any field of activity in Canada were to go to their lawyers or their chartered accountants and say, "We want to find out what are our net profits available for the declaration of a contemplated dividend," we would probably find that the amount could only be ascertained after expenses of this character had been taken into account. And it does seem that, in the light of certain judicial decisions, not only in England but in Canada where, so to speak, a differentiation is made between business practices and tax practices, the act should be changed or the regulations modified so as to make tax practices coincide with legitimate business practices.

Mr. STIKEMAN: Are you familiar with the reference made in the Bar Association brief to Lord MacMillan's suggested redrafting of the English

section, which compares to our section 6 (1) (*a*), in which he imported the idea of normal business and accounting expenses incurred for the purpose of the business?

Mr. RICHARDSON: Not as well as I should be, Mr. Stikeman, as a member of the bar.

Mr. STIKEMAN: I was wondering whether, in formulating your general redraft of section 6 (1) (*a*), you subscribe to the idea that expenditures of that type and of the hypothetical type that you now put before us should be brought into line wholly with normal business and accounting practice.

Mr. RICHARDSON: I thoroughly subscribe to that.

The CHAIRMAN: Are there any further questions? If not, I wish to thank you very much, Mr. Richardson, for coming here and making these helpful suggestions.

Hon. Mr. HAIG: Mr. Chairman, I would like to submit my brief now.

The CHAIRMAN: It looks formidable.

Hon. Mr. CAMPBELL: We probably would hear Senator Haig better if he went in the witness box.

Hon. Mr. HAIG: All right. Before I begin with the brief I want to say that I am not entitled to any credit for it, but if any fault is found with it I will take full responsibility.

This brief is submitted as representing the thoughts of a large number of persons on the provisions and workings of the Income War Tax Act and the Excess Profits Tax Act. It is hoped that the suggestions made herein will be of some interest and value.

Information with regard to these taxing statutes and by which the taxpaying public can ascertain their liability are obtained from three sources, as follows:—

1. *The statute law* which is the laws and their various amendments as enacted by Parliament;
2. *The case law* which is the interpretations of the statute law which has been placed upon it by the courts;
   and
3. *The administrative law or procedure* which includes the regulations, instructions and interpretations issued by the Minister and the officials under him in the actual administration of the terms of the statute law itself.

For purposes of convenience it is proposed to discuss these subjects in the order given above.

*1. The Text of the Statute Law*

In giving consideration to the present terms of the Income War Tax Act and the Excess Profits Tax Act it is fully realized that they must of necessity be of a complex nature designed as they are to cover all phases or methods under which people receive an income or earn a livelihood. The Acts themselves are highly technical and full and proper consideration would necessitate having available a very wide amount of information, statistics and an understanding of the policies upon which its terms are based.

Its scope and effect have been accentuated by the recent war. While primarily designed to raise revenue, it has also admittedly been used to exercise certain controls necessary for the general welfare of the country. It is not felt that in this brief there should be a discussion of the reasons for such control. But essentially the Acts are designed to impose a pecuniary burden distributed equally over those deemed capable of paying it and it is felt that

its provisions should be directed to the end that all persons affected by the workings of the law share the burden equally according to their means with all others.

A general revision of the whole Income Tax law is long overdue. This, it is submitted, should be the work of a Royal Commission. Only in this way can the incidence and effect of the Act as a whole be considered and if necessary remedied. In such a technical subject as income taxation has become, any re-drafting should be done only with the help and advice of skilled persons.

In any revision of the law, two general principles, enunciated by Adam Smith, should be the guide. These are:—

1. The subjects of every state ought to contribute towards the support of the government as nearly as possible in proportion to their respective abilities, i.e., in proportion to the revenue which they respectively enjoy under the protection of the state.
2. The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor and to every other person.

If these are adopted as a guiding principle, it is felt that many of the hardships, anomalies and inequities will be remedied.

The present practice of altering by repeal, amendment, substitution or addition of many sections of the Act tends towards making the interpretation of the law more difficult and confusing. It might well be thought advisable to make changes only every two years, and after they have been given full and careful consideration by Parliament. A review of the various amending Bills passed in the last few years shows that they have made many substantial changes in the law. From the fact that it has been necessary to amend some of these changes in the following or subsequent years is indicative that they were not fully considered at the time of enactment.

It is desirable to emphasize that retroactive legislation should be resorted to only in extreme and unusual circumstances. It cannot be too strongly urged that the use of this is unfair and creates unusual and unnecessary hardships. It is only right that any taxpayer of this country should not be forced to pay tax on past transactions which were done in good faith and upon the basis of the law then existing.

It is essential that a taxpayer be able to determine with some certainty his tax liability. This cannot be done while section 32A of the Income War Tax Act and the corresponding section 15 of the Excess Profits Tax Act remain on the statute books in its present form. These sections not only have all the evils attendant upon retroactive legislation, but hold a concealed threat over any present or future contemplated transaction. No advisor would feel competent to give conclusive advice on the tax effect of any transaction so long as he is confronted with the definite possibility that the Treasury Board may be "of the opinion that the main purpose for which any transaction or transactions was or were effected (whether before or after the passing of this Act) was the avoidance or reduction of liability to tax under this Act . . .". It would be a very indiscreet or unwise person who would, under present conditions, enter into any transaction without considering the effect upon the tax liability. If as a result of any transaction taxation is minimized, it may create a crushing liability. We consider that it is quite proper for any person to conduct his affairs in the manner most beneficial to himself and not necessarily to the revenue. It is submitted that these sections should be repealed or amended so as to remove the threat which deters persons from initiating reasonable and proper transactions.

In any consideration of the present law, it is felt that attention should be directed towards the difficulty of ascertaining what is taxable income. The present definition was derived primarily from Revenue Acts of the United States. It has been added to from time to time, and has been used to bring in as taxable income what has always been recognized as capital. Inasmuch as the purpose of the Act is to tax income, it is submitted that no departure from this should be made without full consideration of its possible effect and consequences. We instance the repeal and re-enactment in 1938 (Chap. 48, Statutes of 1938, Sec. 3) of Section 3, ss. 1, para. (*g*) whereby annuities or annual payments received under a will or trust were deemed taxable,

> notwithstanding that the annuity or annual payments are in whole or in part paid out of capital funds.

The distress and hardships occasioned by this legislation were remedied only after it had been recommended by a Royal Commission appointed to consider it.

Income should not be determined on the basis of values. This has occurred under the provisions of section 13 of chapter 23, Statutes of 1945, whereby the persons who are holders of bonds of the Province of Alberta are charged with "the difference between the purchase price and the aggregate value of all rights accruing to the purchaser upon the implementation of the said debt reorganization proposal". It is submitted that it is contrary to the fundamental principle of the Income Tax law that such unrealized increment should be used as a basis for determining taxable income. If it is desired to prevent persons profiting from such bonds, it should be done in a more appropriate manner.

*Exempt Companies*

With the present growth of taxation and the increased burden upon the public generally, some consideration should be given to the class of institutions which are wholly exempted from taxation under the provisions of section 4 of the Act. It is submitted that where any company or organization, no matter how owned or controlled, engages in business in competition with taxpayers who are required to pay taxes upon their profits, that equally a part of the tax burden should be shared by such institutions. While this may be a matter of policy, it is brought to the attention of the Committee as being a reform which is long needed and which is worthy of study.

*Deductions from Income*

One of the great difficulties in determining the income upon which tax is payable has been the ambiguous provisions in the law with respect to deductions. It was in 1923, some six years after the introduction of income taxation, that the section of the Act which is now section 6(1)(*a*) was enacted. The effect of this was to disallow as a deduction in determining taxable income "disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income." The source of this is undoubtedly the British Income Tax Act, although as transposed it was made more restrictive. Under the English Income Tax Act, those expenses are allowed which are incurred for the purposes of the trade. Here it is restricted to those expenses incurred in the earning of the income and this has, we submit, been a cause of some unfairness and certainly of unnecessary litigation. Taken literally, the provisions as now existing could exclude many expenses which are deemed necessary in the carrying on of a business and which are concerned with the earning of income. The present wording is too restrictive on business generally and should be modified to meet present conditions.

There is a further difficulty, that in the interpretation of the present law, great reliance is placed upon decisions in the English and Empire courts. While the principles which may be laid down in the judgments dealing with similar or related statutes in other countries are no doubt of assistance, yet they are not

wholly suited to conditions in Canada. You have as a result the peculiar anomaly that expenses which might be deemed reasonable and proper under the statutes of other countries and which are made by Canadian taxpayers carrying on business therein excluded by the stricter wording as used in the Canadian Act. If the wording were uniform, reliance could be placed upon and some guidance obtained from the mass of English decisions. We, however, suggest that it may be more desirable to use that suggested by the MacMillan Committee in their report on the Codification of the English Income Tax Act. This is as follows:—

> No deduction shall be permitted, in respect of any item of expenditure or charge except so far as it is attributable to and incurred for the purposes of the business.

If such an amendment was made, we feel confident that it would more suitably meet the present conditions in Canada and it is of sufficient scope to meet the changes which will undoubtedly occur in the future. There should be some amelioration of the restrictions which are imposed by reason of the limitation in the present statute.

*Liability for Tax*

It is an accepted principle and, it is submitted, needs no argument for its support, that the persons liable for tax should be readily ascertainable. Under the Canadian Income Tax Act, liability rests mainly upon persons residing or ordinarily resident in Canada. Here again is a phrase which has been transposed from the English Act, and it may be presumed to have been done with the full knowledge of the difficulties and confusion which interpretation of the phrase has created in this country. It is of interest to know that the MacMillan Report says with regard to the interpretation of these words: "It may be asserted with confidence that no one subject which arises in the application of the Income Tax Act has been more prolific of dispute than the question of the meaning of 'resident'."

We have been fortunate in that the dicta of the judges of the Supreme Court of Canada in the recent case of *Thompson* v. *Minister of National Revenue* has indicated that they are not prepared to adopt the strict interpretation which has arisen in decisions by English courts. The matter is one which will be remedied to a great extent if the proposal suggested in another part of this brief is carried into effect, whereby "residence" can be determined as a question of fact by an independent board of tax appeals. While the tax must fall as imposed, yet we feel that no such interpretation should be placed upon this term as would operate in any way to restrict the present conditions under which there is such free intercourse between the citizens of Canada and the neighbouring country of the United States. To do so would, it is submitted, impose tax where it was never intended and might result in great harm to the welfare of this country.

*Determination of Tax*

Taxpayers are particularly concerned with the difficulty of ascertaining from the Act as presently constituted, what is the tax payable and what exemptions and relief are provided. It is pointed out that under the First Schedule to the Act the rates of tax are imposed and certain exemptions are provided. However, to ascertain whether certain persons are entitled to exemption, it is not only necessary to refer to other sections of the law, but also to the Regulations themselves. We think it is axiomatic that the liability of any person should be easily determinable. It is pointed out, however, that whereas under the First Schedule to the Act a person may claim exemption for certain dependents, to find out just what constitutes a dependent it is necessary to refer to section 2 of the Act wherein certain classes of dependents are defined.

There is then a further exemption for those persons who maintain a self-contained domestic establishment. The definition of a self-contained domestic establishment is also in section 2 of the Act, and we think, could more properly be placed in the section where it is required in determining where the relief shall apply. We also find that exemptions are allowed for persons connected with the taxpayer by blood relationship, marriage or adoption. As to what constitutes this class, it is necessary to refer to a Regulation issued by the Department which defines fully to whom it applies. However, unless a taxpayer is aware that it is necessary to go to these different sources to ascertain the meaning of the terms used, it is possible that he could overlook claiming rights to which he is entitled under the law.

2. *The Case Law*

The case law comprises those opinions of the established courts which have been expressed in certain cases dealing with the Statute. There is being built up in Canada of more recent years a considerable body of such jurisprudence. It is well known that recently the courts have advanced views which have been entirely at variance with the interpretation placed upon the law by the taxing authorities. This cannot but be helpful. It is to be noted, however, that the courts do not make the law. Their function as has been frequently expressed is merely to interpret the law as enacted by Parliament. As a result, it is not in the courts where persons can look for real redress where there has been inadvertently or otherwise a hardship imposed. It is a well known rule in the interpretation of a taxing statute that equitable constructions are not permissible. Whatever may be the merit of this rule, it may prevent any taxpayer who may be aggrieved from obtaining redress in a court of law.

Notwithstanding these limitations, there is no question but that the jurisprudence as contained in the decided cases has been of great value and in some cases their interpretation of the law has been more nearly in accord with what is regarded as fairness and justice. For this reason the courts must always be a necessary factor in the relations of the public to the taxing authorities. It is, in fact, the one place to which a taxpayer looks for justice. As was said by a great writer on constitutional law,

> Amid the cross-currents and shifting sands of public life the Law is like a great rock upon which a man may set his feet and be safe, while the inevitable inequalities of private life are not so dangerous in a country where every citizen knows that in the Law Courts, at any rate, he can get justice. (1)

3. *The Administrative Law*

Administrative law has not yet been fully defined. Perhaps the best description may be found in "Administrative Law" by F. J. Port where he says at page 13—

> Administrative law then is made up of all those legal rules—either formally expressed by statutes or implied in the prerogative—which have as their ultimate object the fulfilment of public law. It touches first the legislature, in that the formally expressed rules are usually laid down by that body; it touches secondly the judiciary in that (*a*) there are rules (both statutory and prerogative) which govern the judicial actions that may be brought by or against administrative persons, and (*b*) administrative bodies are sometimes permitted to exercise judicial powers; thirdly it is, of course, essentially concerned with the practical application of the law. While the administrative function is separate and distinct from the legislative and judicial functions, it depends for practically the whole of its driving force on the legislature; and it

(1) Dicey, The Law of the Constitution, at p. 183.

has sometimes to appeal, or submit to the judicial power before it can proceed to execute the law. Once, however, the executive has started on its way it does not change its character merely because it may adopt methods similar to those normally followed by either the legislature or the judiciary; nor because it is involved in the constitution of bodies, or the appointment of agents, for administrative purposes. The methods it adopts; the bodies which are constituted, the agents which are appointed are all steps towards the fulfilment of the law.

It is recognized that the delegation of power to administrative officials or bodies is inevitable for the proper functioning of many of the public laws which the legislature has enacted in the past and may be expected to pass in the future. It is, however, submitted that such powers should be regulated or controlled by a person or body acting independently and to whom both parties in a dispute may look for fair and impartial consideration. Such control does not at present exist in the Income War Tax Act, the pertinent provisions of which also apply *mutatis mutandis* to the Excess Profits Tax Act. Ultimate control exists primarily in Parliament although it is submitted that the control has not been heretofore properly or effectively exercised.

It is not suggested that administrative or discretionary powers should be withdrawn or withheld from either the Minister of National Revenue or his Deputy in the administration of the Acts. Rather, it would seem that these are necessary for the fulfilment of the purposes of the law. Where, however, the exercise of such powers creates a dispute as between the taxing authority and the taxpayer, it is submitted that an appeal should lie to an independent board for a determination. This suggestion is made because of the fact, as stated above, that there are judicial rules which definitely preclude a court of law from giving judgment on the same basis as that on which the decision was made—that is, administratively. It is therefore only possible to fully review an administrative decision by a board or person which has concurrent or superior administrative powers.

It is believed that the establishment of such a board would remove two main grievances of the taxpaying public at the present time. These are,

1. The lack of provision for a hearing before a competent independent tribunal;
   and
2. Establishment of certain general rules and regulations, based on the decisions of such a tribunal, which would be made available to all.

It is contrary to our conception of natural justice that dispute should be decided by a person who has an interest in the result. The present practice is for an appeal to be made to the Minister who is also charged with making the assessment. It is realized that the Minister cannot personally issue every assessment, but must do so through the officers of his Department. For the same reasons it is not possible for the Minister to consider all appeals. These must necessarily be decided by the same persons who made or are associated with those who made the assessment. It is submitted that such persons are not ones who would, or could, be expected to act judicially in a matter with which they had dealt administratively. Notwithstanding any high reputation which such officials may have acquired for fairness and disinterestedness it is not possible, human nature being what it is, for them to completely disregard their original decision. It is further submitted that such a duty should not be placed upon any administrative officials. They should not be subject to the possible stigma of acting in a manner either too favourable or too prejudicial to the revenue.

It is a characteristic of administrative law that it may operate without publicized rules or regulations. This has been particularly noticeable in the

administration of the Income War Tax Act and the Excess Profits Tax Act. Whatever the reason may be, there have been published only about forty formal regulations. When consideration is given to the complexity of the law, its wide scope touching as it does practically every person and business in Canada, this may seem to be entirely inadequate. The explanation, of course, has been the use of so-called departmental memoranda which have been used by the officers as formal regulations, but which in fact do not have any legal force. Their use, however, has created a condition which has aroused much discontent, and this could be remedied by the publication of the findings or decisions of an appeal tribunal having certain administrative powers.

The delegation of power by the legislation may lead to abuses abhorrent to those who believe in the democratic form of government. In particular it tends to the creation of a bureaucracy. This word has acquired, perhaps unfairly, a certain amount of opprobrium. Its full meaning may be misunderstood although its growth and character have been well and ably dealt with by Lord Hewart of Bury in his well-known work "The New Despotism". The evils to which the learned Lord refers in his book are, it is submitted, encouraged by the present law and practice under the taxing statutes. In this connection it is desired to commend and adopt the definition and comments contained in "Law and Orders" —a recent work by Professor C. K. Allen. At page 173 he says—

> "Bureaucracy" however, is not merely a term of impatience or protest provoked by the creaking of the official machine or the Gordian Knots of red tape. It means *government* by offices and officials. Once the bureau ceases to be an instrument and becomes the real, though masked, governor, it not only presents a constitutional contradiction but is liable to grow into a tyranny of a peculiarly soulless kind.

It is elementary that the legislature is elected or appointed to pass laws for the good of the citizens of Canada. If the legislature deem it necessary that certain of the powers which it holds be delegated to another, it would seem equally necessary that provision should be made to control the exercise of such powers, and to provide adequate remedies for relief in case they are abused or exceeded. Such a statement, it is submitted, needs no argument for its support.

Two suggestions are made for the consideration of this committee. They are put in the form of two suggested amendments to the Income War Tax Act.

(1) *Section 75* of the Act should be amended by adding thereto a subsection to the following effect:—

> (3) When a regulation has been made by the minister and after it has been duly published it should be required that it be submitted to the House of Commons within fifteen days of the opening of each session. If any such regulation is disapproved by Parliament it should be deemed to be void *ab initio*, otherwise to remain in full force and effect. If any regulation is not so presented to Parliament, it would be void.

In support of this suggestion it is submitted that this will return the control of the Act to where it properly belongs. It will enable Parliament to consider the effect of legislation passed, and insure that the incidence of the tax will apply in the manner which was intended. It is further submitted that the consideration of such regulations and the discussions thereon cannot but be beneficial, not only to the members, but to the public as well.

(2) It is recommended that *sections 58 to 68* of the Act, both inclusive, be repealed and legislation effecting the following points be enacted—

1. The Governor-in-Council should be empowered to appoint a board of tax commissioners, the members of which should jointly and severally have all the powers of a commissioner appointed under Part One of the Inquiries Act.

Such board should consist of not more than seven members of whom two shall be persons of legal or judicial training and have not less than ten years' standing in their profession. One of such members should be the president and the other vice-president respectively of such board.

2. The members of the board should have security of tenure of office and accordingly the appointments should not be for less than ten years or for life. They should be eligible for re-appointment and should not be permitted to serve after attaining their seventieth year.

3. The board should be empowered to act as a court of appeal to hear and determine any appeal made by a taxpayer from an assessment under the Act. In so doing and for the purposes thereof the board should have the power to exercise all the powers and discretions vested in the Minister under any of the provisions of the Act. The findings of the board on any question of fact should be conclusive.

4. If a taxpayer is dissatisfied with the appeal or if he considers that he is not liable to taxation under the Act, he should serve a notice of appeal upon the Minister within sixty days after assessment either personally, by a solicitor, or by his agent. The appeal should be in writing and should contain the facts, statutory provisions in support of the appeal.

If the Minister does not allow the appeal within ninety days and amend or cancel the assessment accordingly or if he is satisfied the assessment is correct, the matter should then be transferred to the Board of Tax Appeals and the taxpayer notified accordingly. Thereafter the matter should be dealt with by the Board of Tax Appeals in accordance with rules and regulations to be made by the board and which will govern their procedure.

5. It will then be the duty of the Board of Tax Appeal to consider the appeal and to hear the evidence and make such other inquiry as it deems advisable and determine the appeal and deliver judgment in accordance therewith.

6. The taxpayer should have the right to appear before the board in person or by his solicitor or agent. Should he not appear or be represented at the time appointed for the hearing of the appeal, the board should have the right to dismiss the appeal or make such findings as it may deem appropriate on the evidence before it.

7. The board should be empowered to sit in quorums of three throughout the country in places where it may be deemed necessary for such appeals and which will be convenient for the taxpayer.

8. If the Minister or the taxpayer is dissatisfied with the findings of the board and believes that such findings are not in accordance with the law, he will notify the board accordingly. The board should be required to transmit to the Exchequer Court of Canada a copy of its judgment and the proceedings heard before it. The matter would then be dealt with under the rules and regulations of the court but such court should have jurisdiction in matters of law only.

Where the matter involved is a question of law only and it is agreeable to the taxpayer and the taxing authorities, provision should be made whereby the matter will go directly to the Exchequer Court of Canada.

The Board of Tax Appeals should with the approval of the Governor-in-Council have power to make all necessary rules and regulations for the proper hearing of appeals submitted and may provide for sittings from time to time throughout Canada, and for the publication of its decisions and doing generally all those things deemed necessary in the performance of its function as a Court of Tax Appeals.

The Governor-in-Council should be empowered to appoint such officers, clerks and other assistants as may be necessary for the proper fulfilment of the duties of the board.

It is suggested that the president of the board have the status of a deputy minister.

The provisions of section 81 should be applicable to all members of the Board of Tax Appeals and all officers, clerks, or assistants appointed in connection therewith.

It is strongly recommended that the salaries of the members of the board and its officers shall be adequate and in conformity with those holding office and appointments in superior courts of record. It is thought that only in this way can a competent tribunal be constituted, which will attract to it the confidence and respect of those with whom it will be concerned.

We are concerned only with the broad principles which should govern the institution of such a board. We have confidence that if the main principles are set forth, the Government and the board will by appropriate action, carry out the purposes for which it is created.

In conclusion, it may be said that there was provision in the original Income War Tax Act for a Court of Revision. This was contained in sections 12 to 17 of chapter 28, Statutes of 1917. Such a court was, we understand, never created but it is evident that the Government of that time recognized the need for an independent board to deal with tax appeals. It was replaced by the present procedure instituted in 1923. Whatever may have been the motive for such procedure being adopted, it is felt that it has outlived its usefulness and is totally inadequate to meet the present day conditions or demands.

The CHAIRMAN: I take it that this is your brief, Senator Haig?

Hon. Mr. HAIG: Yes, sir.

The CHAIRMAN: For the purposes of the record I think you should assume the sponsorship of it.

Hon. Mr. HAIG: I am.

The CHAIRMAN: Does the committee desire to proceed with Senator Haig as with other witnesses?

Hon. Mr. HAIG: Let me add, Mr. Chairman, that I like particularly the last part of the brief, which recommends what in my judgment is absolutely necessary, namely, the setting up of a court of tax appeals.

Hon. Mr. HAYDEN: You provide for that court sitting in sections, and that the president and vice-president will either be lawyers or have judicial training?

Hon. Mr. HAIG: Yes.

Hon. Mr. HAYDEN: With respect to the quorum provisions, do you not think that either the president or the vice-president should sit so as to make a quorum?

Hon. Mr. HAIG: It would probably be more useful.

Hon. Mr. HAYDEN: You should have at least one legal member?

Hon. Mr. HAIG: Yes.

Hon. Mr. HAYDEN: I do not like restricting the board from appealing on questions of law.

Hon. Mr. HAIG: The suggestion is copied from the Railway Commission idea. The chairman or the vice-chairman of the Railway Commission usually presides, but it is possible to designate another man.

Hon. Mr. HAYDEN: I have seen the board sit as one man.

Hon. Mr. HAIG: They can do that here.

Mr. STIKEMAN: There is no reference that I noticed in your brief as to whether the decisions should be made public or whether the hearings should be in camera.

Hon. Mr. HAIG: The decisions should be made public but I should like to see the hearings in camera.

Mr. STIKEMAN: That has been the view of the other witnesses.

Hon. Mr. HAIG: I personally have that view.

Mr. STIKEMAN: Do you feel that this formal board you suggest is preferable to the type of board suggested this morning?

Hon. Mr. HAIG: I am definitely opposed to the type of board suggested this morning. Seven members would be too many and perhaps five would be sufficient. I rather like the practice in the United States, but I think our experience with the Railway Commission has taught us that a travelling board can be very useful.

Mr. STIKEMAN: Do you think it would be better to have them sit as two or three members rather than singularly?

Hon. Mr. HAIG: I would have not less than two sit.

Hon. Mr. HAYDEN: Why do you request the status of a deputy minister?

Hon. Mr. HAIG: That is only as it respects salary.

Hon. Mr. HAYDEN: But they might want more salary than a deputy minister gets?

Hon. Mr. HAIG: I think that is reasonable. That is all our judges are getting.

Hon. Mr. HAYDEN: Deputy ministers' salaries are not uniform.

Hon. Mr. HAIG: I had $10,000 in my mind.

Mr. STIKEMAN: Would you make him a deputy minister in status rather than a judge?

Hon. Mr. HAIG: Only as to salary.

Hon. Mr. BENCH: I suggest, Senator Haig, it might not be desirable to call him a deputy minister. It might indicate some departmental tie.

Hon. Mr. HAIG: As I interpreted that, it only referred to salary.

Hon. Mr. HAYDEN: I suggest you leave it out entirely.

Hon. Mr. MCRAE: You should leave out the status of deputy minister.

Mr. STIKEMAN: Would you require security for costs to be posted by a taxpayer?

Hon. Mr. HAIG: I would not require him to post costs on his original appeal. Of course if he is going on to the Exchequer Court that is a different matter.

Hon. Mr. BENCH: Do you agree that it might prevent frivolous appeals if there was a nominal amount charged?

Hon. Mr. HAIG: Yes.

Hon. Mr. BENCH: That is scaled according to the amount involved.

Hon. Mr. HAIG: My thought is that after one or two years there will be very few appeals.

Hon. Mr. HAYDEN: Perhaps after the first five years.

Hon. Mr. HAIG: It may take a little longer. I am thinking about my experience under the conscription law in appearing before the judge in my province. Usually there were two farmers sitting with the judge, and when the man talked it over he went away satisfied. They understood each other. It is my thought that we should have something similar to the Railway Commission where the situation could be talked over. I am not asking for a court, where there are formal pleadings. Decisions will be handed down from the board and they will be used as a guide.

Hon. Mr. BENCH: I am entirely in agreement with your statement but I think in order to prevent frivolous appeals a small deposit should be required.

Hon. Mr. HAIG: Do you mean something like $25.

Hon. Mr. BENCH: Yes, or even a smaller amount.

Hon. Mr. HAIG: I would concur in that view.

The CHAIRMAN: If there are no further questions, gentlemen, I wish to thank Senator Haig for his contribution.

Hon. Mr. HAIG: Thank you, Mr. Chairman.

The CHAIRMAN: I might say, gentlemen, that I have not been able to get in touch with Mr. Elliott who is to appear before us next Tuesday morning. I would ask Senator Lambert to get in touch with him.

There has been some correspondence come in which I think the secretary should now read into the record.

The SECRETARY:

April 12, 1946.

Secretary,
Special Committee of the Senate of Canada,
Re Income War Tax Act and Excess Profits Tax Act,
Ottawa, Ontario.

SIR: On January 12, 1946 this association forwarded a resolution to Hon. J. L. Ilsley, Minister of Finance, on the subject of taxation.

In order to make sure that this resolution is in the record and I assume that it would have been forwarded to your committee by the Minister of Finance, there is enclosed herewith Bulletin Number 85, which was circularized to our membership, which numbers 587 Canadian exporting firms.

Yours very truly,

CANADIAN EXPORTERS' ASSOCIATION,

A. F. Telfer,
*General Manager.*

No. 85

January 17, 1946

C.E.A. PETITIONS GOVERNMENT ON SINGLE TAXATION

The following communication was sent to Hon. J. L. Ilsley, Minister of Finance, Ottawa, on January 2, 1946.

We have noted with pleasure the announced decision of the government to reduce taxes as speedily as possible and this association appreciates the problems with which the government is faced.

We so hope however, that additional measures will be taken in the direction of a further downward revision of taxes.

In this connection I have been instructed by the Directors of the Canadian Exporters' Association to convey to you the following resolution which was passed unanimously at a meeting of the directors held in Toronto on December 18th, 1945.

In view of the importance of export trade at all times to Canada and of the fact that exports are the foundation of our national income and 3/8 of the working population of Canada

are dependent upon export trade for their livelihood, the enabling powers of taxing bodies in Canada and the rates imposed on corporations are of paramount importance.

And further as divided and competitive tax jurisdiction which existed before the war, along with excessive tax rates would restrict production, employment and income, it is

RESOLVED that in the interests of maintaining Canada's high standard of living and of removing all possible barriers to full employment, the Canadian Exporters' Association believes that the pre-war system of taxation was inefficient and inequitable and urges that only the federal government levy income and corporation taxes, which would be on an equal basis to each individual and corporation in Canada. Further that corporation and excess profits taxes are excessive and in the interests of promoting a sound and progressive economy in Canada based upon free enterprise they should be reduced to a considerable extent.

The CHAIRMAN: Gentlemen, so far as I know that concludes the public hearings.

The Committee adjourned until Tuesday, May 7th, at 10.30 a.m.

## APPENDIX

### APPENDIX TO THE BRIEF OF THE CANADIAN ELECTRICAL ASSOCIATION TO THE SPECIAL COMMITTEE OF THE SENATE OF CANADA APPOINTED TO EXAMINE INTO THE PROVISIONS AND WORKING OF THE INCOME WAR TAX ACT AND THE EXCESS PROFITS ACT

(a) *Canadian Authority*

"Accounting Principles and Practice"
R. G. H. Smails, B.Sc. (Econ.), A.C.A. (Eng.) and
C. E. Walker, B.Sc., Acc., C.A.
(6th Edition, Pages 289 to 293)

"ISSUE OF BONDS AT A DISCOUNT:

Bonds may be issued not only at par, but at any price either above or below par for which they can be sold. The actual price of issue in any case is determined by many factors, the chief of which are the rate of interest offered, the term of the bonds (i.e., date of maturity), the security afforded, and the condition of the money market at the time of issue. Where the bonds are issued at a discount (that is, at a figure below their nominal amount) the company is liable to be called upon at any time to repay the full nominal amount. As a rule repayment of bonds before the date of maturity can be enforced only when the company has failed to observe some of the covenants contained in the trust deed, but as the possibility always exists of the company failing quite involuntarily to perform some covenant (e.g., the payment of interest) it must be recognized that the liability is also ever present. In accounting for bonds issued at a discount it is therefore necessary to credit the full nominal amount of the issue to Bonds Payable Account, and to charge the discount to a special Bond Discount Account.

Thus, if the X Co., Ltd., issued 1,000 5 per cent Bonds of $100 each at $95 per bond, the entries to be made to record this issue (in summary form) would be:—

| | | |
|---|---|---|
| Cash | $95,000.00 | |
| Bonds Discount | 5,000.00 | |
| To Bonds Payable | | $100,000.00 |

Being issue of 1,000 5 per cent Bonds at 95

The question remains as to how the discount is to be treated. On the money market there is fixed from time to time a "standard" rate of interest, that is a rate which investments in first class gilt-edge securities are expected to yield. At any time there is also for each individual borrower an effective rate at which he can borrow at par, this rate being determined by reference to the "standard rate" and to the credit of the borrower and to the security offered. If a company chooses to offer this effective rate on a new issue of bonds it can dispose of them at par; if it offers a higher rate of interest it can sell them at a premium; and if it offers a lower rate it must be prepared to fix the price below par since otherwise they will find no market. Thus, if a certain company (say the A Co. Ltd.) could raise all necessary funds by the offer of irredeemable 8 per cent Bonds at par, it could presumably do so alternatively by offering 4 per cent Bonds at a discount of fifty per cent or 10 per cent Bonds at a premium of twenty-five per cent. Practically all commercial bonds, however, are redeemable and the date

of redemption directly affects the price of issue. Suppose, then, that this same company could borrow on 10 year 8 per cent bonds at par. If it decides to issue below par it will determine the interest rate to offer somewhat in this way: "If we ask $90 for a hundred dollar bond the investor will require to get 8 per cent on the money he loans us, that is to say, $7.20 on each $100 bond. But are we going to repay this bond at par at the end of 10 years, which means that at the end of the tenth year we are giving him $10 more than he originally loaned to us. That $10 at the end of the tenth year is approximately equivalent to $1 every year. Instead of offering a rate of $7.20 on each $100 bond we will, therefore, offer $7.20 less $1.00 and the investor should be satisfied." In this way a decision may be reached to issue the bonds at 90 as 10-year 6½ per cent Bonds. It is clear, then, that the discount on the bonds is simply capitalized interest; from this the rule can be deduced that the discount on issue of bonds must be charged against revenue in equal instalments over the terms of the bonds, (♯) in order to show correctly the money. Reverting once more to our illustration of the A. Company, and supposing that the company issued $100,000 10-year 8 per cent Bonds at par, we see that the annual charge against Profit and Loss Account for the use of $100,000 would be $8,000. If the Company issued $100,000 10-year 6½ per cent Bonds at 90, the annual charge for the use of $90,000 would be:—

| | |
|---|---|
| Cash interest paid, 6½ per cent on $100,000..... | $6,200 |
| Discount provided for 1/10th of $10,000..... | 1,000 |
| | $7,200 |

"Issue of Bonds at Premium:

When bonds are issued at a premium the nominal value of the bonds must be credited to Bonds Payable Account, and the premium on bonds to Bond Premium Account.

Thus if the Alpha Co., Ltd., issues 1,000 10 per cent Bonds of $100 each at $110 per Bond an entry will be made:

| | | |
|---|---|---|
| Cash ..... | $110,000.00 | |
| To Bonds Payable..... | | $100,000.00 |
| Premium on Bonds..... | | 10,000.00 |

Being issue of 1,000 10 per cent Bonds of $100 each at $110.

The premium on issue has its origin in causes similar to those discussed at length in the preceding section; that is to say, it is simply the capitalized value of the amount of interest which the company has undertaken to pay in excess of the effective rate at which the Company can borrow money. In order to show the real cost of money borrowed, the premium must be credited to Profit and Loss Account in equal instalments over the term of the bonds, or if the bonds are repayable in annual instalments then it must be credited each year in proportion to the relative value of the bonds outstanding during that year.

'Auditing'
R. G. H. Smails, B.Sc., (Econ.)
(3rd Edition, pp. 212 and 213.)

"2. Issue at a Discount or Premium.

The issue price of a bond is not controlled by its nominal amount, i.e., the amount which will be repaid to the lender on maturity. A company can borrow money at a certain price (known to the borrower as the "effective rate" and the lender as the "yield rate" of interest) which is determined by reference

(♯) This is not mathematically accurate but is a sufficiently close approximation for most purposes.

to the current rate of interest, the credit standing of the company concerned and the security offered.

It is not within the power of any company to secure its funds at less than the effective rate and no company will deliberately offer more than the effective rate. But it is within the power of any company to determine the manner in which the effective rate shall be paid. These are three methods available, viz.:

(*a*) Payment of interest at the effective rate from the issue to the maturity of the loan, and repayment at maturity of the sum originally borrowed, neither more nor less.

(*b*) Payment of interest at a rate less than the effective rate during the course of the loan and repayment at maturity of the sum originally borrowed plus arrears of interest accumulated at the effective rate.

(*c*) Payment of interest at a rate greater than the effective rate during the course of the loan and repayment at maturity of the sum originally borrowed less overpayments of interest discounted at the effective rate.

Method (*a*) is known as issue and redemption at par; method (*b*) is issue at a discount and redemption at par, or issue at par and redemption at a premium; while method (*c*) is issue at a premium and redemption at par. Thus supposing the effective rate of a company for a five-year credit to be 6 per cent per annum payable semi-annually, the company can borrow on a 6 per cent bond issued and repayable to $100 on a 3 per cent bond issued at $87.20 repayable at $100 or on a 7 per cent bond issued at $104.27 and repayable at par. It will be seen from this analysis that a discount or premium on an issue of bonds bears no relation to a discount or premium on an issue of shares, but must be amortized over the term of the bonds by periodical transfers to interest account in order to show correctly the price which is being paid by the borrower for the money which he has borrowed. Bonds issued at a discount should be credited to Bonds Payable Account at par (since this is the amount for which the company is liable if it defaults on its convenants at any time) and the discount be debited to Bond Discount Account as a deferred charge. Bonds issued at a premium are usually credited to Bonds Payable Account at the issue price, though a more logical treatment is to credit this account with the par value only and to credit the premium to Bond Premiums Account as a deferred credit. If the issue is a small one the premium or discount may be amortized by equal periodical instalments without serious distortion of costs; if it is large the premium or discount should be amortized by applying the effective rate of interest to the amount at any time on loan."

(b) *English Authority*

"Practical Auditing."
Ernest Evan Spicer, F.C.A. and
Ernest C. Pegler, F.C.A.,
London 1925.
4th Edition, Chapter 9, Page 298/9.

"2. Debentures Issued at a Discount.

Unlike Share Capital, Debenture Capital can be issued at a discount, and the discount can be regarded as a lump sum allowed to the lenders at the time of their taking up the Debentures, in consideration of a lower rate of interest being payable than would have been the case had the Debentures been issued at par. The financial position of the Company and the state of the money market at the date of issue are important factors in determining the price of issue.

The Debentures will appear in the Balance Sheet as a liability at their nominal value, and the discount will be written off over a period of years, the balance remaining at any date being carried forward in the Balance Sheet, and shown separately as such under Sec. 90 of the Company (Consol-

idated) Act, 1908. Under Sec. 26 of the same Act, any sums paid by way of commission in respect of the issued Debentures, or allowed by way of discount, must be stated in the Annual Summary.

As this discount does not represent any available asset, it is very advisable that it should be written off as soon as possible. It cannot be said, however, to be incorrect to write off the discount over the term of the Debentures and in that case, when no Sinking Fund is formed for the purpose of repaying the Debentures and the Debentures are repayable at the end of a given period, an equal amount of the discount should be written off each year. If the Debentures are payable by annual drawings, without the provision of a Sinking Fund the discount should be written off in relative proportion to the amount of Debentures outstanding, in order that the periods enjoying the use of the greater portion of the Debentures should be charged with the greater portion of the discount.

Where the redemption of the nominal amount of the Debentures repayable is provided for by annual charges against Profit and Loss, such charges will include the provision for discount, and, consequently, the discount can be written off against the credit balance of the Redemption Account."

(c) *American Authority*

"Auditing Theory and Practice."
By Robert H. Montgomery, C.P.A.
(2nd Edition, pp. 374 and 375.)

"Premiums and Discounts on Bonds to be Amortized.

Where bonds are sold at a premium, the amount received in excess of the par value represents the equivalent of interest collected in advance, and must be held in reserve and distributed over the years to which it applies as a reduction in bond interest account. For instance, a corporation may sell its 5 per cent ten-year bonds at 105, indication that its credit is rated on a basis of about 4½ per cent, that is, if a 4½ per cent bond had been issued, the corporation should have realized about par. Therefore, the bond interest, when paid, is subject to a deduction of one-half of 1 per cent annually. The excess received at the time of sale should not be applied to income or to surplus, but, as stated above, must be carried as a deferred credit and reduced annually.

Likewise when bonds are sold at a discount it is because the rate of interest the bonds bear is less than the effective rate at which the corporation's credit is rated. For instance, if 5 per cent ten-year bonds are sold at 90, it means that the corporation's borrowing strength is rated at about 6 per cent, and in order to reflect the actual rate each year as interest is paid, it will be necessary to carry to discount as a deferred charge among the assets and write off to interest account 1 per cent annually. This, added to the amount paid in cash will adjust the interest account to the proper cost."

"Principles of Accounting."
R. B. Kester, Ph.D., C.P.A.,
(4th Edition, pp. 437 to 439 and 441.)

"Bonds Payable

When a corporation borrows money on long-term notes or bonds, such notes or bonds are issued in uniform amounts, frequently on $1,000, $500 and even $100 denominations, making it possible for one of limited means to take advantage of the investment opportunity. Bond issues are distributed in pretty much the same way as capital stock issues, being offered for subscription at a price which depends on several factors, the chief of which are:—

1. The interest rate which the bonds bear.
2. The prevailing interest rate at the time of their offering.
3. The credit standing of the issuing corporation.

The earning power of the corporation, the type of collateral security offered in support of the bonds, etc., are other price-determining factors.

Thus, if the bonds bear 5 per cent interest and the market rate for bonds of the same general character is 6 per cent, an investor will naturally not be willing to pay par for them and the company will, therefore, have to sell them at such a discount as will put the yield to the investor approximately on a 6 per cent basis. The Company, by receiving for its bonds an amount less than par value but by being required to pay interest on the par amount, is thus actually paying higher than the nominal or agreed rate. Similarly, a 6 per cent bond offered in a 5 per cent market will usually sell at a premium. For the loss of the premium which will not be repaid by the corporation when the bonds mature —usually only their par amount being repaid—the investor receives an interest return in excess of the market rate. The effect of this loss of premium is to reduce the rate of return on his investment to approximately the market rate. From the corporation's standpoint, it pays a higher interest rate than the market demands and secures therefore a larger capital sum, the premium portion of which will not be returned when the loan matures. There is thus a very definite relationship between the bond discount or premium and the nominal rate of interest which the bonds bear, as compared with the interest rate which the market demands at the time of flotation of the issue.

Always some direct expense must be incurred in connection with bond issues. Lawyers' fees must be paid to insure that all legal matters have been handled properly; printing and engraving costs must be incurred in the printing of the bonds; there may be fees to bankers for selling the bonds; fees to appraisal engineeers for determining the present value of the collateral security—if any —behind the bonds; and fees to accountants for preparation of balance sheets and profit and loss statements as indicative of the issuing company's financial condition and earning power—information to which the underwriting bankers and prospective investor are entitled. These are all charged to a Bond Expense account which is later merged with the Bond Discount or the Bond Premium account or directly to a Bond Discount and Expense or Bond Premium and Expense account, as the case may be.

ACCOUNTING FOR BOND INTEREST PAYMENT

.....PROBLEM 2. A $100,000 issue of first mortgage bonds bearing 5 per cent interest, payable semi-annually, and maturing in 1960, is sold at 90. Expenses in connection with the issue amount to $4,000.....

At the close of the first six months, 2½ per cent interest, or $2,500 will be paid to the holders of the bonds. Since the corporation will have to redeem its bonds at par, it has been deprived of the use of $10,000 represented by bond discount, because the issue was brought out at 5 per cent in a 6 per cent market and it has had to incur expenses of $4,000 in bringing out the issue. The $10,000 discount is, therefore, in the nature of a lump-sum interest cost incurred in advance—prepaid—and together with the expense should be spread equitably over the life of the bonds. Accordingly, at each of the 40 interest payments during the life of the issue, a pro-rata share of this prepaid interest and expense should be taken into account as bond interest. The distribution of bond discount and expenses over the interest payments made during the life of a bond issue is termed "amortization" of the discount and expense. Scientifically, amortization is worked out on a compound interest basis, discussion and explanation of which are found in the Advanced Accounting volume of this series. Here, only the principle involved—not a scientific computation of the amount—is dealt with. For the sake of simplicity, therefore, the amortization is prorated evenly over the 40 interest periods, and results in an additional interest charge of $350 each period. The record is therefore:—

| | | |
|---|---|---|
| Bond Interest Expense..... | $2,500.00 | |
| Cash ..... | | $2,500.00 |
| Bond Interest Expense..... | 350.00 | |
| Bond Discount and Expense..... | | 350.00 |

In this way, the Bond Discount and Expense Account is treated as an expense item of the periods covering the life of the bonds and at its close will be entirely closed out. At the end of each period, the balance in the account is carrid forward to the next, being shown on the balance sheet in the section, other Assets, or better still, in a new class entitled "Deferred Charges". It is a prepaid expense but the period of its ultimate consumption is usually too long to justify its set-up on the balance sheet with that class.

ACCOUNTING FOR BOND PREMIUM

As explained above, bonds are also often sold at a premium. As with discount, the premium is directly related to the interest rate which the bonds bear. At the time of the sale of bonds, the premium is brought on the books as a credit, which, together with the par value at which the bonds are booked, offsets the cash received from their sale. At the regular interest periods, the premium is amortized over the life of the bonds and so results in a lessening of the periodic bond interest charge. The expenses incurred with the issue of the bonds, when charged to the Bond Premium account, will decrease the amount to be amortized. The student should set up the entries to record the sale of bonds at a premium and the interest payment for such bonds."

"Advanced Accounting."
R. B. Kester, Ph.D., C.P.A.,
3rd Revised Edition, p. 421 and pp. 424 to 426.

"RELATION OF BOND INTEREST TO PREMIUM OR DISCOUNT

The main problem in connection with accounting for bond interest is that of the relation between bond premium or discount and the periodic bond interest. At practically any time in the market, there is a rate at which the bonds could be sold at par. This rate is known as the effective rate. If a company puts an issue of bonds on the market at a higher rate than this, the market will offer a premium for them. The amount of the premium will be, theoretically, the present value of the periodic sum represented by the difference between the stated bond interest and the effective interest, these periodic payments extending over the life of the bond. In other words, the premium represents the price paid to buy the additional interest, dollar for dollar, on a compound interest basis. The premium is therefore not an earning, an item of income, but is an offset to the excess bond interest. The portion of it applicable to each period represents the excess interest which deducted from the bond interest shows the real or effective cost of the money borrowed and to be paid back. Thus, the bond interest rate based on the money actually received, i.e., par plus premium, is exactly the same as the market or effective rate on par. In other words, the corporation is paying for its actual borrowing simply the current market rate of interest.

It is therefore incorrect to show on the books the cost of the loan at any other figure than the effective interest. The actual periodic payment of interest is, however, at the bond interest rate. This must be brought down to the effective rate by application to it of a portion of the premium which represents the sum paid for the privilege of receiving the higher rate of interest.

Similarly, bonds are marketed at a discount when the bond interest rate is lower than the market rate prevailing on similar security at the time the bonds are floated. This may be looked upon as a payment by the Company in lump sum to compensate a purchaser for the difference in the income of the bond

and what he might obtain on the open market. The discount should be applied, therefore, periodically to bring the cost of the loan up to its true figure, viz., the market or effective rate.

The expense incident to the issue of bonds—such as legal fees, printing and engraving, bankers' fees, etc.—should be spread over the life of the issue and are usually recorded in Bond Discount and Expense account and amortized periodically".

1946

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

## SPECIAL COMMITTEE

Appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon.

No. 9

TUESDAY, MAY 7, 1946

CHAIRMAN

The Honourable W. D. Euler, P.C.

WITNESS:

Mr. C. Fraser Elliott, C.M.G., K.C., Deputy Minister of National Revenue for Taxation.

OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1946

## ORDER OF APPOINTMENT

*(Extracts from the Minutes of Proceedings of the Senate for 19th March, 1946)*

Resolved,—That a Special Committee of the Senate be appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon;

(2) That the said Committee be composed of the Honourable Senators Aseltine, Beauregard, Bench, Buchanan, Campbell, Crerar, Euler, Farris, Haig, Hayden, Hugessen, Lambert, Léger, McRae, Moraud, Robertson, Sinclair and Vien;

(3) That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. MOYER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

TUESDAY, 7th May, 1946.

Pursuant to adjournment and notice the Special Committee appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, met this day at 10.30 a.m.

*Present:* The Honourable W. D. Euler, P.C., Chairman; the Honourable Senators Bench, Buchanan, Campbell, Crerar, Farris, Haig, Hayden, Hugessen, Lambert, Léger, McRae, Sinclair and Vien—14.

*In attendance:*

The Official Reporters of the Senate.
Mr. H. H. Stikeman, Counsel to the Committee.

Mr. C. Fraser Elliott, C.M.G, K.C., Deputy Minister of National Revenue for Taxation, was heard and was questioned by counsel.

At 1 p.m., the Committee adjourned until 11.45 a.m., Thursday 9th May, instant.

ATTEST:

R. LAROSE
*Clerk of the Committee.*

# MINUTES OF EVIDENCE

THE SENATE,

TUESDAY, May 7, 1946.

The Special Committee of the Senate to consider the provisions and workings of the Income Tax Act, etc., resumed this day at 10.30 a.m.

Hon. Mr. Euler in the Chair.

The CHAIRMAN: Gentlemen, when our sittings began Mr. Elliott was our first witness, and it appears he will be our last. Since he gave his evidence we have proceeded by way, first, of hearing the brief of whoever was making the presentation, and then we led off in discussion through Mr. Stikeman, counsel for the committee. Mr. Stikeman at that time was in a slightly different position from what he is today: he was then an employee of the Department. He is not that now, he is counsel for the committee. It is for the committee to decide whether we will proceed in the usual way. I do not even know whether Mr. Elliott has a brief which he wants to present. If so, we will hear him, and then perhaps have the questioning led off by Mr. Stikeman. Have you a brief, Mr. Elliott, which you want to present to us?

Mr. C. FRASER ELLIOTT, K.C. (Deputy Minister of National Revenue for Taxation): No, Mr. Chairman, I would not dignify it by the term "brief." I am very conscious of the fact that since the opening of your proceedings you have had many very excellent briefs presented to you, and no doubt you have been informed by those briefs to a degree which may render any further submission from me more or less superfluous.

The CHAIRMAN: Don't be so modest.

Mr. ELLIOTT: When I was requested to come here this morning I did not know, and I still do not know, whether first, I was to be questioned on that which had been presented in the various briefs; or, secondly, whether we were going to discuss the possibility of setting up some new boards or procedure; or, thirdly, whether we were to discuss possible amendments. Therefore on those three points—contents of briefs, new boards, or possible amendments, I do not know yet which one or all of these we are going to develop.

The CHAIRMAN: I would think the committeee would be quite prepared to have your comments on some of the recommendations that have been made by the various organizations that have appeared before us. Then I am quite sure they will want to ask you some questions which have arisen in their minds as a result of the representations made by those who have appeared here before us.

Is it the wish of the committee to have Mr. Elliott make a preliminary statement of some sort?

Hon. Mr. CRERAR: I agree with what you have just said, Mr. Chairman. Mr. Elliott, I presume, has read most of the briefs.

Mr. ELLIOTT: No, I regret to say that I have not read them all, Mr. Crerar. As you know, I have been away a great deal.

Hon. Mr. CRERAR: Yes.

Mr. ELLIOTT: I regret that I have not been able to read them all. I have glanced through some of those that came before you lately and I am fairly

familiar with them, but not to the extent that I can say, "This brief said so and so, and this brief said so and so." I could not recall it in that way at all.

The CHAIRMAN: Would you like to make a statement first?

Mr. ELLIOTT: On the apprehension that you were going to discuss organization, and particularly the suggested board of referees or appeal court?

Hon. Mr. CRERAR: Tax appeal board.

Mr. ELLIOTT: Yes, tax appeal board, or whatever name you may suggest. I thought that was to be the discussion this morning.

The CHAIRMAN: That will be one of the points.

Mr. ELLIOTT: Therefore I did dictate a couple of days ago—skipping Saturday and Sunday—a memo on the possibility of a board of tax appeals or a board of referees—I repeat, whatever name we may desire to give it. Now, if you wish to start in at that point I will read the comments I have dictated.

The CHAIRMAN: What is the wish of the committee?

Several Hon. MEMBERS: That is all right.

Mr. ELLIOTT: Then on the subject of appeals and the method by which they should be received and dealt with and referred to a new body, to be there dealt with, as opposed to the initial administration, and afterwards to be referred to the higher courts, I am going to read a statement that I dictated in my office.

Appeals fall into two categories:

1. appeals on facts, on law, or a mixture of facts and law, and

2. appeals from discretionary powers exercised by the Minister.

The first is an appeal generally on an interpretation of the law pertaining to the facts because the Income Tax administration is usually placed in possession of the facts. Therefore, it is repeated that the majority of cases are cases requiring determination of what the law is, having regard to the facts, the statutory provisions and the general law of the land, as determined by the jurisprudence arising out of decided cases.

When questions of law are to be determined, it is not appropriate that any court of first instance should be the final court deciding the law. There should always be the right of appeal to both parties, to the next higher court.

This is particularly so in matters pertaining to Income Tax, because a matter may be small in amount in one particular year, but it determines the principle in law which has to be applied not only to that small case but in succeeding years to amounts that may be very large, in the affairs of the same taxpayer or in the affairs of other taxpayers having similar facts. In short, nearly every case is a case of future rights under the law. What you decide on ever so small a case to-day as a matter of law you have established as a principle which becomes applicable to a large number of cases of a similar character arising thereafter. I told this committee some time ago that the jurisdiction of the Supreme Court of Canada is limited; that is, they will not hear certain small cases. But no matter how small a case is, if an appellant can show the court that future rights are involved, then the court will hear the particular case, disregarding the amount of money involved, which may be very small. In other words, future rights is a matter of great concern.

It is intended to distinguish this form of law as against the exercise of discretion. I pointed out to the committee the absence of the power of the court, under the law, to review the decisions of the minister exercising discretion; that is, I said that so long as the minister was possessed of the facts, considered the facts and was not moved by principles contrary to natural justice, the courts did not interfere with the ministerial discretion. The courts have no

jurisdiction to set aside his discretionary determination. I shall not pause to develop those reasons again, but if you wish to read what I said in earlier evidence you will find the law that I there referred to.

It may be the opinion of this committee, appreciating the distinction between the two things just mentioned—the distinction between law and discretion—that two distinct bodies should be established, or, if only one body, that it should have two distinct functions; one pertaining to determination of questions of law, and the other being the making of recommendations to the minister as to how he should exercise and the degree to which he should exercise his discretion.

If I may I shall develop thoughts pertaining to the establishment of a special body, often referred to as the Board of Tax Appeals, to hear appeals of taxpayers which raise questions of law or questions having to do with a combination of law and fact. When the high rates of tax came into force, the liability of the taxpayer became one of much greater substance than the pre-war rates demanded, and the exemptions went down much lower. In other words, the weight of tax was increased. The field of taxpayers was greatly enlarged under these heavy burdens, and it is questionable just how far the weight of the tax is the basic complaint because of a desire to be relieved in some manner from the burden, rather than because of demands being made by the Income Tax Division under either the income tax or excess profits tax acts (that are contrary to the law.) Remember that I am leaving out the question of discretion in this part of the discussion. I am on the question of law. In pre-war times the question of law was there, without the weight, but I point out as a matter of evidence that there were not complaints then arising on the question of law. The Income War Tax Act has been in force from 1917 on, and up to 1940 there were not those complaints that we have today. Therefore I suggest the thought that the weight of the tax has so burdened the people that they are complaining. Naturally when they complain they have to point out something.

Hon. Mr. FARRIS: Has the zeal of the department to collect increased correspondingly?

Mr. ELLIOTT: I should hope that the department has maintained the even tenor of its ways throughout.

Hon. Mr. HAIG: A man may pay a $10 tax without much complaint, even though he thinks he should not pay it, but if he is asked to pay $10,000 and thinks he has been wrongly assessed, he will make a strong complaint, he will kick hard.

Mr. ELLIOTT: If the man is going to be taxed every year on what he considers a wrong basis, I do not think he is going to submit.

Mr. HAIG: The amount has something to do with whether he submits or not.

Mr. ELLIOTT: Probably, but I suggest that the question here is one as to what the law is in the case that is in dispute. That is going to be the law, not for one taxpayer alone, but for millions of others.

The CHAIRMAN: Senator Farris suggests that the department's zeal to collect has increased with the increase in the taxes.

Hon. Mr. HAIG: That is not the point Mr. Elliott is making. He is trying to show why there are more complaints now than there used to be. Many of us here are lawyers, and we know that if a man consults us about a tax, and there is only $10 involved, we are not going to advise him to take the case to court. I might say to a taxpayer, "I would charge you $500 to represent you," and he would say, "All right, I will pay the tax." But if the dispute is over a tax of $5,000, he will go to bat.

The CHAIRMAN: I was just referring to the question asked by Senator Farris, which I thought suggested that the amount at stake had something to do with the department's zeal in making collections.

Hon. Mr. FARRIS: I simply asked a question; I did not make a statement.

Mr. ELLIOTT: If I caught it correctly, it was combined with a somewhat facetious dig, the point of which was an inquiry whether our zeal had not increased in war time; and in the same spirit I replied that we maintained the even tenor of our way.

Hon. Mr. CAMPBELL: Has not section 32 (A) made you a little more zealous?

Mr. ELLIOTT: That was a war section, of course, to try to bring into the ambit of the law all that it is clearly intended should be taxed. It is an extraordinary section, and it really is just a tone or two above the determination by law in the normally accepted manner long established over centuries. It is just a tone or two above that, and it was put a tone or two above that because men in war time, handling large sums of money and conscious that great profits were in the offering, did extraordinary things. I would not make it a basis of approach for good peacetime taxes.

The CHAIRMAN: What do you mean by "a tone or two above"?

Mr. ELLIOTT: It is a little above what should be the letter of the law as contained in the statute.

Hon. Mr. HAYDEN: But you made it retroactive as well.

Mr. ELLIOTT: It was made retroactive.

Hon. Mr. LAMBERT: Are not the circumstances which have brought about increases in taxes analogous to the circumstances facing a hungry man who perhaps does a little stealing to help himself out?

Mr. ELLIOTT: To answer that question, I think, would be to invite a sort of philosophic discussion on the powers that move a hungry man versus the powers that move a man who wants to avoid taxes, and to correlate the two in a manner that would be satisfactory to you would be very difficult.

The CHAIRMAN: Gentlemen, shall we depart from our customary practice of permitting the witness to complete his presentation before he is asked questions? Perhaps his presentation is a little different from the ordinary.

Hon. Mr. HAIG: This is not an ordinary presentation. Mr. Elliott has presented his case and he is here now for cross-examination.

The CHAIRMAN: If it is the wish of the committee that he may be questioned as he goes along, that will of course be all right.

Mr. ELLIOTT: I am quite agreeable to being questioned whenever a point of particular interest to any member of the committee comes up. I would suggest to Senator Haig, though, that I would rather regret being put in the position of a person under cross-examination. I suggest that the matter be developed by appropriate questions, rather than by cross-examination, because I want to be one with you, neither for you nor against you, but helping to develop the subject as best I can.

Hon. Mr. HAIG: Mr. Chairman, I want to point out quite candidly to you, and through you to Mr. Elliott, that we are under a very great obligation that does not apply to him. The public expects us to represent them. Mr. Elliott is one of the ablest men in the Civil Service of Canada, and he ought to know more about this subject than any other person. It is our duty to get from him the information necessary to enable us to deal with the problems facing the people. We want him to help us to make the best possible law for taxation. We are not dealing with the incidence of the tax at all. When I say that Mr. Elliott is here for cross-examination, I mean simply that he is here to answer questions that we desire to have answered.

The CHAIRMAN: I think it is clear what you meant, Senator Haig. Mr. Elliott himself is a lawyer, as are many of the members of the committee, and it is known that sometimes witnesses are treated fairly roughly on cross-examination. I do not think he expects to be treated that way here, and I know Senator Haig does not intend anything of that kind.

Hon. Mr. HAIG: No.

Hon. Mr. VIEN: What Senator Haig had in mind was not cross-examination as it is conducted in court, but simply the questioning of the witness whenever occasion arises. In the course of the inquiry a good deal has been said on the question of whether a Board of Tax Appeals should be established. Mr. Fraser Elliott has been in Europe for a considerable time, and since his return he has prepared a statement, as I understand it, on the question of whether a board of some kind to deal with questions of fact and of law would be a good thing for the country. It seems to me—but I do not want to impose my view on the committee—that the record would be more intelligible if we allowed Mr. Elliott to proceed with his submission, at least on this point, without interruption, reserving to ourselves the right to ask a question only when it is necessary to do so for purposes of clarification of a word or expression used by him.

The CHAIRMAN: What is the wish of the committee? Should Mr. Elliott proceed with his statement without interruption, except for purposes of clarification?

Hon. Mr. CRERAR: Certainly.

The CHAIRMAN: Then I will have to rule to that effect.

Hon. Mr. MCRAE: As a layman and not a member of the legal fraternity, I take it that Mr. Elliott is here for consultation and co-operation with the committee.

Mr. ELLIOTT: Quite.

Hon. Mr. MCRAE: I think that better expresses the position than cross-examination. I have a fear of cross-examination.

The CHAIRMAN: All right, Mr. Elliott.

Mr. ELLIOTT: I might recall to the committee as part of the background of this appeal just what has the appeal to do. I fancy most of you know, but I will go over the matter shortly.

The taxpayer feels he has been improperly assessed, and he launches an appeal in accordance with the form provided in the Act. The word "form" is too indicative. The procedure is so informal that if a man even wrote a letter and said, "I have received your notice for assessment for such and such a year, and I wish to appeal the assessment," that would be accepted as an appeal. Therefore no taxpayer in Canada is really forestalled in lodging an appeal by reason of form. It is very easy to come before the Income Tax administration with an appeal. When that appeal is received it is incumbent upon the Minister to reply, and he makes a decision as to whether that appeal is in his judgment right or not. Before that answer to the appeal goes out it generally happens that there is either extensive correspondence or actual conferences.

When the taxpayer is notified that they do not agree with his appeal the matter becomes serious, and we say, "Now, if this appeal is to go on it is incumbent upon you to place all the facts that you wish to present on the record"—it is entirely inappropriate that a man should appeal to one jurisdiction on only a part of the facts, and then go to a higher jurisdiction with new and important facts. The higher court would then be determining the appeal, not on the same facts, but on different facts, and that should be guarded against. Therefore we say to the taxpayer at this juncture,—that is, the juncture of having filed his appeal and having been replied to by the Minister—that he

must now file notice of dissatisfaction. In that notice he is requested to state all the facts give all statutory references that he wishes to refer to, and set out in extenso his reasons for appeal. With that he must put up security, mentioned as $400. Actually it is not $400 necessarily. The man can give us security in bonds, Dominion, provincial or even municipal. Of course, the bond or bonds in the meantime draw interest and cost him nothing. On the other hand, he can buy a bond from an indemnity company or an insurance company, and I understand it costs about $8 or $10. Or he can put up cash. The majority of them do put up cash, and it is held as security. But the point I am making is that the cost is not very great.

When the Minister receives that he feels that he now has all the facts and must give an official decision; which he does. It is presumed that he still disagrees with the taxpayer. Those four documents, together with the original return, constitute the record, and that record is transcribed and lodged in the Exchequer Court, and thereupon the matter is ready for trial and hearing. I recall that to your mind because that is the background of the present procedure.

Now, on the question of law and appeals arising thereunder, I am not aware of any taxpayer, be he large or small, who really has a grievance on the ground that he is put to a great deal of cost to lodge his appeal, give security, and get his case to the Exchequer Court. There may have been some delays but that is not the complaint, as I understand it. The complaint is, again on the legal side, that he has not had his day in court and that he wants a court of small cost rather than the Exchequer Court in which to have his case heard; and, of course, this means his little case, for if large sums of money are involved in an appeal, neither side is going to be content with a minor court decision. The consideration, therefore, is in respect of the little fellow.

Now, let us presume that we establish an intermediary court called a Court of Revision, a Board of Tax Appeals, or whatever name you like to give it, and for the moment it is immaterial whether it is a central body in Ottawa of small number or large number with itinerant members, or whether it is several bodies in different parts of Canada and their decisions being affirmed by a central body or court at Ottawa, before being uttered. That is immaterial to the main point, that is, there is some kind of a court to hear the little fellow's appeal and to afford him his day in court, and let us presume, although please do not seize on the figure, that the court costs were not more than $10; there is also quite a cost of compliance with the requirements of the court in the conduct of his case. His own time or his own accountant's or lawyer's and witnesses mean quite a cost of compliance that he has to bear.

Now, if this court confirms the decision of the Minister, the best that can be said is that the taxpayer has had his day in court at the two costs just referred to, i.e. $10 and his own time and other costs; but if the court should decide against the Minister, as already stated, this taxpayer's decision is only representative of hundreds and perhaps hundreds of thousands of like departmental decisions pertaining to that matter.

Therefore, to the Minister it is a matter of concern because it is a question of law, and the Minister would have to take an appeal to the Exchequer Court. This, it is expected, would be found to be the case in the great number of cases when the court decided against the Minister, for the simple reason that the Minister and his advisers are skilled in these matters inasmuch as they give their whole time to it, and secondly, they are aware of the effect of what is called a small decision in the wide field in which they operate and have to apply this decision.

It is not easy for the Minister to accept a so-called minor decision in a minor case when he has to apply it in a great field to multiple cases resulting in substantial sums of money. It is not of course a case of the Minister wishing to support his decision. It is a case of finding out from the most authoritative

source whether the opinion of the Minister and his officers, which is contrary to the opinion of a Board of Referees or Board of Tax appeals, is right or wrong. Now, the taxpayer will certainly, being a small man, object to being taken to the Exchequer Court, and he may not appear, because the costs are high, as he asserts, in the Exchequer Court, and if he does not appear he in all probability may lose his case for want of argument and presentation.

Hon. Mr. HAYDEN: I should like a little clarification there. The Minister would still have to support his part, that is, the grounds for the appeal, whether the taxpayer appeared or not.

Hon. Mr. BENCH: That is the order now.

Mr. ELLIOTT: Observe that there may be room for considerable complaint here, for we really have no cure for the situation, except in so far as the Board of Tax Appeals has confirmed the decision of the Minister, and the little fellow has had his day in court only to find that the principle of law applied by the Department is sustained by the Board. Q. Is it advisable to invite him into this position without being very clear on what is about to develop when a small case goes to the Board of Referees or Board of Tax Appeals?

Some might suggest that the Board have final jurisdiction in matters under a certain sum. There are two faults to this:—

1. A small sum may establish a principle in law, which is very great and which the Department should adopt in applying it not only to the multiple cases in its files of a like character, but in all future years, which means many years. This means that this decision is going to be applicable for a great number of years, though it is small in itself because a small sum is involved.

2. To allow the decision to stand as a kind of settlement in that case without changing the application of the law throughout the land, is to give a taxpayer an advantage over the continuing law as applied throughout Canada. That I do not think is right.

Both these objections cannot be put aside. This shows the great responsibility placed upon the Division in matters of law, of being right. But if, perchance, they are wrong, at least this can be said, that they are wrong in a uniform manner throughout the whole of Canada and all the little fellows are suffering the same detriment.

Having said so much, I think I should now state that there is not anyone present here or in Canada who has a more earnest desire to give the little fellow every right that the law, justly interpreted by proper tribunals, can afford him. Both you and I are anxious that he should have his full rights and supply him with every remedy that can reasonably be made available when he feels aggrieved under the law, but an Income Tax Law, annually imposed on millions of persons, is a law that touches millions of small people and they all must be treated alike.

Therefore, we should dismiss the thought that these special tribunals are to be adjustment bureaus with power to reduce or increase taxes by a direction, for any little fellow because they think it expedient so to do, not under the law, but having regard to the little fellow's particular circumstances in his domestic or business relations. They are courts of law by whatever name, and their decisions, it is suggested, should be published and become law. Any published decision that is regarded as contrary to the law in the minds of the legal advisers to the Administration, is subject to appeal. In other words, these are not adjustment bureaus, they are bureaus to determine the law, publish that law, and have it applied throughout the land. There are no small cases in the realm of law.

Therefore it is repeated that if you invite the little fellow into what is called a minor court so that he might have his day in court at little cost, it may amount

in the majority of cases to nothing more than a confirmation of that which he has already been told. There may be some value to that, but if the Department objects to the decision and takes it to the next court, the little fellow might feel even more aggrieved, having been put to this additional cost in time and money.

There is perhaps one advantage which does not redound however to the same taxpayer-appellant, namely these boards will be writing decisions. They will be published and will be of value to the legal profession, the accounting profession, business executives and the public generally. Being a court of little cost, there may be many more appeals, and hence there will be a considerable flow of decisions, but, I repeat, this is informative to those who are outside the ambit of the immediate appeal.

The committee should clearly distinguish between the desire for more publicity of departmental determinations and the desire to afford the small taxpayer a less costly means of appeal, but only in a court of first instance, for he has yet the higher courts as a possibility, if he wishes to appear before them.

If what is desired is publicity, then we should think of that as something separate and not arising out of appeals. We could set up a publicity board which could publish decisions of the administration in important cases, as well as publish important general initial departmental interpretations. In other words, we should be careful not to seek publicity through the medium of inviting appeals by small taxpayers to courts of little cost.

Hon. Mr. VIEN: You are referring there not to publicity as to facts, but only as to rulings, so that the principles involved may become known?

Mr. ELLIOTT: That is right. I say that the taxpayer appellant is not concerned with those principles that may be published; he is concerned only about his own little case. But I fancy a great many people are approaching this subject with the belief that if we have a large number of appeals to an easily accessible board, a great many decisions will be given publicity. The little fellow is not interested in that, though. Therefore we must distinguish between publicity versus giving the little fellow his rights at small cost.

Hon. Mr. FARRIS: Isn't the answer this, that if the Crown wished to go beyond that court with small cases it should pay the cost of both sides? That is what the Privy Council orders sometimes when it grants an appeal.

Mr. ELLIOTT: I fancy that the Privy Council or any court will hear a case *in causa pauperis*, but are you suggesting that if in a case decided by this court of little cost the Crown feels that the principle of law is so important that an appeal should be made to a higher court, the Crown should bear the cost, even if the taxpayer is a man of substance?

Hon. Mr. HAYDEN: Certainly.

Hon. Mr. VIEN: Why not?

The CHAIRMAN: This is not a point of clarification, and I think it could come up later on.

Mr. ELLIOTT: Mr. Chairman, I have covered my submission on the question of appeals pertaining to matters of law. The next part of my submission has to do with appeals pertaining to discretionary powers, and I think before we go into that it would be well to have a discussion on appeals on questions of law. In the discussion let us not confuse this matter with discretionary powers.

The CHAIRMAN: Is it the wish of the committee to discuss that phase of Mr. Elliott's submission now?

Hon. Mr. HAIG: It seems to me that there might be an overlapping of the two points, and if we started questioning Mr. Elliott now he might have to reply that some of our questions were concerned with the later part of his brief. I think he should go on and finish his submission.

Hon. Mr. LAMBERT: May I ask Mr. Elliott if those two divisions comprise the whole of his submission?

Mr. ELLIOTT: Yes.

The CHAIRMAN: You have finished with what you want to say about matters of law?

Mr. ELLIOTT: Yes.

The CHAIRMAN: And now you want to go on to discretionary powers.

Mr. ELLIOTT: I think that here I might make a comment which to my mind is pertinent to both of them. As a Government official not infrequently consulted by the Government of the day on tax laws that are about to be enacted, and also on procedural matters, I want it distinctly understood that I am discussing this subject in only a general manner, that I am not tied to any of these methods or ways and means. It would be highly inappropriate that in a public record I should lay down something as my view which might conflict with something afterwards brought in by the Government, for the opposition could then say, "We are quoting from Mr. Elliott's statement, which is contrary to what the Government is doing." That would create a rather awkward situation, both for me and the Government. I do not know quite how to avoid it. I merely mention it more as a plea to those who read hereafter to remember that I am speaking quite frankly in an endeavour to help the committee and am not laying down any firm views that can be quoted as my views against whatever may be developed in future budgets or taxing laws.

Hon. Mr. HAYDEN: You are laying down no doctrine?

Mr. ELLIOTT: That is right.

My thought is that I should develop my comments on the handling of discretionary matters quite distinctly from matters pertaining to law. Discretionary power, by its very name, has nothing whatsoever to do with the question of law. It is more founded on the principles of reasonableness as to quantum of the allowance to be granted or not granted, or the permission or non-permission for this or that, having regard to the circumstances of the taxpayer and, in a wider sense, to the endeavour to make certain as far as possible that this reasonableness is uniform in its application throughout Canada in cases that are substantially similar one to another. The minister is charged with the determination of matters pertaining to discretion. Should we consider removing that responsibility from him and establishing a central advisory board not so much skilled in the niceties of legal interpretations, but rather skilled in the advisability of this or that business expense, or of this or that business activity being proper in relation to the taxpayer's affairs? In other words, the matter is not only one of quantum, but of whether good business judgment has been properly exercised, under the powers of discretion, first for the taxpayer himself in doing what he did or claiming what he claims, and second by the minister in altering downward that action or claim.

Discretion exercised by an individual or group of individuals living in one part of Canada would probably be exerted in a manner different from that exercised by an individual or group situated in another part of Canada. I do not think I need to develop that point. If parties in different parts of Canada were to make a discretionary decision and send it to a central body for approval, the different bodies exercising discretion, if not supported in their decision, would soon become disgruntled. They would ask for some guiding principle on which discretion in every possible and conceivable set of circumstances should be exercised. This is almost impossible to give because the matter does not lend itself to principles, such as the principles of law, inasmuch as discretion is a question of conscience and good personal judgment quite apart from law, having regard to the particular circumstances. As salaries

controller I am not without some slight experience in handling boards across Canada. We have seven boards across the country. As they begin to get into the work a few of them ask, "On what principle do you allow this increase and disallow that one?" They want something that is basic in principle. Now you gentlemen know that whether a man should or should not get an increase in a set of circumstances is not always something capable of being laid down in the form of a principle. I suggest that if you have boards exercising discretion in different parts of Canada they quite probably will seek diligently for the declaration of some principles equivalent to the principles that underlie law and which people can follow with reasonable approximation.

Therefore it may be—I am not recommending or otherwise—it may be that a central discretionary board of say three persons could be set up at Ottawa to review the discretionary determinations of the inspectors and the members of their staff as they are reported to head office. This board would act in an advisory capacity to the minister in cases where there is disagreement between the taxpayer and the district office, leaving the responsibility for the conclusion of the matter with him. It is almost unquestionable that the minister would in every case accept the advice of this board.

Hon. Mr. FARRIS: Would that board be in the nature of a court before which counsel could appear?

Mr. ELLIOTT: It would be a board to which the taxpayer's representative might make representations.

Hon. Mr. BENCH: It would be comparable to the Board of Referees as now constituted under the Excess Profits Tax Act?

Mr. ELLIOTT: I should think that is a good analogy.

This board could, of course, be itinerant, could hear taxpayers in matters that are substantially different from the general run of determinations in discretionary matters, and after such activities could advise the minister as to how he should exercise his discretion. I repeat that I am not recommending. That proposal may or may not be good.

In the brief presented by the chartered accountants they have set out the discretionary powers and determinations which the minister must exercise. One must realize that these discretionary powers are spread throughout the Act. They are every-day occurrences. They are multiple in their number. Hence, both as to weight and number, they might be equivalent to the board becoming assessors so far as all the determinations referred to require to be settled. One could conceive therefore, that they would require a staff of their own; and if that were so, we would be merely substituting one set of assessors for the existing set of assessors, and doing the job twice—once by the departmental assessors, and a second time as a review by a second group of assessors advising the Advisory Board as to what it should say to the minister or, if it were not advising the minister, determining the matter finally itself, as to what its final decision should be. If that were to develop our departmental assessors might lightly pass the work on to those charged with finality, or indeed they might be overly generous in their discretions and let the board be tough. In other words, human nature being what it is, as our assessors in the field deal directly with the taxpayer they want to be reasonable with him, and where there is an opportunity to be generous I think it is only natural for them to take advantage of that opportunity. If these cases were sent on to a central board, the board might say of each of them, "Oh, that is out of line; we will have to cut that down." So in practice our assessors could become not the diligent vigilant reasonable men that I think they are, but easy and lax, taking the attitude, "There is another body looking after that; let us pass it on." That is a danger, and when you look at the list of discretions that the minister has had to exercise and the determinations he has had to make, you realize it is a matter of real concern.

In other words, there is really no perfect answer to the exercise of discretion in a managerial sense. It may be that this board should be called upon to consider discretion only when the taxpayer appeals the discretionary determination made by the minister on the advice of his regular officers, and this perhaps is the extent to which the board should function.

It does not appear appropriate, and I would not think that the higher courts would wish to have thrust upon them the duty of determining matters that are not questions of law. The judges of the courts are skilled in matters of law. Who would care to comment on their discretionary propensities? They are not presumed or required to know the advisability of this or that expenditure or the taking of this or that activity as a proper business move, at least not as well as those ministers who are in daily touch with public and business affairs.

It is not a question of law that the judge would be asked to determine, but one of reasonable judgment in a widespread field, such as income tax law, and I submit that their reasonableness should not be substituted for the reasonableness of those who are more closely associated with the things they are dealing with.

In short, discretion finds no place within the legal system, strictly as a legal system in the administration of justice; that is, under the courts as presided over by judges. They properly refuse to substitute their discretion for that of the minister. All they do in law is to say "Has the minister considered the facts; has he applied the rules of natural justice?" If he has done those two things, and the court is satisfied he has, they do not over-ride ministerial discretion. In other words, the manner of doing in the light of knowing the facts is essential. What the courts will say is: "Did you know the facts, did you sit down and consider them? If you did, that is the end of it." I agree with that as my interpretation of the presently existing law.

Hon. Mr. VIEN: Is there not something more? Must not the discretion be exercised judicially and reasonably?

Mr. ELLIOTT: I covered that under the head of natural justice.

It is one thing to list, as the Chartered Accountants' brief did, and indeed rendered good service to you by so doing, it is one thing to list as bold statements, and it is another thing to turn up the section in which these matters are found and ask the question: "If we were drafting the law, would we give the Minister discretion or would we make the law fixed and rigid with no possible consideration for the business side or other features that arise in the affairs of taxpayers?" A rigid law can work great hardship.

My belief is that more damage will be done by rigidity, affording thereby no relief to a taxpayer, no matter how reasonable he may be in his action, as opposed to making it possible for some consideration to be granted under the terms of the law.

Of course, the reasonableness of the Crown's action is never the subject of complaint, and you hear nothing on that score, and therefore, you are impressed by the complaints wherein a taxpayer is precluded by the Crown from certain actions, on the ground that they are not in accord with the allowances given or denied to other persons. Perhaps the matter is over-stressed by a few interested parties or groups, or perhaps not.

That is to say, by and large the quantum of discretions has not become the subject of great complaint. At least I think I can give that as evidence. But there are those who have special interests that find the discretion is not exercised according to their view, and the question is: "How can we deal with that complaint?"

Hon. Mr. VIEN: There is very little room for complaints of discrimination, because the decisions are kept secret.

Mr. ELLIOTT: Oh, no, they are not secret. The taxpayer knows all about it. The question is whether the other taxpayer knows about it.

Hon. Mr. VIEN: Does he?

Mr. ELLIOTT: No. Of course you cannot say to another taxpayer, "In relation to these facts in this taxpayer's affairs the following was done," because you are not allowed to tell the other fellow about his affairs. There is a real, strict limitation upon that disclosure.

Now I will give you an example—an actual occurrence— of the damage that can be done by a rigid law. Let me preface it by suggesting that we analyse the powers and then ask ourselves the question: Should the laws be more rigid?

For example, a Canadian subsidiary of a United States parent had as its president a non-resident individual who was president of both companies. The parent, by its world-wide activities, was in a favourable position, situated as it was in New York and with the aid of its travellers, to make world-wide purchases in great volume at good prices, and after having so purchased, to distribute the goods at their cost to all branches and subsidiaries in North America. There is no question that the value to the Canadian company was so great that it meant profits to the Canadian company, as opposed perhaps to no profits if such services were not available.

The salary of the non-resident president was $65,000, as I recollect; that figure is more or less correct.

A resolution was introduced some years ago rigidly stating that salaries paid by Canadian companies to non-resident officers would not be allowed as a deduction, but this resolution never got through the House, because those concerned insisted that there was real value coming to the Canadian company, and that if not the whole salary, at least some part of the salary, should be allowed as an expense, and it was so provided. But had that resolution passed the law would have been rigid and we should have been taxing the Canadian company unfairly.

It is simply pointed out that if this committee were empowered to write an Income Tax law and did write it, with an absence of appropriate powers and discretions, there would soon be a greater volume of concern than we now have. In fact, I doubt if such a tax measure would be acceptable to the country at all. Realizing, therefore, that we must have powers and discretions in any law that touches the people at so many points and so vitally, we are back to the question of how those powers should be exercised.

That is all I am going to say on the introduction to the method of handling discretionary powers. When we discuss this matter I would ask all members of the committee to try to keep the two separate; that is, merely matters that raise great questions of law, versus the discretionary power, which has no real principle of law involved in it but rather good judgment. I think at this point, Mr. Chairman, we can enter upon a general discussion.

The CHAIRMAN: Gentlemen, in our other meetings when a witness has completed his presentation we have asked Mr. Stikeman to proceed with his questions. Do you wish to follow that procedure now? Any objections?

Some Hon. SENATORS: No objections.

The CHAIRMAN: Mr. Stikeman.

Mr. STIKEMAN: Mr. Chairman, before I proceed with my questions in detail I should like to make a few remarks as to what I conceive to be my duty throughout this hearing and the proper attitude for me to adopt to-day in view of the witness's opening statement as to the difficulties resulting from his presentation of views of a personal nature which might possibly be misconstrued by other persons reading the record.

As I understand, we are here in this committee to conduct an entirely objective investigation and inquiry on certain statements of facts, and in doing so we have directed our attention entirely objectively to ascertaining the validity of the facts and the soundness of the opinions and views put before us. We have endeavoured to deal with every witness who has presented a brief to this committee in precisely the same manner, neither in the form of examination-in-chief nor of cross-examination in the legal sense. We have been guided solely by our desire to reach the truth in every submission of fact or opinion.

It is therefore my view that we wish to deal with Mr. Elliott in precisely the same way in which we have dealt with the other witnesses, that is, objectively, in order to obtain real and considered guidance for this committee in formulating its conclusions.

If my questions may seem to-day to be somewhat searching, or perhaps doubting, in their measure, I should like to point out, Mr. Chairman, to the witness that that attitude is entirely prompted by a desire to avoid any misunderstanding in this room, and at the same time to avoid embarrassing any witness by making remarks which might be regarded as not fair comment.

I notice that Mr. Elliott has divided his very interesting statement into two general categories, and that he has confined himself to the consideration of the establishing or the not establishing, of a board to consider appeals, and the possibility of that board being used to consider matters of discretion. Mr. Elliott has told us that he has made these two divisions for the reason that, in his opinion, matters of law and matters of discretion may not necessarily be suitably considered together.

Before going into a discussion of Mr. Elliott's statement and ascertaining some of his opinions in detail, I should like to read a brief statement which I prepared during the course of last week, and in which I have endeavoured to synthesize the views presented to us as evident in the public mind; and also the statements and submissions of witnesses before this committee on questions of law and of discretion in so far as they pertain to the making of an assessment and the affording the taxpayer the possibility of a review.

The following synthesis—it can scarcely be called a summary—I will now read.

The general opinion would appear to be that the taxpayer should be provided with a speedy and inexpensive tribunal to which he may take all disputes arising from assessments, including questions of fact, questions of law and questions arising out of the exercise of ministerial or administrative discretion, and that he be assured through ready access to such tribunal of an impartial and considered adjudication. I believe a majority of the witnesses considered it essential that the adjudicating body should be able to substitute its opinion for that of the Minister or of any administrative tribunal which has exercised discretion, in so far as the exercise of discretion has entered into the making of the particular assessment in dispute.

The second broad principle which has been brought out by the questioning of witnesses before this committee is that the adjudicating body—the Board—by considering the various exercises of discretionary power and the various questions of law would ensure the continued flexibility of the statute, since the rendering of decisions on these matters would reduce the need to remove entirely the discretionary authority now contained in the statute. It is true that many witnesses have urged that the discretionary powers should be reduced in number and perhaps in some cases in form. The feeling has been apparent, however, that if such a body were created which could consider impartially the exercise of discretion and the reasons for the exercise of that discretion, it would not be necessary to eliminate discretionary powers from the statute, and that that would be conducive to maintaining the flexibility of the present act and the freedom of movement which the administration must necessarily have in making

it a working document. In addition it has been considered that the rendering of decisions on questions of discretion as on questions of law and fact would be useful not only to taxpayers but to officials acting for the Minister of National Revenue, who would thereby be afforded guides of increasing usefulness as a body of jurisprudence was established relating to the proper consideration of the various questions of law and fact in particular instances.

Lastly, and following from these two main principles which have become apparent to us, it would appear that the witnesses have considered that the accumulation of a body of precedent through the publication of decisions or reasons of whatever board may be set up, would tend to diminish the need for departmental directives, in so far as they appertain to questions of substance rather than to questions of administration within the precincts of the department itself. It is also felt that in addition to relieving the administration of the very real burden of administering through directives, the body of precedent built up by this board would assist in the clarification of many sections of the taxing statutes that are now obscure for want of final determination or interpretation by a court, and that in turn this body of precedent might diminish to some extent the need for redrafting holus-bolus large portions of the statutes, since those sections which are now charged with ambiguity or difficulty by the public—and in some cases by the administration—would perforce obtain certainity from the application to them of the decisions of the board.

I felt it was necessary to put before the committee what I have conceived to be the general principles brought out in the evidence, in order that we might have a real opportunity to evaluate the very interesting suggestions and comments made by the witnesses. If in his draft memorandum, of which I am fortunate enough to have a copy before me, Mr. Elliott takes issue with some of those principles, I feel that he does so upon a basis of very wide and lengthy experience, and that before attempting to evaluate the principles presented to us we should not pass up the opportunity to ask him certain questions concerning those principles and also certain questions on his statement.

Hon. Mr. VIEN: I understand that you have given a summary of the evidence presented to this committee on the points you have mentioned.

Mr. STIKEMAN: Correct, sir.

Hon. Mr. VIEN: From a reading of the evidence do you understand the general feeling to be that the act should be so changed as to divest officers of the department of all discretionary powers, or do you regard the general request or expression of opinion to be that when discretionary power is exercised by the department there should be an opportunity for the taxpayer to ventilate any grievances that he may have?

Mr. STIKEMAN: The evidence would appear to indicate the general feeling to be that discretion cannot be entirely eliminated in every instance from the statute.

Hon. Mr. VIEN: My question was directed to another point. Is the general feeling that discretion should be exercised exclusively by an outside board, or that it should be exercised by departmental officials, with an opportunity for appeal being given to the taxpayer?

Mr. STIKEMAN: Your last statement expresses the general feeling, sir, namely, that the discretion, wherever it is put in the statute, should in the first instance be exercised by departmental officials, but that their decision should be subject to appeal—or perhaps the feeling is better expressed by the word "discussion"—before another tribunal.

Hon. Mr. VIEN: When you were summarizing the evidence I understood you to say the general feeling was that the discretionary powers that must be written into the act to keep it flexible should not be exercised at all by officers of the department. I am glad to be corrected.

Mr. STIKEMAN: That was not what I had in mind, Senator. I have attempted to state what the evidence indicates to us as being the general feeling of the witnesses, namely, that the number of instances of discretionary power in the statute might perhaps be reduced; and, secondly, that where discretionary power remains for necessary administrative purposes and because of the practical inability to legislate to cover every detailed instance, the discretion should be exercised by administrative officials, but that the exercise should be in some manner subject to review by an independent committee or tribunal divorced from the hand which imposes the tax.

Mr. Elliott, in the evidence that you gave before this committee last November you said, as reported at page 108 of the proceedings, "If there is a belief among our people that they are deprived of a competent court at a reasonable cost, then the people's wish should be met." I suggest to you that by and large there are very few who are asking for the establishment of another court, but if there are they certainly should have it. From what you have said this morning I now understand—and I am stating this only to make sure that I understand you correctly—that your references to a court in that connection have been to a court or board for the consideration of questions of law only and not questions of discretion. Am I correct in that understanding?

Mr. ELLIOTT: I think that is correct, yes.

Mr. STIKEMAN: In making the distinction between questions of discretion and questions of law, do you feel that all questions of discretion as at present entrusted to the administration are entirely matters of fact, or do you not feel that some of them turn upon a proper construction of the statute and thereby verge over into the field defined as law?

Mr. ELLIOTT: Well, I draw a sharp distinction between the two, taking discretion as not relating to principles of law. I thought that questions having to do with principles of law should go to what you call a court, and that questions having to do with discretion should go to those who are not of the Judiciary. If you are going to have a separate body to consider discretion it should be composed of men of wide experience in business matters. Discretion touches business closely, and therefore the men who sit in review should be business men.

Mr. STIKEMAN: Is it your opinion from a practical point of view, not as a public official, that such a court—to give it the name which was given to it in the earlier evidence—in so far as it deals with questions of law should be like a court in the sense that it is divorced from the Department of National Revenue or the taxing authorities?

Mr. ELLIOTT: Oh yes, it should be separate from the administration, an independent court.

Mr. STIKEMAN: It would also seem that if this court is to be independent the appeal procedure should not be so devised as to prevent the department from examining, in advance of going to the court, the grounds of objections raised by the taxpayer to his assessment?.

Mr. ELLIOTT: There are two points there. The administration must first have all the facts. After the taxpayer has set out certain facts in his appeal to the administration, he should not be permitted to present additional facts to the court. That would be disastrous to the whole system, from the administration right up to the highest courts.

Mr. STIKEMAN: You think that a better outline of the procedure would be something like this: that the taxpayer should receive either an assessment or what amounts to an assessment, a notice of intention to assess, and within a certain prescribed period have an opportunity to meet with the proper official, as he has today, and discuss the merits of his case, and that only after that

point and some confirmatory action on the part of the minister, such as an affirmation of assessment or a notice of affirmation of assessment, should the taxpayer be permitted to go further, or should the minister be permitted to go further if he so desires?

Mr. ELLIOTT: That is right. There should be a complete disclosure to the administration, and the decision should be made in the light of that full disclosure. Then if the taxpayer wishes he should go to the higher court, but on the same facts, on nothing new.

Mr. STIKEMAN: From a practical point of view and in the light of your experience have you any comments to offer to the committee on the various suggestions which have been made in the evidence as to the formation of the proposed board to deal with questions of law?

Mr. ELLIOTT: Do you mean in its constitution, its membership?

Mr. STIKEMAN: Yes. You mentioned that a great number of appeals might be expected. Could you indicate how many individuals might be necessary to cope with such a large number of applications?

Mr. ELLIOTT: Well, I do not want to indicate a preference, if that is what you are driving at,—

Mr. STIKEMAN: No.

Mr. ELLIOTT:—between a central body to whom all must come, or a central body to whom some must come, and a body so large that it has its members available in groups of two or even only one in various parts of Canada. In other words, an itinerant court with sufficient membership to send one or two members in various directions across Canada, and thereby as a matter of convenience carry the venue to the place where the taxpayer resides. Their decision would be approved by the central board. These all have their good features. I would only suggest that if we realize we are dealing with decisions that are almost equivalent to statutory directions—laws that must be obeyed by interpretation the same as statutory laws—then it is apparent that this is a very important court or body of persons. The members of this board should in my judgment have a standing that would command respect, for the reason that if they have not that respect people will say, "We will take our case beyond them." There is not the satisfaction that a higher court does afford a person of saying that his case was well considered by capable persons. Therefore you must set up a dignified, qualified, well paid body of persons to deal with things that you are calling small, but in fact they are nearly always concerned with future rights.

The CHAIRMAN: Would you be in favour of regional boards whose members would not necessarily be also members of that central body?

Mr. ELLIOTT: No. I would be inclined to have the focus of power in the board at Ottawa, for regional boards will unquestionably give decisions different from those given by other regional boards on matters that superficially may appear different, but basically the thread of law running through them is the same. I think before the board speaks it must speak as a central organization, the same as the Exchequer Court, which is a central organization, although it sits in various parts of Canada and is thus itinerant in character.

Hon. Mr. VIEN: Do you think the suggested board might be constituted similar to the Board of Transport Commissioners? This body sits as a single board, but it can delegate two or three of its members to hold sittings in the West or the East.

Mr. ELLIOTT: A very good analogy, senator. I think that is correct.

Mr. STIKEMAN: Do you feel that the establishment of such a board would assist or hinder the administrative efficiency at the division?

Mr. ELLIOTT: Technically, the answer would be no because I am not conscious of the need of any court, be it new or old, to assist ministerial discretion. But I do not think that is quite the point. The point is, does the taxpayer feel assisted by this new court? If he does, and there is a demand for it, this being a real democracy, I would say, let him have it. He may not get what he hopes for, but it is one more court he can go to, if his case involves a real principle of law, before he reaches the court of ultimate decision.

Hon. Mr. VIEN: What we had in mind was that the board, once constituted, would hear appeals from any taxpayer, and that there would be a right of appeal from that board to the Supreme Court of Canada.

Hon. Mr. HUGESSEN: On law only?

Hon. Mr. VIEN: I do not think so. Speaking for myself, I would suggest an appeal on law, on facts, on jurisdiction and on discretion. Further, I would suggest that the same board should have full jurisdiction in all these matters.

Hon. Mr. HUGESSEN: No. I meant, would there be an appeal from that board on all questions?

Hon. Mr. VIEN: All questions. I would think that even the Railway Act might well be amended to that effect. In my experience it would have been preferable in all cases that the Supreme Court of Canada should have a right of review not only on questions of law or jurisdiction, but on questions of fact as well.

Mr. STIKEMAN: I think it is important that we should go back to the question I asked the witness as to whether the suggested board would assist or hinder the administrative efficiency of the division. I should have said, would it assist in dividing or helping to bear the general administrative burden, which is very heavy? Because if the Board or court would impair or not assist the division in that respect, it would also to the same extent not be of the value to the taxpayer that you conceived it might be.

Mr. ELLIOTT: I have two questions before me. One is Senator Vien's question and the other is Mr. Stikeman's. I assume it is of the first importance that I answer the honourable senator's question.

The CHAIRMAN: Mr. Stikeman is doing the questioning just now.

Mr. ELLIOTT: Well, I will take direction from the chair.

Hon. Mr. VIEN: Then I must apologize to the committee. I thought that as soon as Mr. Elliott had completed his statement members of the committee would be given the privilege of asking questions.

The CHAIRMAN: Our practice has been to have Mr. Stikeman complete his questions first.

Hon. Mr. VIEN: I misunderstood that.

Mr. ELLIOTT: To answer Mr. Stikeman's question, if there is a court that, as we expect, is to be used to a greater degree than the presently constituted courts, it necessarily follows that there is additional work for us to aid that court with documents, all of which have to be copied and put in order with the necessary covering documents prepared to pass the whole file on to the court that would be established. If there are to be more cases, it means more work for us. That follows, not as a matter of opinion but as a necessary result.

Mr. STIKEMAN: Do you not feel that after the initial phase of appeals—which might release the floodgates—is over, precedents might be established which might lighten the administrative burden by simplifying the problems to be considered, by reason of their having already been considered and in large measure determined?

Mr. ELLIOTT: No, I do not think so. I think we must make it plain that we are approaching this as a ready reference for small taxpayers, that is, to establish a court which will determine questions of law. In that statement there is inherent the thought that we shall make the little fellow the medium, through his cases, of determining the jurisprudence arising on appeals under the Income Tax Act. If he has a real case now he can go to the Exchequer Court.

Hon. Mr. HAYDEN: There is something I do not follow, that is, the assumption that we are discussing the establishment of a board of review for the purpose of giving the small taxpayer ready access to it. I thought it was to be an appeal board for everybody.

The CHAIRMAN: Quite so.

Mr. ELLIOTT: I thought the genesis of the suggestion was that we were trying to assist the small fellow to get into court at little cost.

Hon. Mr. HAYDEN: That is only one element.

Mr. ELLIOTT: I thought he represented 70 per cent of the whole. It comes down, then, to this: Shall we establish another court rather than resort to the Exchequer Court?

Hon. Mr. HAYDEN: Yes.

Mr. ELLIOTT: Then it comes immediately to my mind, why not extend the Exchequer Court if the suggested board was not for the purpose of assisting the little fellow to get into court at less cost.

The CHAIRMAN: Senator Hayden is right. I do not think the committee had in mind the little fellow; the proposed board was intended to cover all taxpayers, large and small.

Mr. ELLIOTT: I repeat my comment, I would feel it very difficult to distinguish between the need of a new court and enlarging the present court.

Mr. STIKEMAN: We will leave that over for general discussion, in which Senator Hayden will probably participate. Do you not feel, however, Mr. Elliott, that the decisions of this board or court would to some extent render unnecessary the standard interdepartmental directives or perhaps limit them to the extent that they make known such matters to the officials of the board?

Mr. ELLIOTT: I do not think it would have much effect, for this reason, we have to determine officially what the law is applicable to all persons, and to do that we have to send out directives. It may happen that somebody in some part of Canada takes exception to a directive, and it forms the basis of an appeal; but before it gets to this new board we have to send out our directive in any event. I fancy this new court would be found to support our directive or determination in the particular case that it applied to. We would still have to send out directives, and ultimately they would either be confirmed or altered by this court. In any event, I do not think it would cut down the necessity of advising our assessors how to behave.

Mr. STIKEMAN: I suggest that as the decisions of the court are built up, and as the law gradually covered the various fields in which it has been necessary to consult various officials and secure uniformity of action through the internal directives, that whether or not those directives are endorsed by the decisions of the court—as they probably would be—the need for them as internal documents would cease, because the public would also be aware of the principles upon which they were founded, and the two would gradually come into conformity. One of the criticsims has been that the public has not had access to the rulings of the Department. I submit the proposed court would remove the grounds for that objection, in that it would make known the principles upon which the Department acted in its general rulings.

Mr. ELLIOTT: The comment on that is that the decisions of the court would only be in substitution of the directives, would take their place.

The second part you touch upon is what I want you to keep in mind, that there is an element of publicity in this. Our directives could have been publicized. Long before we went to court we could publish these directives.

Hon. Mr. HAYDEN: They would still only be directives.

Mr. ELLIOTT: And still only a decision of the court. Both of us might quarrel with it.

Hon. Mr. HAYDEN: Would you not issue your directive prior to the decision of the court?

Mr. ELLIOTT: No. I am just saying that the court's decision takes the place of our directive,—either confirms or changes it.

Mr. STIKEMAN: The taxpayer would be less inclined to contest a ruling when met by the published decision of a court which was available to him as a court of review or appeal?

Mr. ELLIOTT: I think that is right.

Hon. Mr. HAIG: May I remind Mr. Stikeman what Mr. Oliphant said on that very point, that when the taxpayers were able to get to the court of tax appeals, the appeals at the outset were very numerous, but after a certain period there was a marked reduction.

Mr. STIKEMAN: He said there was a tremendous number of appeals and the court was unable to deal with them, but that they began to level off as jurisprudence became available upon multiplicity of points, and the appeals remained at a point of from 890 to 900 a year. But that is not quite on the question I was endeavouring to put to Mr. Elliott.

Mr. ELLIOTT: If I may interrupt, the essence of that is this, the taxpayer is more ready to accept the decision of a court than he is the directive of the Department. That is all there is to that. We have to give the initial directive just the same.

Mr. STIKEMAN: Would you say it might be possible to establish an advisory board to which the taxpayer or the Department might repair for consideration of the exercise of discretion? In answering a question I put to you earlier, I believe you intimated that such a board or committee might suitably take the form of the present board of referees. If I am wrong in that understanding please correct me.

Mr. ELLIOTT: My thought was that a committee or a board of sound business men might exercise a review of this discretion in an advisory capacity. I doubt very much the wisdom of taking the responsibility in this kind of thing wholly away from the minister. The advisory board might hear the taxpayer, but they should not make a final decision overriding the minister's responsibility. As Minister of National Revenue he is responsible to his people for the discharge of his duties, as a reasonable man closely in touch with their affairs.

Hon. Mr. VIEN: But the objection to the present practice was that the minister does not exercise the discretion, that the discretion is being exercised by departmental officials who have already made a ruling.

Mr. ELLIOTT: In the practical sense that is correct, but in the sense that the public look upon the minister in every department the civil servant does the job and the minister takes the responsibility to his people. That is a very good principle and I am suggesting that we should not disturb it. Therefore I suggest an advisory board.

Hon. Mr. VIEN: That would be all right in the initial stage, but when the minister has exercised his discretion as advised by his departmental officers the taxpayer should have recourse to some body who can review that discretion.

The Exchequer Court, as you know, will refuse to review the exercise of discretion by the minister in a case in which he has been in possession of all the facts. The Exchequer Court will say, "It is not our function to exercise the discretion which, under the act, rests with the minister." It has been suggested to this committee that it might be a good thing if a body of some kind were established to review the exercise of discretionary power by the minister, and that that body should be completely divorced from and independent of the departmental officers.

The CHAIRMAN: Mr. Elliott has already said that he thinks the final discretion should remain with the minister.

Mr. STIKEMAN: I do not think Mr. Elliott has indicated the manner in which the board should be set up and I do not think he would wish to make a definite statement on that point. I would like to ask him whether, when suggesting that it might be possible to have such a board, he had in mind that the taxpayer should be permitted to go to it as of right or only after consideration of his case by the administrative officials?

Mr. ELLIOTT: An initial discretionary determination must be made by the administration in all cases. Then the question is: how would it come before this board? One way is this: the taxpayer, having been advised of the discretion, can say, "I wish to have this referred to the board." Then the board, having been given the complete powers that Senator Vien suggests, could raise or lower or otherwise change the effect of the discretion. I am suggesting that the board should be able to review the case and refer it back to the minister in an advisory way, saying "We recommend that this discretion should be exercised in the following manner," or something to that effect. The responsibility rests upon the minister whether he should take that advice or not. Under our constitutional set-up he is not divorced of that business power.

Hon. Mr. HUGESSEN: In other words, Mr. Elliott, you would not allow the board to override the discretionary power of the minister? He would remain the final authority? He might or might not accept the view of the board?

Mr. ELLIOTT: That is right. I imagine that in the vast number of cases he would take their advice.

Hon. Mr. HAIG: But what if he did not?

Mr. ELLIOTT: He is charged with responsibility in public affairs, and he could say, "In the interest of the public I do not think that recommendation is right."

The CHAIRMAN: Mr. Elliott has made that point pretty clear.

Hon. Mr. CRERAR: I would like to ask one question. If the minister's decision should be against the recommendation of the appeal board, what redress would you say the taxpayer should have?

Hon. Mr. HAYDEN: None.

Mr. ELLIOTT: I would not say none. I think there is redress in the larger sense. If the taxpayer thinks that the minister has exercised his discretion in an improper manner, he will have to take it up through his member, I suppose, with a view to having it brought up in the house as a matter of public concern. The member might allege in the house that the ministerial power of discretion is being abused. The minister is responsible for the exercise of his powers, and if they are not exercised in a proper manner he has to suffer whatever results flow from that.

Hon. Mr. CRERAR: But the penalty on the minister could come only from an aroused public opinion?

Mr. ELLIOTT: That is about right.

Hon. Mr. VIEN: Is it not preferable that there should be a court that would make a finding in a judicial manner, rather than that the matter should be brought into the political arena?

Mr. ELLIOTT: The minister is charged with the administration, and these matters of business judgment are part of his duties.

The CHAIRMAN: I think Mr. Elliott has made it very clear that he is not in favour of having the discretionary power taken away from the minister, that he believes the minister should have the final say.

Hon. Mr. HAYDEN: But there is still the question whether there should not be some board to which the taxpayer could apply for a ruling as to whether there has been a proper assessment, after the minister has exercised his discretion.

The CHAIRMAN: Mr. Elliott has said that the taxpayer's only remedy is to go to a member of parliament and ask him to bring the matter up on the floor of the house.

Hon. Mr. HAYDEN: That is the only remedy now, but does he not think there should be a board?

Mr. ELLIOTT: I will answer it again, and I may put it in a little different way. I think the discretion should always be with the minister. After he has exercised discretion in a case and advised the taxpayer of it, the taxpayer may say he is dissatisfied, and the administration could then have the matter referred to the advisory board. Let us assume that the advisory board states that in its judgment the discretion has been improperly exercised. It therefore advises the minister to review his discretion. The minister may say, "I accept that advice and I will alter my decision"; or, contrariwise, he may say: "I will not accept that advice, because in the larger view I do not think we should give that quantum to that particular taxpayer. If we did so it would have too wide an effect across the rest of Canada." Let me give you a rather extreme example. A taxpayer claims 23 per cent depreciation on his machinery because it is used in a certain way. The administration says: "We will not allow you more than 10 per cent, which is the rate common throughout Canada. Your machinery may be slightly different from the general run of machinery, and it may be used under conditions such that the elements play havoc with it, but we do not think you should be allowed more than 10 per cent." The taxpayer is dissatisfied, and the matter is referred to the board. Let us suppose that the board says that due to the location of the machinery and the surrounding circumstances the rate of depreciation allowable should be 23 per cent. The minister may say: "If I allow that taxpayer to deduct 23 per cent for depreciation I will have to raise the rate for depreciation of machinery all across Canada, and I am not going to do that. The taxpayer will get his money back in any event within a certain time, and I am going to allow him only 10 per cent." In other words, he exercises his discretion in refusing to accept the board's recommendation, believing that that recommendation would be detrimental to the public interest.

Mr. STIKEMAN: Witnesses have repeatedly stated to this committee that they feel there should be some method of divorcing the hand which metes out the discretionary decision—whether that decision be reasonable or unreasonable —from the hand that imposes the tax which follows from the exercise of that discretion.

Mr. ELLIOTT: I do not agree with that.

The CHAIRMAN: I think Mr. Elliott has been very clear on the point. We are just rehashing it.

Hon. Mr. HAIG: I think we understand his point. We may agree or not agree.

Hon. Mr. VIEN: To my mind Mr. Elliott has been very clear; he has repeated his answer often in different forms. But what is clear to the chairman or to other members of the committee may appear to another member to call for further question.

The CHAIRMAN: That is so, and we have now come to the point where members may question Mr. Elliott. Our general practice has been that after Mr. Stikeman has completed his examination of a witness, the members of the committee, beginning with the one on the extreme right, put any further questions that they may wish. Now that Mr. Stikeman has completed his questions I am going to ask Senator Vien to ask whatever questions he may have in mind, and we will move right down the line of members so that every one will have an opportunity to participate.

Hon. Mr. CAMPBELL: It may be that a question asked by one member on a particular point will give rise to a question in the mind of another member; and perhaps it would be better to permit questions to be asked out of turn so as to clear up one point before discussing another.

Hon. Mr VIEN: I do not like the procedure you have suggested, Mr. Chairman. I would rather have it understood that each senator is free to ask questions, without being required to speak in turn, as in a school. I suggest that if an answer to one question gives rise to another question in the mind of a different senator, that senator should have the privilege of asking his question then, regardless of where he is sitting.

The CHAIRMAN: I do not see any objection to that. The procedure to which I referred is one that we have been following here with a view to ensuring that every member of the committee gets an opportunity to ask questions. However, if the committee wishes that the questioning be thrown wide open and that we no longer follow the practice of asking questions in turn, that will be all right.

Hon. Mr. McRAE: In this instance, Mr. Chairman, I think that would be preferable.

The CHAIRMAN: Is it the wish of the committee that the questioning be wide open?

Hon. Mr. McRAE: I think in this case that will be preferable, Mr. Chairman, for there are certain members of the committee versed in certain features.

The CHAIRMAN: Is it to be a wide open discussion?

Hon. Mr. BUCHANAN: How long are we to have Mr. Elliott with us?

The CHAIRMAN: We were hoping to complete his evidence this morning.

Is the meeting open now for any member to ask questions?

Hon. Mr. VIEN: Mr. Chairman, I would suggest that inasmuch as we shall have Mr. Elliott's and Mr. Stikeman's statements in print we should wait until they are available before we question these gentlemen. It would also give us the opportunity of summarizing and limiting our questions to essential points.

The CHAIRMAN: Would you suggest that we adjourn now until we get the printed proceedings?

Hon. Mr. VIEN: Yes, unless any honourable gentlemen have questions to put now.

Hon. Mr. CRERAR: I should like to ask Mr. Elliott a question following up his statement a moment ago. Personally, I think it is rather important. If a taxpayer appeals to the board, and the board reverses the decision of the Department, then, as I understand Mr. Elliott's suggestion, the Department is to report the facts to the Minister, who reviews them and may or may not accept the view expressed by the board.

Mr. ELLIOTT: In discretionary matters.

Hon. Mr. CRERAR: Yes, in discretionary matters. If the minister does not accept the view of the board, I ask Mr. Elliott what redress the taxpayer would then have. Mr. Elliott suggested that the taxpayer would go back to his member. This means that his member would ask questions in parliament and the matter would be discussed there. Personally, I think it is desirable, if possible, to keep out of that atmosphere. If not, political considerations are almost certain to be brought to bear, and you will have arguments pro and con, aimed wholly at some sort of political decision. Is that desirable? I cannot think that it is.

Hon. Mr. LEGER: No.

Hon. Mr. SINCLAIR: Do you mean that individual cases would be discussed in parliament?

The CHAIRMAN: It could not be otherwise.

Hon. Mr. HAYDEN: I agree with you, Mr. Chairman.

Hon. Mr. SINCLAIR: Would not Parliament refuse to do that?

Hon. Mr. CRERAR: Senator Sinclair, Mr. Elliott has suggested that the taxpayer might have relief by taking up his case with his member. It would then become a question probably for public opinion to settle. But if the taxpayer could persuade his member to take up the case, or a member learned of it and wanted to make political capital out of it, he would attack the Minister in the House for having over-ridden the judgment expressed by the board. The matter would then get into the arena of public discussion.

The CHAIRMAN: Would not this be the result, Mr. Elliott? The member, if a supporter of the Government, would probably be rather reluctant to attack the Minister of National Revenue of whom naturally he is a supporter. If a member on the other side, he might perhaps be very anxious to do that sort of thing. But would not the Government then be in the position of having to back up the decision of the Minister?

Mr. ELLIOTT: The way we are discussing it that is what I fancy would happen. But the question is: What do you do when a law is passed that you do not like? Public opinion crystallizes and in due course has the law changed.

Hon. Mr. HAYDEN: The law affects exerybody. This might be an individual problem that the rest of the world might not be very much concerned about.

Hon. Mr. CAMPBELL: Has not the taxpayer the same opportunity today if he is dissatisfied with improper or wrongful exercise of the ministerial discretion?

Mr. ELLIOTT: Certainly.

Hon. Mr. CAMPBELL: I suppose you feel that in a practical way it would never happen under the suggestion you have made?

Mr. ELLIOTT: I do not think it would in a practical way, because I believe the Minister in 99·9 per cent of the cases would take the advice of the board. But the point of it all is: Are we going to put him in charge of the administration and say to him that he has no responsibility in matters that rest not on law but on judgment?

Hon. Mr. HAYDEN: You think if you provide for appeals from assessments to a board, which also involve the right to consider the proper exercise of discretion, that would take away responsibility from the Minister?

Mr. ELLIOTT: Yes; and I am not aware that it is taken away in any other country. Somebody told me you asked Mr. Oliphant that question. I looked in the United States volume dealing with the tax court and have been thumbing it over trying to find what I read yesterday, that their courts very properly have not discretion. The point is that discretion is not handed over to the courts. The courts do not want that discretion. Discretion is a very

important matter running through the law in many directions. I do not think it would be wise to hand ministerial discretion over to a board of two or three members.

Hon. Mr. HAYDEN: The board has the right to review the exercise of discretion.

Hon. Mr. CAMPBELL: I should like to ask one or two questions on this particular point, because I think it is rather important to clear the atmosphere. The chief criticism we have had before us in the form of evidence and briefs seems to be against the exercise of the ministerial discretion in certain particular cases, and the inability of the taxpayer to have any tribunal to whom he can go to review that discretion. Your suggestion of an advisory board would in substance afford that method of review?

Mr. ELLIOTT: That is my belief.

Hon. Mr. CAMPBELL: Would it be your thought that that board should communicate its decision or advice to the Minister and to the taxpayer at the time it dealt with the matter?

Mr. ELLIOTT: Certainly.

Hon. Mr. CAMPBELL: So the taxpayer would then have the benefit of the board's advice or decision to the Minister?

Mr. ELLIOTT: That is right; and if the Minister did not adopt it he would know why. Probably the Minister because of some large policy in his mind would feel that the board's advice could be accepted.

Hon. Mr. CAMPBELL: But you do not feel that the board should have power to substitute its decision for the decision of the Minister?

Mr. ELLIOTT: That is correct.

Hon. Mr. CAMPBELL: Let us take one or two particular sections of the Act. Recently we have had an amendment to the section dealing with annuities and superannuation, where Parliament indicated by the language in the section that the amount of the contribution from employer and employee should be increased from, I think, $300 to $900. I understand that before such a plan can come into force it must carry the approval of the Minister?

Mr. ELLIOTT: That is right.

Hon. Mr. CAMPBELL: In other words, the plan must be approved as to amount?

Mr. ELLIOTT: And that it is a pension plan.

Hon. Mr. CAMPBELL: Yes, a pension plan.

Mr. ELLIOTT: Yes, that it is not an insurance plan or a savings plan. It is really a pension fund to take care of his retirement.

Hon. Mr. CAMPBELL: But the Minister also has the power to say, although Parliament has said the contribution may be $900, "I will only allow $300 or $400."

Mr. ELLIOTT: No, it is never exercised in that manner. The maximum is $900. It is left to the taxpayer himself to decide how much it shall be.

Hon. Mr. CAMPBELL: I understand that that is not the case.

Mr. ELLIOTT: Then you are advising me on something that I am not aware of. I doubt that that is so. My thought is, as the head of the division, that they can go to $900. If they want to make it less, that is all right too.

Hon. Mr. CAMPBELL: I raise this point. Assuming the Minister would in that case withhold his approval and exercise discretion so as to limit the amount, say, to $500?

Mr. ELLIOTT: I cannot think of that case because I do not believe it happens.

The CHAIRMAN: You think the taxpayer in those cases has discretion?

Mr. ELLIOTT: Certainly.

Hon. Mr. CAMPBELL: I am assuming the Minister does say to the taxpayer: You are limited to a contribution of $600. Now, under the present law there is no appeal from such a decision, and would you not think—

Mr. ELLIOTT: There would be an appeal in the law there, would there not? The man would say, "By statute I have a right to contribute $900, and the Minister cannot exercise any discretion to deprive me of that right."

Hon. Mr. HAYDEN: There would still be a discretion in his hands up to $900?

Mr. ELLIOTT: No. I think the taxpayer can go up to $900, and no one can stop him. That is a right given to him in law, and no one, minister or otherwise, could take it away under any so-called discretion.

Hon. Mr. CAMPBELL: A case of that kind would be the type of case that might go to this board?

Mr. ELLIOTT: No, that case would go to the courts.

Hon. Mr. CAMPBELL: Under the Act, before setting up the plan you must have the approval of the Minister. No tax question arises because the plan has not been approved. Would you suggest that that type of case might be referred to the board as well for advice?

Mr. ELLIOTT: It is a hypothetical case that I do not think can happen. But if it did happen, I would suggest to the taxpayer that his right rests in law and not in discretion, and therefore the case would go to the courts.

Hon. Mr. CAMPBELL: My question leads up to another question, whether or not it would be advisable to provide the taxpayer with facilities to go to this advisory board on questions of that kind?

Mr. ELLIOTT: On questions of discretion he should have the right to go to the board.

Hon. Mr. CAMPBELL: Before the transaction takes place?

Mr. ELLIOTT: Oh, business has got to go on, and we have to exercise these discretions every day. You cannot say, "Before I exercise discretion I will refer what I am going to do to the board," because in that event the board would become more a board of assessors. We have to get on with the job.

Hon. Mr. CAMPBELL: I do not know whether I make my point clear. Suppose a taxpayer is wondering how a proposed transaction would be affected by the discretionary decision of the minister, and that after discussion with the minister the taxpayer learns that the discretion would be exercised in a manner detrimental to him and which he feels would be contrary to the intention of the Act. Should the taxpayer have the privilege of going to this advisory board with such a problem?

Mr. ELLIOTT: I would think so, yes. He would be quarrelling with the quantum of the discretion.

Hon. Mr. CAMPBELL: If the board were constituted as a court, the taxpayer would of course not be able to do that.

Mr. ELLIOTT: No.

Hon. Mr. CAMPBELL: Would you see any objection to designating some of the members of the proposed court of tax appeals as an advisory board?

Mr. ELLIOTT: That could be done, but the members concerned would be functioning in two distinct capacities. In one instance they would be members of a court of law, and in the other they would be advisers on discretionary matters, without final jurisdiction. There could be a merging of personnel, but I suggest different bodies for purposes of clarity.

Hon. Mr. HAIG: Mr. Elliott, your suggestion is that if the proposed board advised the minister that they did not agree with the exercise of his discretion in any case, the minister should be free to accept the advice of the board or stick to his own opinion?

Mr. ELLIOTT: That is right.

Hon. Mr. HAIG: Then for redress an aggrieved taxpayer would have to go to a member of the house—preferably, I suppose, a member who did not support the government?

Mr. ELLIOTT: I did suggest that the matter could be brought up through a member, but would a taxpayer not go to a board of trade or a chamber of commerce and say: "Here is my case. I want to know if I can get public opinion in support of my view that this law is not good. Will you not support me?" His first object would be to get public opinion on his view of the law.

Hon. Mr. HAYDEN: It is not a case of the law.

Hon. Mr. HAIG: If I were a member of the other house, not a supporter of the government, and an aggrieved taxpayer came to me with a complaint, I would ask him to let me see the correspondence showing that the board had recommended that the minister revise his discretion and that he had refused to do so. Then I would consult other people, and if I came to the conclusion that the minister's treatment of that taxpayer was in keeping with a general practice, I would bring the matter to the attention of the house. I think I would stir up quite a controversy that would get wide publicity, and in that way there would be an opportunity for the expression of public opinion.

Hon. Mr. HAYDEN: If the minister did not follow the advice of the board he would have to be prepared to defend his reasons and to submit that they were better than the reasons advanced by the taxpayer.

The CHAIRMAN: I do not think Senator Haig has finished his question.

Hon. Mr. HAIG: The minister can say now what salaries a company may pay to its officers. During the whole period of the depression, from 1932 to 1935, one big department store in Winnipeg made a lot of money, whereas another one lost a lot. We in Winnipeg think—we may be wrong—that the manager of one store was responsible for its making so much money, and that the manager of the other store was responsible for its losing money. Now, who in the world except the directors of the stores concerned is able to say how much those managers are worth? Yet at the present time the minister, under his discretionary power, has the right to tell the directors of store A that they are paying their manager too high a salary, that they should not pay him any more than the manager of store B receives.

Mr. ELLIOTT: The board could hear reasons why the directors considered they were justified in paying a certain salary. I am quite free to say that for a time during the war the 100 per cent tax was responsible for many increases in salaries; and then the salaries order was passed and put a stop to that at one swoop. In a case such as you mention the board would listen to the reasons why the company paid such a high salary, and they would come to their decision as business men, for it is not a question of law. The board might say "We think the company did not pay a higher salary than it should have paid," and the minister would probably accept that view. Many of the comments suggest that the minister would act unreasonably, but it is likely that he would be more reasonable than ever, for he would have the advice of the board to guide him. Nevertheless, he should be free to adhere to his decision when he is convinced that acceptance of the board's advice would have an undesirable effect upon the whole taxing system. It is his job to take the final responsibility; his reasons must take priority to the board's reason.

Hon. Mr. HAIG: That law as to salaries paid by the companies is still in effect?

Mr. ELLIOTT: Not so directly as you put it. It is there, though.

Hon. Mr. HAIG: There was a discussion relating to this in the House of Commons last night. I wondered why the managers of the Massey-Harris Company and the Cockshutt Plow Company got such large blocks of stock so cheaply. Was the object not to get over your directive?

Mr. ELLIOTT: I should have to investigate the case before I could answer that.

Hon. Mr. CAMPBELL: Assuming that the manager of a company is being paid a salary of $x which has been approved by the salaries control board, has the minister not power to say that the salary is too high and that the company cannot deduct the whole amount as an expense?

Mr. ELLIOTT: In theory, yes; but the same minister is responsible for the administration of the salaries order and of the income tax, and he is not likely to get himself in the fix of saying, in one of his capacities, that a salary is reasonable, and afterwards, in another capacity, ruling that the salary is unreasonable.

Hon. Mr. CAMPBELL: Is that kind of thing not likely to happen in the district offices?

Mr. ELLIOTT: No, I should not think so.

The Committee adjourned to the call of the Chair.

1946

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

## SPECIAL COMMITTEE

Appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon.

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No. 10

THURSDAY, MAY 9, 1946

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CHAIRMAN

The Honourable W. D. Euler, P.C.

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WITNESS:

Mr. C. Fraser Elliott, C.M.G., K.C., Deputy Minister of National Revenue For Taxation.

OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1946

## ORDER OF APPOINTMENT

*(Extracts from the Minutes of Proceedings of the Senate for 19th March, 1946)*

Resolved,—That a Special Committee of the Senate be appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon;

(2) That the said Committee be composed of the Honourable Senators Aseltine, Beauregard, Bench, Buchanan, Campbell, Crerar, Euler, Farris, Haig, Hayden, Hugessen, Lambert, Léger McRae Moraud, Robertson, Sinclair and Vien;

(3) That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. MOYER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

THURSDAY, 9th May, 1946.

Pursuant to adjournment and notice the Special Committee appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, met this day at 12.15 p.m.,

*Present:*—The Honourable W. D. Euler, P.C., Chairman, The Honourable Senators Buchanan, Campbell, Crerar, Haig, Hayden, Hugessen, Lambert, Léger, McRae and Sinclair—11.

*In attendance:*

The Official Reporters of the Senate. Mr. H. H. Stikeman, Counsel to the Committee.

Mr. C. Fraser Elliott, C.M.G., K.C., Deputy Minister of National Revenue for Taxation, was heard and was questioned by counsel.

At 1.10 p.m., the Committee adjourned until 10.30 a.m., Tuesday, 14th May, instant.

ATTEST:

R. LAROSE,
*Clerk of the Committee.*

# MINUTES OF EVIDENCE

THE SENATE,

THURSDAY, May 9, 1946.

The Special Committee of the Senate to consider the provisions and workings of the Income War Tax Act, etc., resumed this day at 12.15 p.m.

Hon. Mr. EULER in the chair.

The CHAIRMAN: Gentlemen, when we adjourned on Tuesday last I believe the members were questioning Mr. Elliott. We shall continue with questions by members this morning.

Hon. Mr. CAMPBELL: Mr. Chairman, I should like to follow up one or two questions I asked Mr. Elliott the other day. I asked whether there would be any objection to having a body of the board of tax review designated as a body for the consideration of discretionary matters arising out of the act. To follow that up I should like to suggest a procedure.

Assuming that we had a central board consisting of five men, three of whom might be constituted a committee to review the exercise of ministerial discretion, would it be advisable to refer matters to them before or after assessment?

Mr. ELLIOTT: I should think after assessment. I am very strongly of that opinion, because if you referred it to them before assessment they would become an assessing body, which I do not think is in the mind of this committee or any other group.

Hon. Mr. CAMPBELL: There are so many discretions which must be exercised under the act before assessing that it would be impractical to refer all questions to such a board.

Mr. ELLIOTT: I would think so.

Hon. Mr. CAMPBELL: Your suggestion is that if there is to be a reference it should be after assessment and upon application of the taxpayer.

Mr. ELLIOTT: That is correct.

Hon. Mr. CAMPBELL: Would that be in the nature of an appeal from the assessment?

Mr. ELLIOTT: The answer is yes, but it needs some explanation. An appeal in the minds of the general public has a formality about it, born of the word being used in courts. Because of that formality they feel the appeal has to be set forth by lawyers and persons highly skilled. If the word "appeal" could get a broader meaning—

Hon. Mr. LEGER: Would the word "review" be more suitable?

Mr. ELLIOTT: —so that any taxpayer could give notice that he desired to have his case reviewed, it would be better. Any other word that has not got the meaning I just described attached to it could be made use of. I envisage the operation of this procedure in such a manner that the taxpayer will come himself, and it is quite unusual for an appellant to go into court, although he has every right to do so.

Hon. Mr. CAMPBELL: Would there be any objection to adopting the practice by which a notice of intention to assess might be served, particularly in cases where there had been an exercise of some ministerial discretion before making the assessment?

Mr. ELLIOTT: I know there is something akin to that in force in the United States, but it strikes me that to give notice of intention to assess is only adding an unnecessary step. If you have made up your mind to assess, then let us put the matter into progress and assess. Then the next step is another progressive step.

Hon. Mr. HAYDEN: But you do that in some fashion now, Mr. Elliott. For instance, under Section 32A your local inspector may say that here is an opportunity to say something because we think the circumstances indicate that the matter should be referred to the Prices Board.

Mr. ELLIOTT: We are thinking of assessing in the broad, progressive sense. When you get into section 32A you have a matter of great concern; usually large sums of money are involved, and back of it there generally is some highly technical and skilled moves. I do not think I would bring that thought into the generalities that we are discussing here.

Hon. Mr. CAMPBELL: I was trying to find a practical way by which the question could be referred to this board. If you make an assessment, then the taxpayer might be entitled to file an application for consideration of the question. Do you suggest he should then have a right to go before this board?

Mr. ELLIOTT: Yes, very much so. You mean by himself?

Hon. Mr. CAMPBELL: Yes, by himself.

Mr. ELLIOTT: And he should not only have a right to go through a legal agent or accountant, but by any friend or business person in whom he has confidence.

Hon. Mr. CAMPBELL: He would not be dependent upon your department for granting permission to go before the board?

Mr. ELLIOTT: No, let him go as a right.

Hon. Mr. CAMPBELL: That is there should be some simple procedure by which he would serve a notice?

Mr. ELLIOTT: Simple and informal.

Hon. Mr. CAMPBELL: Would there be any objection to having an appeal in cases where the minister refused to follow the advice of the board in exercising his discretion?

Mr. ELLIOTT: Yes; we must not cut off his appeal at any point. Where the minister makes a decision on the discretionary side, and if the minister did not accept the advice of this board, then of course the taxpayer should have the right to proceed to the courts in the normal, now-established method of appeal. I was going to point out that he would have no success in the constituted courts on the question of discretion.

Hon. Mr. HAYDEN: Unless we change the law.

Mr. ELLIOTT: Unless we change the law, which I have suggested will be done.

Hon. Mr. CAMPBELL: Assuming that the taxpayer appeared before this board, and the board advised the minister that the discretion should be exercised in a certain manner, and the minister refused to accept the advice of the board. Under those circumstances I am suggesting that the taxpayer might have the right to appeal to the courts, and the courts be given the power to review the discretion.

Mr. ELLIOTT: Well of course one never objects to a suggestion, but I do think it is inappropriate for the reasons that I gave before; that the minister is charged with matters that touch the affairs of the public insofar as judgment, reason, or let us say, common sense are concerned; that is the function of the minister. The courts are not there to be reasonable men, or substitute their opinion for matters that touch the public in general on this kind of question.

The judges, being highly skilled in the law, desire to retain their duties in that field alone, and it has been so expressed in some cases. They do not wish to substitute their common sense view for the common sense view of the public administrator and the public representative, namely the minister. It is asking a great deal of the courts to do that.

Hon. Mr. CAMPBELL: If we constitute a court of tax appeals, as we have talked about, would not that court over a period of time gain great knowledge about the practical ways, as well as the legal ways, and could determine these questions as well as the minister or any official in the department?

Mr. ELLIOTT: I would not care to say that any official of the department, by reason of being in touch day by day with the problems that arise, would be any more skilled than any other person of normal mental capacity and experience. Because a civil servant has done the same thing multiple times does not say that thereby he is more skilled than the man who has done it a few times, but exercised good judgment in those few cases. One man is capable of coming to a proper conclusion in a short time, while another man might take a very long time to come to a proper conclusion; but as between the two of them they both might have equal ability in respect of any particular obligation, even though one had done it infrequently and the other frequently. That is hardly the way to measure ability, upon day to day activities. The real point as I see it is, do you wish to substitute the opinion—and I repeat the word "opinion"—of some other group of persons for the minister who, technically, is charged with the administration of this law, when no question of law is involved. I think that we are letting him out of a responsibility to the people that he must accept.

I gave an example the other day of the board stating that they thought a particular asset should have a very large depreciation; and the administration advises the minister that that is a very widespread matter of public concern. He therefore does not accept the board's opinion. It is just the same as making a new law. The respective ministers bring in their various bills, and they have to answer to the public for what they do with those laws. In the administration of great laws, such as the one we have here, touching so many people, the minister is in the same position as if he introduced bills in the house; he has to answer to the public for the laws that he makes. I do not think the law should be made based upon the opinion of judges in the courts. They interpret the laws that are made but they do not make them.

Hon. Mr. HAYDEN: They are bound to determine the facts.

Mr. ELLIOTT: We must always keep in this realm of discretion; and they can determine the facts.

Hon. Mr. HAYDEN: The exercise of the minister's discretion may proceed from a wrong conclusion drawn from the facts.

Mr. ELLIOTT: That would be a mistake in law, which the courts today would have a right to consider.

Hon. Mr. HAYDEN: I am not so sure that they would have the right.

Hon. Mr. CAMPBELL: We are trying to find some answer to the objections taken by every witness appearing before this committee, and in every brief submitted to it, in respect to the minister's final determination of the tax liability where discretion is exercised under the act.

Mr. ELLIOTT: You must consider whose opinion you will take last.

Hon. Mr. CAMPBELL: That is what it amounts to.

Mr. ELLIOTT: That is what you are doing. If you want to leave the last opinion to the courts, I think that is inappropriate, and is out of line with our general basic procedure in matters judicial. I should like to leave it where it now is.

Hon. Mr. HAIG: Mr. Elliott, for instance, if I file my income returns, it goes through a certain routine and you or your officials make an assessment, and I am dissatisfied with the assessment; I then appeal to this assessment appeal board consisting of, say, five men. The appeal board hears the whole facts of the case, and comes to a decision that the assessment is wrong, that they proceeded probably on, what they think, was an improper line of interpretation of the law. The suggestion made on Tuesday was that the minister would still be able to override the board's decision.

Mr. ELLIOTT: No, that was not my suggestion. I said that if they come to a wrong decision, as we think, in a question of law.

Hon. Mr. HAIG: It is not a question of law; it is your discretion that arises from an interpretation of the law, with the facts, because that is what actually happens. I suggest that if you study the statutes of every province in Canada, and of the Parliament of Canada, you will find that where judges had the right to do what I am suggesting this tax appeal can do—and they have the right to do that—when they found anything repungnant to public opinion the government of the day always brought in new legislation overcoming that situation. That happens every day Parliament is sitting. I suggest that would be a better way to approach the problem than by causing public agitation. The minister would have control and could go to parliament, and the government could introduce and pass the necessary legislation. Would not that be better procedure than having individuals get after their members and bring pressure on parliament to make a change?

Mr. ELLIOTT: I think there is a portion of your statement which is not sufficiently clear. You have stated that the judge in giving his decision indicates that a law is repugnant to public opinion. I do not think the judges, strictly within the ambit of their requirements, are acting properly when they say this or that law is repugnant to public opinion.

Hon. Mr. HAIG: Thay say it all the time—obiter dicta.

Mr. ELLIOTT: I am suggesting that this committee should not go on record as approving obiter dicta of judges outside the ambit of their official duties. Judges are doing that from time to time, but it is highly improper, and, if I may respectfully suggest, an adverse comment with respect to that by this committee would be better for the country than commendation. However, we have got into a field that has not much to do with taxation.

Hon. Mr. HAIG: I am a radical, I must admit, and I think the judges are right in doing that sometimes.

Mr. ELLIOTT: You do agree with their going outside the ambit of their official duties?

Hon. Mr. HAIG: Yes, I do.

Mr. ELLIOTT: Do you agree with any official going outside the ambit of his official duties, whether he is a judge or a civil servant or anybody else?

Mr. HAIG: Let me give you an illustration. The other day Mr. Justice Adamson of the Court of King's Bench of Manitoba, in the course of granting a divorce, said it was about time that the divorce laws of this country were reconsidered. He did not have to say that when granting a divorce. His experience of twenty-four years on the bench, and of fifteen or eighteen years in trying divorce cases, had led him to that conclusion, and in making the statement I am not sure that he did not perform a really good service.

Mr. ELLIOTT: Are you telling me that with a view to getting a response from me?

Hon. Mr. HAIG: No.

Mr. ELLIOTT: I could make a response.

Hon. Mr. HAIG: If a taxpayer took his case to the court of appeal and the minister thought the court gave a wrong decision, why could he not then bring in a bill to make clear what, in his opinion, the act ought to mean? Then public opinion would be registered through members of the House of Commons and of the Senate. That would seem to me a better way to proceed, rather than your way, which is the reverse of that.

Mr. ELLIOTT: No, I would not call it quite the reverse. I am saying that people should not proceed beyond the responsibilities with which they are directly charged, and I do not think our courts as yet are charged with setting up their opinion against the opinion of the elected representatives of the people. I do not think we have gone that far, but that is what you are suggesting when you suggest that the courts should have the right to review the minister's opinion. I do not think that is basically sound.

Hon. Mr. LAMBERT: Mr. Elliott, could you define as nearly as possible what you consider should be the limitation of the minister's discretionary powers? How far would you go in specifying in the act where the minister should exercise discretionary power? I understood you to say a moment ago that you thought he should have discretionary powers in connection with the law.

Mr. ELLIOTT: No, not with the law; I have never said that. That is a complete misunderstanding.

Hon. Mr. LAMBERT: In other words, the minister would have no power to reverse the decision of the board in a case concerning the matter of law alone?

Mr. ELLIOTT: If a taxpayer objects to an assessment and the point involved is either fact or law, but principally law, he has the right to appeal. If the court of tax appeals that we have been talking about is set up, he could appeal to the that, but otherwise he could appeal to Exchequer Court. The minister has nothing further whatever to say about it. If the court finds as a matter of law that the decision of the administration was wrong, the minister can appeal to a higher court. If the position of the taxpayer is sustained all the way through, the decision of the last court ends the matter.

Hon. Mr. LAMBERT: Would you leave the discretionary power to the minister wide open as to appeals on fact?

Mr. ELLIOTT: I think the matter of discretion, being a matter of opinion, should be left entirely to the minister.

Hon. Mr. LAMBERT: I would not agree with that for a moment.

Hon. Mr. HAIG: Nor would I.

Hon. Mr. HAYDEN: Mr. Elliott, representations have been made to the committee to the effect that there should be a limited period for the making of assessments. Have you any view on that?

Mr. ELLIOTT: I am not quite sure that I appreciate the point.

Hon. Mr. HAYDEN: A taxpayer files his income tax return for 1945 on the 30th April this year, let us say. The suggestion is that the department should be allowed no longer than a certain period—say two or three years—within which to examine the return and make an assessment.

Mr. ELLIOTT: They have that system in the United States, and I think the period for assessment is limited to five years. If an assessment is not made by then, the return as filed must be accepted. Now, how does that work out in practice? I inquired while in Washington. I was dealing with other matters, agreements, but we talked in general, and I asked: "In dealing with millions of taxpayers, how do you handle those returns that you have not been able to scrutinize carefully by the time that the end of the five-year period approaches?" The reply was: "It is very simple. In each of those cases we send an assessment which is so high that it is sure to be appealed, and then we have got all the time we need to think about it." That is an undesirable practice.

There are two ways in which the Crown can do business. It can do business, as the saying is, expeditiously, that is, by rushing things through. If you gave me a large enough appropriation to permit me to engage an unlimited staff at attractive salaries, I could put on enough people to get all the assessments out within a year, or even within six months. Of course, if the work was all done in six months the staff would be idle for the next six months, and the Government that defended that kind of thing would not last long. That would be a gross waste of public funds. On the other hand, you should have enough staff so that you can get through the vast bulk of your work within a year. But there is always a small percentage of complicated, difficult returns that require consideration and consultation and therefore take time. The assessment of those returns cannot be done within a year. Each of the persons in that small percentage of taxpayers knows perfectly well why he is not assessed within the year; he knows that his return is complicated and he really expects some delay in the assessment.

Another point to be borne in mind is that in assessing returns of the major taxpayers whose returns are more or less complicated, you must send auditors out to places of business to scrutinize the books of accounts. It is not regarded as good administration to send an auditor every year to a place of business, and in point of fact we do not do that. If a company has a complex business we send out an auditor with two or three years' returns in his brief case. It is not that we have waited to assess, but we wait to examine. It is more satisfactory to the taxpayer to have an auditor from the department evefy third year instead of every year, because it costs the taxpayer something in time and bother to give the auditor the books he requires and to do whatever else happens to be necessary in helping to have the audit made. The making of audits in this way causes some delay in assessing. The range of delay that must normally be considered reasonable is much more than two years. Mark you, the year has gone by before we ever get the return. Indeed, the returns come to us four months late, if everybody is on time. And included in those returns are thousands from businesses, partnerships and proprietorships, which returns must all be considered carefully in order that the appropriate tax may be applied. The delay allowed by the statute for the filing of returns is partly responsible for the feeling in the minds of many people that there is a delay in the making of assessments; whereas, as a matter of fact, there is really no delay, when one considers the character of our business.

Hon. Mr. HAYDEN: I understand that it has to be dealt with as a continuing business, and that all the work for each year cannot be done in six months. But when an assessment is made after a lapse of three or four or five years and the tax is found to be higher than the taxpayer had estimated, there is an accumulation of interest over that period of time. Now, if the procedure necessarily requires the range of time that you have suggested—and I am not saying that it does not—what about the levying of interest by the Crown in those circumstances?

Mr. ELLIOTT: In those circumstances—I emphasize those words—there is a great deal in what you say. But let us examine it. Here is a complicated file that takes the time to constitute the circumstances to which you refer. There is a liability of perhaps $500,000. Another taxpayer doing substantially the same business, so calculated his affairs in relation to the law, which all are presumed to know, that he paid his tax of $500,000 on the 30th of April following the year in which the income was earned. That second taxpayer is thereafter deprived of the use of that $500,000; he can no longer get any yield out of it. The other man, though, who was not so careful to comply with the law, has the use of the $500,000 for a period of perhaps two or three years. Say the money is worth 3 per cent to him. That means, it yields him an annual income of $15,000; so in two years he would get $30,000, and in three years

$45,000. That income would arise because of his incorrect calculation at the time he filed his return. I suggest that the balance between two such taxpayers is not properly held unless interest is charged on the amount by which the one taxpayer is short in the remittance accompanying his return. It may be that the rate of interest charged by the department is too high, but that is another point.

Hon. Mr. HAYDEN: You have given one illustration only, but take a case where the taxpayer's assessment is increased by an exercise of the minister's discretion. How can a company anticipate, for instance, what the minister's attitude will be towards certain amounts claimed for salaries and expenses?

Mr. ELLIOTT: The manner of determining the tax does not touch the question of equality of treatment as between two taxpayers.

Hon. Mr. HAYDEN: You are just staying in the centre of that road. The conditions affecting the operation of a certain taxpayer's business may be different from those affecting the business of a competitor. For instance, a taxpayer may be convinced that the salaries and expenses which he claims as deductions are reasonable and legitimate, but the minister, at the instance of departmental officials, may decide that the salaries were too high and that some of the expenses were not wholly exclusively and necessarily laid out for the purpose of earning the income. That taxpayer may not receive his notice of assessment until four or five years after filing his return, and then for the first time he learns that he is assessed a larger amount than he had in all good faith calculated to be payable by him. Is it fair that he should be charged interest on the amount of the increased tax over that period of four or five years?

Mr. ELLIOTT: I would accept that as a very rational statement up to the point where you speak of four or five years. Let us say some reasonable number of years afterwards. Leaving that out of your statement, I would answer it this way. If the expenses which he incurred are not proper expenses within the ambit of the law as an allowable deduction, then it simply means that although the business man exercised what he thought was good judgment, he did not exercise good judgment in law in filing his return. Therefore he owes more tax. That is the point at which I say one man has paid all he owes within the ambit of the law; as to the other, no matter how good his reasons may be, exception should be taken to the deductions because they are of a character that you cannot allow under the Income Tax Law.

Hon. Mr. HUGESSEN: He has to try to put himself in the mind of the Minister as to what discretion the Minister will in future exercise.

Mr. ELLIOTT: Yes. But of these discretions we speak as though the Minister were some unreasonable gentleman that made unreasonable decisions. I suggest that if you examine the thousands of discretions exercised you will find the evidence is overwhelming that in the vast majority of cases he is a very reasonable gentleman.

Hon. Mr. HAYDEN: We are only concerned with the occasions that involve exercise of discretion which is against the view of the taxpayer.

Mr. ELLIOTT: As I say, he would have his board to advise him in those unusual cases.

The CHAIRMAN: Mr. Elliott, in this matter of delay, would you say that even in the small percentage of what you term difficult cases it would be possible to put a period to the term beyond which you should not delay matters?

Mr. ELLIOTT: It may be ironical, Mr. Chairman, to suggest with regard to discretion that if in the opinion of the Minister a business man acted reasonably, let it be in order that the Minister should in his discretion cancel interest.

Hon. Mr. HAYDEN: There might be some value in that.

The CHAIRMAN: There are cases—you know what they are—where final decisions have been held over—I do not say delayed, although I think I might use the word—for five or even six years. Would you think it would be reasonable to say that even in those cases that are of a complicated nature no final decision could be given in a shorter time that that?

Mr. ELLIOTT: Well, if I appreciate the point you are making, Mr. Chairman, it means that after a certain delay no interest should be charged.

Hon. Mr. HAIG: That is what I was going to ask you.

Mr. ELLIOTT: There is much reason in that.

Hon. Mr. HAIG: Say, after three years no interest should be charged.

Mr. ELLIOTT: I should think every reasonable man would say there is a lot in that suggestion.

Hon. Mr. CAMPBELL: It is a fact, is it not, that the Minister does often allow expenses which technically would not be allowable under the Act, particularly with respect to refunding expenses?

Mr. ELLIOTT: I think that is going on now, but I should add—

Hon. Mr. CAMPBELL: Yes. But is any effort being made to collect together sections of the Act which, we will say, are ambiguous or not in accordance with the practice of the Department, with a view to getting them amended?

Mr. ELLIOTT: I think we have this in our mind, that the law since 1927, when it was last consolidated, has had so many amendments that the time is ripe for consolidation, and in making that consolidation your suggestion would necessarily be a consideration.

Hon. Mr. CAMPBELL: There has been a lot of objection taken to certain sections of the Act and certain provisions where there is ambiguity.

Mr. ELLIOTT: Yes.

Hon. Mr. CAMPBELL: They say that if a certain transaction is complicated a ruling has first to be obtained. It is a fact, is it not, that where there is an ambiguous section which may affect the contemplated transaction, a ruling may now be obtained from your Department in advance?

Mr. ELLIOTT: That is right; it is done. But you have branched off a little from your first point. I would like to comment on your first by saying that if there be ambiguity, emphasized by experience either by the public or the administration, or both, one would naturally say: Let the ambiguity be written out of the statute, let it be clarified.

Hon. Mr. CAMPBELL: Yes.

Mr. ELLIOTT: As to getting an opinion as to what a section may mean under a given set of circumstances that may yet arise, we endeavour to indicate what the law might be with respect to that given set of facts. That is always very dangerous, for this reason among others. It usually happens that a great organization—it does not happen in small ones at all—is going to make a major move and the directors want to indicate to the administration what it is. We say: "If you intend to carry out the following plan, in point of fact it would look as though there is, or is not, a liability." We give that opinion. Later on when they come to their shareholders' meetings or board meetings, on the advice of their legal and accounting consultants they may say, "We will change it this way and this way." There may be good business reasons for doing so. They end up by the general plan being carried out, but varied in certain details. This means a different set of facts. It is like an architect building a house. You get an estimate based on his plans, but as things progress new thoughts are found to be business-wise or home-wise and desirable, and the plans are all changed. They do come back later on and say, "Oh, we know we are liable now, but we took your opinion before we adopted the plan." So it is a question whether the ultimate facts are in accordance with the original sketch.

Hon. Mr. CAMPBELL: That shows the importance of having the language in the statute as clear as possible.

Mr. ELLIOTT: I think it goes beyond that. I would say: If you want an opinion on a set of facts do not depart from those facts one iota.

Hon. Mr. HAIG: We had one or two representations made where companies were refinancing. There is a lot of that going on in Canada just now. The cost of that refinancing, they claim, has been charged against one year, whereas it should be spread over the life of the bonds.

Mr. ELLIOTT: It should not be charged at all to income; it should be charged to capital.

Hon. Mr. CAMPBELL: The statement is that those refinancing charges should be amortized over the period of the bond or debenture issue as part of the cost.

Mr. ELLIOTT: You would have to change the law to do that and depart from the principle that only those expenses necessary to earn income are allowable. If you start to allow capital expenditures, then you take the first step towards taxing capital gains. I do not think we in this country would be wise to have capital gains taxed, because we are an expanding country and want capital for its development. Furthermore, if you bring in capital gains into your income tax return you have to allow capital losses, and that is not so good for the Exchequer.

Hon. Mr. HUGESSEN: I think the case is a little different. It is this: If a company refinanced its bond issue, for instance, by new bonds at a lower rate of interest, then what in fact they are doing is to increase for the future their taxable income. It was put up to us that that being so, it would be reasonable to allow the expenses of that operation to be charged against income over future years, inasmuch as it was resulting in greater income during those years.

Mr. ELLIOTT: The way you put it one would have to say, that is very reasonable. In other words, the bond discount should be assimilated to the interest rate.

Hon. Mr. HUGESSEN: Yes.

Mr. ELLIOTT: Because it is only an indirect way of paying for the money you are going to use. But let us look at it in this way, in regard to some companies that are still closely held, because we must try to have a law that touches everybody. The company states, "We will issue bonds to our shareholders at a great discount, not a normal discount." That is obviously in our minds in discussing this problem. It might be a discount of 1 per cent or 2 per cent, but they say, "We will issue our bonds at a discount of 10 per cent." I remember this actually happened to a limited group. Then the bonds are redeemable within a period of ten years. Clearly that company in ten years expected to be able to redeem those bonds. When the bondholder got $100 for the $90 he put up—if your proposition is accepted that the discount should be allowed as an expense—one should say that the bond when redeemed should constitute income so far as that $100 is made up of the $10 difference between the $90 and the $100 that was redeemed. It is quite a difficult thing to say to a bondholder at the time of redemption when he gets the $100, "You have got income there, because those bonds were issued at a discount of 10 per cent. Therefore you have 10 per cent more than you put up and a yield on your money. That is interest or it can be assimilated to interest." He will say, "Why, no, that is the redemption of my bond." Then the fellow who bought the bond from him will say, "I bought this bond, issued at 10 per cent discount, for $95. Now it is being redeemed at $100. Are you going to tax me on the

$10?" The problem is so difficult that you cannot follow it. There the circumstance is that the bond discount being in the realm of capital should not be brought within the ambit of the law. It lends itself to a good many undesirable features.

Hon. Mr. CAMPBELL: Would not that still be controllable under the present law? I recall a case in which there had been a big discount taken and even the interest charge was not allowed. The bonds on the face of them carried an interest of 5 per cent. The only amount allowed as a deduction was 5 per cent on the actual money paid for the bonds. That was upheld, I think, in the Supreme Court of Canada.

Mr. ELLIOTT: That could be. I certainly would not dispute your recollection of a factual case. That is quite beyond what I am here for. I will accept that statement, but let us think that out for a moment.

For instance, take a substantial company, not too widely held, decides to put out a bond issue under the laws as they now exist. Interest of course is an expense, and thereby saves the company the tax on the corporate profits which would be greater if the interest rates were lower. These shareholders, being not too great in number, say "Let us put on a bond issue, and thereby invest our money in our own company; but we will get, not a normal and reasonable rate of interest in the community, but will put it at, say, 10 per cent." They thereby save the corporate taxes, and strengthen their own equities, by the weight of tax on the difference between a normal rate of interest, of say 4 per cent, and the 10 per cent, which would be 6 per cent per annum. On a substantial bond issue it might keep the company down.

The CHAIRMAN: The shareholders would pay higher individual income tax because of the high rate of interest.

Mr. ELLIOTT: Yes, but I repeat that their equities are being strengthened by saving of corporate tax, due only to the excess rate of interest provided in the bond issue. These are incidental cases; they do not arise, but they are the kind of cases you have to take care of.

Hon. Mr. CAMPBELL: At present the act gives the right to disallow part of that interest.

Mr. ELLIOTT: I think it does.

Hon. Mr. CAMPBELL: And you would be fully protected in respect of any amortization over a period of years.

Mr. ELLIOTT: Again you have to introduce discretion. We are back to the stage where instead of cutting down discretions we are increasing them.

The CHAIRMAN: It is now 1 o'clock and time to adjourn. Is there any reasonable likelihood that we can complete the hearing this morning?

Hon. Mr. BUCHANAN: Will Mr. Elliott finish to-day?

The CHAIRMAN: That is what I should like to know.

Hon. Mr. BUCHANAN: I have some questions I wish to ask him.

The CHAIRMAN: If the committee does not wish to sit further now we will adjourn until Tuesday next, if that suits Mr. Elliott.

Mr. ELLIOTT: I am entirely at the pleasure of this committee.

Hon. Mr. HAIG: I move we adjourn until 10.30 next Tuesday morning.

Mr. ELLIOTT: May I make a comment, which perhaps might not be considered in order, as to whether we as a committee wish to go into the rulings of the department on this or that set of cases, or whether we want to set up some conversation on policy in the broad sense.

Hon. Mr. HAIG: No, we agreed not to do that. This committee agreed not to report on policy.

Mr. ELLIOTT: You do not quite get my point. There are a great many rulings on particular sets of circumstances, and we conjure up these sets of circumstances from various members of the committee. Is it appropriate that I should give rulings where are conjured up sets of facts? I am suggesting that perhaps that is inappropriate?

Hon. Mr. HAIG: I think you are correct.. We do not wish to do that.

The CHAIRMAN: There is a motion before the committee to adjourn until next Tuesday. Is there a seconder?

Hon. Mr. SINCLAIR: Seconded.

The Committee adjourned until Tuesday, May 14, at 10.30 a.m.

1946

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

## SPECIAL COMMITTEE

Appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon.

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No. 11

TUESDAY, MAY 14, 1946

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CHAIRMAN

The Honourable W. D. Euler, P.C.

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WITNESS:

Mr. C. Fraser Elliott, C.M.G., K.C., Deputy Minister of National Revenue For Taxation.

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OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1946

## ORDER OF APPOINTMENT

*(Extracts from the Minutes of Proceedings of the Senate for 19th March, 1946)*

Resolved,—That a Special Committee of the Senate be appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon;

(2) That the said Committee be composed of the Honourable Senators Aseltine, Beauregard, Bench, Buchanan, Campbell, Crerar, Euler, Farris, Haig, Hayden, Hugessen, Lambert, Léger, McRae, Moraud, Robertson, Sinclair and Vien;

(3) That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. MOYER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

TUESDAY, 14th May, 1946.

Pursuant to adjournment and notice the Special Committee appointed to examine into the provisions and working of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, met this day at 10.30 a.m.

*Present:* The Honourable W. D. Euler, P.C., Chairman; the Honourable Senators Aseltine, Buchanan, Campbell, Haig, Hayden, Hugessen, Lambert, Léger, Moraud and Sinclair—11.

*In attendance:*

The Official Reporters of the Senate.
Mr. H. H. Stikeman, Counsel of the Committee.

A letter from Mr. Alex. Aitken, Commissioner, Regina Board of Trade, Regina, Saskatchewan, was read.

A brief from the Canadian Federation of Insurance Agents, Toronto, Ontario, was received and was ordered to form part of the record.

A brief from the Chamber of Commerce, Montreal, P.Q., in the French language, was received and was ordered to form part of the record.

A brief, as submitted to the Federal Cabinet was received from the Canadian and Catholic Confederation of Labour, and was ordered to form part of the record.

Mr. C. Fraser Elliott, C.M.G., K.C., Deputy Minister of National Revenue for Taxation, was heard and was questioned by counsel.

At 1 p.m., the Committee adjourned to the call of the Chairman.

Attest.

R. LAROSE,
*Clerk of the Committee.*



63756—1½

# MINUTES OF EVIDENCE

THE SENATE,

TUESDAY, May 14, 1946.

The Special Committee of the Senate to consider the provisions and workings of the Income War Tax Act, etc., resumed this day at 10.30 a.m.

Hon. Mr. EULER in the chair.

The CHAIRMAN: Gentlemen, some correspondence has been received which I think should be dealt with before we proceed with the questioning of Mr. Elliott. First, I have a letter from the Regina Board of Trade which should be read into the record. The letter states as follows:

"Senator W. D. Euler,
Chairman, Senate Taxation Committee,
Ottawa, Ontario.

Dear Sir:

The Edmonton Chamber of Commerce has recently submitted a copy of its Taxation Committee reports for your consideration.

The Regina Board of Trade has considered this report and wishes to record with you its approval of the first clause of the report, namely:—

> That a Royal Commission be set up to investigate the present basis of taxation on incomes, and the effect of present taxation in the economic development of the country; and, further, to recommend
> (*a*) such amendments regarding the administration of the Act that will tend to simplification of the tax structure; and,
> (*b*) such amendments as will assist rather than retard economic development.
>
> Our Board feels that only by an investigation by such a Commission can an adequate study of our tax system be undertaken. They concur with Edmonton's viewpoint that the present act shows a tendency to deal with our tax structure on a piece-meal basis rather than on a basis of broad national policy.
>
> We therefore urge that your committee give serious consideration to establishment of a Royal Commission as suggested in the Edmonton report.

Yours respectfully,
ALEX AITKEN,
*Commissioner.*

I have a brief from the Canadian Federation of Insurance Agents, with executive offices in Toronto. Since this brief deals entirely with matters of policy is it the wish of the committee that it should go into the record?

Hon. Mr. LEGER: Yes.

Hon. Mr. HAYDEN: If it deals entirely with questions of policy why should it go into the record?

The CHAIRMAN: I have not read the brief myself, but the solicitor says it deals entirely with policy.

Hon. Mr. HAIG: We agreed that the committee would not touch matters of policy, and I think we should stick to our agreement.

The CHAIRMAN: We have allowed other briefs dealing with policy to go into the record.

Hon. Mr. HAIG: We are anxious that the report which we submit be acceptable to the government.

The CHAIRMAN: This brief will not figure in our report. Perhaps I should say it is from these associations:—

The Vancouver Insurance Agents' Association
The Insurance Agents' Association of Regina
The Insurance Agents' Association of Brandon
The Insurance Agents' Association of Winnipeg
The Insurance Brokers' Association of the Province of Quebec
Ontario Insurance Agents' Association, and
Toronto Insurance Conference.

Hon. Mr. HAYDEN: It is similar to the stock, fire and casualty brief which we heard, and which was entirely policy.

The CHAIRMAN: Is it the feeling of the committee that the brief should go in the record?

Hon. Mr. LEGER: We have not refused any so far. I think it should be included.

Hon. Mr. HAIG: It does not matter to me what you do with it.

Hon. Mr. HAYDEN: There should be some comment to the effect that it deals with policy and is beyond the scope of the committee.

The CHAIRMAN: I have already pointed out that it is entirely a matter of policy. Senator Leger, do you move that it should be included in the proceedings?

Hon. Mr. LEGER: I do.

Hon. Mr. MORAUD: Seconded.

The CHAIRMAN: I declare the motion carried.

The submissions herein are made on behalf of the members of the territorial agency associations constituting the Canadian Federation of Insurance Agents. These associations are as follows:—

The Vancouver Insurance Agents' Association
The Insurance Agents' Association of Regina
The Insurance Agents' Association of Brandon
The Insurance Agents' Association of Winnipeg
The Insurance Brokers' Association of the Province of Quebec
Ontario Insurance Agents' Association, and
Toronto Insurance Conference

The membership of these organizations consists of approximately 2,200 insurance agents (other than Life insurance agents). These agents employ a large number of persons as sub-agents, solicitors, clerks, stenographers, etc.

At various hearings of the Royal Commission on co-operatives separate submissions were presented by the above mentioned Agents' Associations, as follows:—

At Vancouver—The Vancouver Insurance Agents' Association, (associated with which were the Victoria and New Westminster Agents' Associations);

At Regina—The Insurance Agents' Association of Regina, (with which were associated the Saskatoon, Moose Jaw and Prince Albert Agents' Associations);

At Winnipeg—The Insurance Agents' Association of Winnipeg, (with which was associated the Brandon Insurance Agents' Association);

At Toronto—A joint submission by the Ontario Insurance Agents' Association and Toronto Insurance Conference;

At Montreal—The Insurance Brokers' Association of the Province of Quebec.

This Federation desires to bring those submissions to the attention of the Special Committee on Taxation of the Senate of Canada, and for this purpose has herein consolidated the main pleas contained in the above-mentioned individual submissions.

The Federation accordingly submits:—

1. That, as taxpayers, the members regard the present exemption from taxation enjoyed by co-operative organizations and mutual and reciprocal insurers (other than Life), in view of the present very heavy income and excess profits taxation (much of which will undoubtedly continue for some time to come) as a negation of equality of taxation, which should be the basis of any tax structure. Such an exemption tends to increase the burden upon all others liable to tax.

That, as insurance agents, the members regard as unjust the exemption from taxation enjoyed by the above class as it has the effect of penalizing those who conduct business where capital is invested therein and who are subject to taxation on earnings thereof. It is discriminatory and is an indirect subsidizing of such types of organization at the expense of others, thus giving an unfair competitive advantage.

2. That, if the taxation of moneys transferred to reserves for the benefit of present and future policyholders of insurers (other than Life) is proper and justified in principle, there should be no exemption given where similar moneys are transferred by organizations which carry on their operations on the mutual or reciprocal plan.

3. If the principle of taxing the earnings of moneys invested in a business (as distinct from taxing merely the income of individuals) is to be continued, as seems likely, any earnings of money invested in carrying on a business should be taxed no matter how such money is obtained, i.e. whether it be from shareholders or members.

4. That the present advantage enjoyed by organizations operating on the co-operative, mutual and reciprocal basis, under the tax laws of Canada cannot help but cause concern by reason of the implications. The situation may well develop where the disinclination to risk capital may well impede the development of the country.

5. That, as taxpayers, until Parliament, after full consideration of all the implications and upon a clear mandate from the electorate to do so, decides that co-operative ownership of business, whether it be trading or insurance, is to be encouraged as the economic policy of Canada, the direct or indirect fostering of such a policy by tax exemption should be abolished.

Dated at Toronto, Ontario, the 19th day of March, 1946.

All of which is respectfully submitted.

CANADIAN FEDERATION OF INSURANCE AGENTS

J. E. PROCTOR,

*Chairman.*

The CHAIRMAN: There is also a brief before us from the Chamber of Commerce of the District of Montreal. The brief is in French.

Hon. Mr. LEGER: Read it.

Hon. Mr. HAIG: Put it on the record.

The CHAIRMAN: It is quite a valuable submission, but I think it is also dealing with policy.

Mr. HALL: No, Mr. Chairman, I think that is mostly within the terms of the reference; it deals with appeals and discretionary powers.

The CHAIRMAN: Is it the wish of the Committee to deal with it, or should it be translated first?

Hon. Mr. LEGER: It should be translated.

The CHAIRMAN: And then put on the record?

Hon. Mr. LEGER: Yes.

## INTRODUCTION

The Chambre de Commerce of the district of Montreal noted with much satisfaction of the proposal of the Minister of Finance set out in the Budget speeches of the month of October, 1945, to revise completely our Income Tax Act. Such a revision or rather a complete overhauling of our Income Tax Act is a measure that has been imperative for a long time.

Enacted in the course of the First World War, this Act has over the years undergone considerable changes and been subjected to amendments after amendments, so that its administration and its interpretation have become so complicated that great dissatisfaction has developed in the public mind.

By reason of the extensive increase in their rates, the Income Tax and the Excess Profits Tax which was added to it, play a predominant part in the Canadian economy, the worker too heavily taxed reduces his hours of work; the merchant who has reached his normal profit decreases his sales and the industrialist thinks twice before undertaking a development that will perhaps benefit the State mainly. The high rates of the Income Tax and of the Excess Profits Tax were admissible during the war; in peace time, they considerably paralyze Canadian economy.

The Chambre de Commerce of the district of Montreal greatly appreciates the opportunity afforded it by the setting up of a special committee of the Senate the purpose of which is to inquire into the administration of the Income Tax Act and the Excess Profits Tax Act to make known its views in this respect.

According to a resolution of the Senate, it was agreed "That a Special Committee of the Senate be appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon".

We understand that the Senate committee is not commissioned to examine the government's taxation policy, but solely to analyse the method of administration of the acts involved and to suggest the amendments to be made thereto. We will keep these considerations in mind in the suggestions that follow.

However, we venture to point out in passing the imperative necessity of reducing taxes and relieving especially the heads of families and wage earners who are presently the most affected.

## THE MINISTER'S DISCRETIONARY POWERS

The Income Tax Act confers much too wide discretionary powers on the Minister of Finance and the Treasury Board. It is left to the discretion of the minister to determine the size of reserves to be accumulated (bad debts, depreciations, etc.), the wages to be paid, the expenses to be incurred. In normal times, the taxpayer never knows if the assessor, availing himself of the minister's discretionary powers, will not rule that the salary paid to a new sales' manager is too high, if the commission paid on such or such a commercial deal is too large.

We submit that the discretionary powers conferred on the minister should only apply to problems of an administrative nature such as the establishment of forms, the fixing of dates for the filing of returns, etc. Every other ruling of a judicial or semi-judicial nature should be subject to an appeal before a special committee of which we will speak under the following heading.

### Appeals

The discretionary powers the Act confers on the minister greatly restrict the appeals taxpayers could enter against the rulings of the tax assessors. However, it is comforting to note that the Supreme Court, in the case of Wright's Canadian Rope, dealt a heavy blow to the minister's discretionary powers.

In the ordinary course of affairs if a taxpayer is not satisfied with the manner in which he has been assessed he can appeal to the minister. It then happens that the accused (the minister) is a judge in his own case. If the minister is unwilling to alter his original ruling the taxpayer may appeal from such a ruling to the Exchequer Court and in such a case he must post a sum of $500 to guarantee the payment of the costs. Needless to say that only sufficiently important enterprises can take upon themselves to appeal from the rulings of the minister of rather from those made by his officials.

We suggest the setting up of independent committees whose function would be to hear the taxpayers' appeals without any cost to them. These committees, to the number of four: one for the Maritime Provinces, one for Quebec, one for Ontario and another for the Western Provinces, would comprise three members, one of whom would be a public accountant, under the chairmanship of a judge. The decisions rendered would be published in the Canada Gazette. The parties concerned could appeal from such decisions to a civil court then to the Supreme Court.

### Publication and Consolidation of Decisions

A reproach we often hear levelled against the administration of Canada's Income Tax Act relates to the fact that the rulings made by the deputy minister are not published. It is true that one may generally secure information on a very definite case but the rulings are not published automatically. Publication and consolidation of such rulings would facilitate the task of accountants, lawyers and other persons interested in such acts.

### Assessments

Because of the magnitude of their task, the Income Tax assessors do not succeed in assessing all taxpayers in the two or three years that follow the tax impost year. When the assessment involves a readjustment in favor of the government the taxpayer is called upon to pay interest on this amount for the period extending from the expiration of the due date of the tax up to the moment of the payment of the readjustment required by the assessment, which sometimes represents a period of 3 or 4 years.

We believe that, except in cases of fraud or misrepresentation in the preparation of the tax return, interest payable on the amount of the readjustment should cease applying two years after the filing of the return. If, 30 days after the assessment, readjustment had not taken place interest would start to accrue again. Interest paid for the period prior to the assessment should be recognized as expense for the purposes of the tax.

### Refunds

The Income Tax Act does not compel the minister to refund to the taxpayer the sums in excess which the latter may have paid him in error. However,

it authorizes the minister to refund such sums if the taxpayer makes a request for same in writing within the twelve months following the assessment notice.

We believe that the minister should be required to refund such sums to every taxpayer who makes a request for same. The time-limit to enter such claim should not be less than the time-limit granted to the minister for the revision of the assessments (presently 6 years).

We suggest furthermore that interest should be paid on such refunds. The interest rate should be the current rate.

The CHAIRMAN: There is also before us a memorandum from the Canadian and Catholic Confederation of Labour, a submission made to the Federal Cabinet some time ago. This organization is asking that pages 2 and 3, which also deal with policy, be considered by the committee. What is the wish of the committee?

Hon. Mr. HAYDEN: We may as well be consistent.

The CHAIRMAN: And put pages 2 and 3 in the record?

Hon. Mr. LEGER: Yes.

This brings us to some particular subjects, which the C.C.C.L. desires to deal with and on which it submits the opinion of its affiliated Federations, Councils and Syndicates.

*Income Tax*

At the beginning of January, 1946, the C.C.C.L. submitted to the Senate Special Committee on Taxation the following suggestions as to the tax on individual incomes:—

1. Abolition of the annual Income Tax forms for all salaried persons and wage-earners who have only their salaries or wages as source of revenue;
2. Salaried persons and wage-earners would complete, in duplicate, only Form T.D.1 and the income tax should be collected at the source (i.e. one hundred per cent); one copy of the Form, duly completed, to be destined for the employer, and the other copy transmitted by the employer to the Inspector of Income Tax for the district where the employee has his domicile.
3. Income Tax deductions to me made only for the normal working week; therefore no deduction of tax from overtime pay;
4. It is the opinion of the C.C.C.L. that Income Tax exemption in favour of salaried persons and wage-earners ought to be established as follows:
   (*a*) Full exemption from the Income Tax, for unmarried persons, on incomes up to $1,200 per annum;
   (*b*) Full exemption from the Income Tax, for married persons, on incomes up to $2,000 per annum, plus an exemption of $400 for each dependant without regard to family allowances.

The first two suggestions aim at simplifying Income Tax deductions as far as possible. The salaried person or wage-earner will no longer be put to the trouble of making complicated annual returns, and will have no supplementary payment to make to the Department of National Revenue at the end of each year. For its part the Federal Government will be assured of receiving periodically the monies due to it, and the thousands upon thousands of reporting forms will be no longer either sent in or returned. Under this system there may, however, be reimbursements to make to a certain number of salaried persons or wage-earners, as at present. As to the employers, they will have only to remit to each employee at the end of each year the statement of earnings slip (T.4).

The third suggestion of the C.C.C.L. deals with the normal working week and the exemption of overtime pay from taxation. If the Government were to carry out this suggestion it would be giving the employee an incentive to better production; it would be simplifying for the employer the task of making tax

deductions at the source, and thus increasing his profits; and it is to be presumed that an appreciable part of the improved revenue from industry would tend to further swell the coffers of Government. Moreover the present system lends itself to fraud as between employer and employee, and, in our opinion, the government would be better of by taking into account the suggestion. But, in any case, this question was discussed in detail before the Senate Special Committee (Vol. 6, December 11, 1945) by the Hon. Senator A. N. McLean, and the Federal Government has no doubt studied the convincing argument put forth on that occasion.

The C.C.C.L. desires to develop its fourth suggestion at greater length and trusts the federal authorities will put it into effect as from this present year.

According to official statistics there were in Canada in June 1945 about 2,450,000 individuals subject to the Income tax; as against 200,000 to 300,000 before the war; and in 1944 there were over 1,500,000 of them earning less than $2,000 a year. On the other hand, according to statistics given out by the Minister of National Revenue 19,000 companies declared profits for that same year, 1944, amounting altogether to $1,200,000,000. Out of this total, Income and Excess Profits taxes took $675,000,000 leaving $525,000,000 to the companies. Since the same 19,000 companies had, before assigning anything to taxes, written off a total of $350,000,000 to depreciation, it is readily to be concluded that the 19,000 retained for different purposes, after paying taxes, a total of $875,000,000. And there is here question of income alone, the capital not being taxable.

Unless there should be some change effected, wage-earners will benefit from a 16 per cent reduction in Income Tax for the year 1946. As to corporations, they will retain the refundable portion of the Tax on excess profits, or 20 per cent, and will also enjoy a 20 per cent reduction in the same tax. Furthermore, in the case of corporations whose regular profits have been established at less than $25,000 per annum, these latter may, before computing the excess profits tax, increase their "standard" profits by one-half the difference between the actual current year's profits and the amount of $25,000. And how avoid mention here, as an actual application of the same idea along the same lines, the fact that the federal ministers and members of parliament will enjoy for 1946 an exemption of $2,000, besides the 16 per cent reduction referred to at the opening of the present paragraph.

The C.C.C.L. is not against Income Tax reductions in favour of corporations, ministers, and members of parliament, but it does consider that the working people ought to benefit from more substantial exemptions than those granted till now.

Thousands of workers whose earnings, due to the high cost of living and seasonal unemployment, are at best insufficient, pay the income tax and contribute towards the payment of other federal taxes as, for instance, (*a*) the federal sales tax; (*b*) the cigarette and tobacco tax; (*c*) the tax on cigarette papers and tubes; (*d*) the tax on sugar, etc., etc. And in addition there is their contribution to provincial, municipal and school taxes.

The C.C.C.L. is of the opinion that it is high time the present tax were modified and suggests, as explained above, complete exemption up to $1,200. for unmarried persons and up to $2,000. for married persons. The question of dependents will be taken up farther on.

An unmarried person, man or woman, whose annual revenue is $1,200. or less, that is to say whose weekly income is $23, or less, needs all of his money. There would seeem to be no need to stress upon this point. Everyone knows how much it costs to live these days. In 1946, even with the exemption of 16 percent, an unmarried person earning $23. a week will still have to pay $2.30 a week in income tax.

The C.C.C.L. also requests exemption up to $2,000. for married persons. According to federal statistics the minimum living wage is about $30. a week,

and the Toronto Welfare Council sets it at $33.73 a week. Neither case includes any provision for the acquiring of property. It would hardly seem exaggerated to set aside $400. a year for that item, and the worker would have to save that much a year over a period of eight to ten years in order to become a proprietor. We thus arrive at about $2,000. a year, and there is no provision in that amount for the payment of income tax. And yet in 1946, taking into account the 16 per cent reduction, a married worker, without dependents and earning $2,000. a year (or $38. to $39. a week), will still have to pay $176.80 per annum (or $3.40 a week) in income tax.

The C.C.C.L. asks further an exemption of $400. per child, regardless of family allowances. According to official figures given in the Marsh Report, the real cost for the maintenance of a child varies from $12. to $20. a month, being from $144. to $240. a year. A $400. exemption per child per annum would represent an income tax reduction of about $2. to $3. a week or $8. to $12. a month. Since the average family allowance in Canada is about $6. a month per child, there would result an amount of $14. to $18. available for each child if the $400. exemption were accorded and if the family allowance were exempted from income tax. It is to be noted, however, that the amounts of $14. to $18. mentioned above are correct only in the case of children 16 years of age and under, since the family allowance is not paid for children over 16.

The position of married persons for 1946, in respect of Income Tax, is as follows:—

| | Married without children | Married 1 child | Married 2 children | Married 3 children |
|---|---|---|---|---|
| Income: $2.000. a year: Tax per month: | $15.35 | $10.70 | $7.15 | $3.55 |
| Plus partial reimbursement of family allowance per month: | | $ 1.75 to $ 2.80 | $ 3.50 to $ 5.60 | $5.25 to $ 8.40 |
| Total tax per month: | $15.35 | $12.45 to $13.50 | $10.65 to $12.75 | $8.80 to $11.95 |

We believe the foregoing to fully justify the C.C.C.L. in pressing for the income tax exemptions petitioned for in this memorandum.

The CHAIRMAN: Mr. Elliott is here and available now for further questioning. Our counsel, Mr. Stikeman, is not present at the moment, but will be with us before long. Would any member of the committee like to question Mr. Elliott? If not, is there anything that Mr. Elliott himself would like to say?

Mr. ELLIOTT: I recollect that at the close of the last sitting of the committee Senator Buchanan stated there were some questions he would like to ask.

Hon. Mr. BUCHANAN: When I was at home in the last Easter recess I ran into farmers who were complaining of the system of collecting income tax. Though there is a considerable difference of opinion about the matter among farmers, some of them seem to think it would be more satisfactory if the tax were collected at the source, so to speak, when the grain is being marketed. I was wondering if there was any system of that kind that you considered feasible.

Mr. ELLIOTT: I presume the suggestion is that the purchaser of wheat, let us say, should retain some of the purchase price and hand that over to the Crown on account of the farmer's ultimate income tax liability.

Hon. Mr. BUCHANAN: Under the Prairie Farm Act so much a bushel is taken off as a sort of tax now, and the suggested system for collection of income tax is something along that line.

Mr. ELLIOTT: Well, in the first place, if you start deducting from the purchase price to be paid to producers, you could not confine this system to wheat. There are large crops of sugar beets, tobacco, and a thousand other commodities. Where would you draw the line for application of the system?

The CHAIRMAN: Besides, if the farmer does not make a profit, you are really subjecting him to a capital levy, which you would have to refund to him.

Mr. ELLIOTT: That is the second point I was going to make, that no one can tell what the producer's costs will be and whether he will be operating at a profit or a loss. That is something that he himself does not know until the end of the year. If you deducted a tax from the purchase price of all commodities you would certainly bring into the Crown's hands large sums of money that would have to be refunded.

Hon. Mr. HAYDEN: You would have the use of that money without interest.

Mr. ELLIOTT: I do not think the Crown desires to get any money into its coffers by such a method.

Hon. Mr. BUCHANAN: A rancher, let us say, deducts for tax purposes so much from the wages payable to the men working for him, and at the end of the year if he has deducted too much or too little he makes an adjustment. Could the purchasers of grain, for instance, not do something like that?

Mr. ELLIOTT: There is a vast difference between making a deduction from a purchase price and making a deduction from the wages of a servant. The wages that a servant gets is in most cases net income, and the amount deducted on account of tax is approximately accurate.

Hon. Mr. BUCHANAN: I have no criticism of my own to make, but I know there is a great deal of criticism by the farmers, and I was wondering whether there could not be devised some method of collection that would suit them better than the present method.

Mr. ELLIOTT: It may be that the present method could be improved, but I have great doubt about the advisability of deducting the tax from the purchase price.

Hon. Mr. BUCHANAN: There is quite a sentiment among farmers in favour of that.

Mr. ELLIOTT: Well, those who clearly know that they are taxable might prefer to have the tax collected at the source. It is a great advantage to find on the 30th of April that a large portion of your tax has already been paid. I like that myself. As a matter of fact, I have given instructions to have deducted from my own salary more than is required from that source, and I find that practice is pretty general across Canada. People ask their employers to take off a larger tax than is required, because in that easy way they are paying towards the tax on income from other sources.

Hon. Mr. LEGER: Could you not devise some sort of a tithe system by which farmers would be taxed a certain percentage on their crop? In that way you would bring in quite a bit of additional revenue. I am all for the farmers, but there is no doubt that some of them are evading the payment of taxes. The poor labourer pays his tax, but as a general rule the farmer who employs him goes scot free. If you could inaugurate some system for levying a percentage on the produce, the farmer himself would also have to pay.

The CHAIRMAN: But that would not be an income tax.

Hon. Mr. MORAUD: It would be a sales tax.

Mr. ELLIOTT: You have made some broad suggestions that really require a long answer. The first broad suggestion is that there be a tax on the produce. That would be a producers' tax, and the farmer would be taxed a certain amount, by way of deduction from the sale price, at the time he sold his goods.

Hon. Mr. LEGER: I do not mean that. When a farmer makes his return, could he not show that he had so many bushels of wheat, so many bushels of potatotes, and so on?

Mr. ELLIOTT: On the form that farmers file now they are required to show the value received for the goods sold.

Hon. Mr. HAIG: The question that arises when cattle are sold is causing quite a problem in Manitoba—especially in eastern Manitoba—and in parts of Alberta. The claim is that when a farmer buys cattle it is a capital investment, but when he sells them he has to make a return on his income tax form.

Mr. ELLIOTT: It is not quite that way, Senator. Most farmers start in a moderate way, and over a series of years they build up a herd. Every year that the herd is added to, whether by purchase of animals or by natural increase, the cost of acquiring the animal is charged as an expense. Expense is charged when an animal is acquired by natural increase because the farmer has had the cost of looking after the farm and so on. And when a cow or any other animal is bought, that is generally charged as an expense, because the farmer is on a cash basis. Therefore the farmer is taxable when he sells an animal. Now, in the course of time a day arrives when a farmer wants to quit and sell off everything at once. Then he has a large revenue, which puts him in the higher brackets, and he feels the burden to be excessive in that particular year. If, on the other hand, farmers were on an accounting basis, as some of the large ranchers are, then the natural increase would be valued at the end of the year rather than lumped together in the year of sale. These things are in the hands of the farmers themselves.

Hon. Mr. HAYDEN: It is pretty hard for the farmer to operate in any other way, is it not?

Mr. ELLIOTT: Yes, I agree it is very difficult.

Hon. Mr. HAYDEN: Do you not think it would be possible to have some provision that in the case of a bulk sale by a farmer the proceeds might be allocated for tax purposes over a period of years?

Mr. ELLIOTT: Yes. As a matter of fact, we do that in practice. We say to a farmer, "If you can give us the value of your cattle for each of the back five preceding years, we will put you on an inventory basis as of five years ago." Of course we have to put in the value of the cattle in that year five years ago as revenue, but this method does make it easier for the farmer when he comes to sell out.

The CHAIRMAN: You are doing something of that kind with regard to wheat now, are you not?

Mr. ELLIOTT: A statement was made on that in the House of Commons.

Hon. Mr. HAIG: That applies only to wheat.

Hon. Mr. HAYDEN: What is the legislative basis for that course of action?

Mr. ELLIOTT: There is no legislative basis.

Hon. Mr. HAYDEN: Should it not be written into the statute?

Mr. ELLIOTT: It is not an easy thing to write in. It is generally recognized that the farmer finds it difficult to put himself on an accounting basis, and if you put in the statute a requirement that he must do this he feels that parliament is trying to make him do something that is not practicable.

Hon. Mr. HAYDEN: Could the minister not be given discretionary power—just another discretionary power—to be exercised in the event of a bulk sale?

Mr. ELLIOTT: The bulk sale sometimes is detrimental to the profit margin.

Hon. Mr. HAIG: Farmers who raise thoroughbred cattle are sometimes placed at a considerable disadvantage. I have in mind a case where a man was raising Holsteins, and he had a cow which had made a wonderful record as a

milk producer. Of course that cow and her calves were extremely valuable. The farmer runs considerable risk, because he has to spend a large sum of money in keeping up the strain, and sometimes he sells those valuable animals at a loss.

Hon. Mr. BUCHANAN: Would it not be possible to fix a period and establish a basic herd, which could be recognized as capital?

Mr. ELLIOTT: That could be done, yes. Then the farmer would have to keep on an accounting basis after that.

Hon. Mr. BUCHANAN: Representations along that line have been made. In the brief that it presented to this committee the Federation of Agriculture put forward the same idea.

Hon. Mr. HAIG: Perhaps you could solve the farmer's problem by doing something like you have done for partnerships. Last fall you brought in an amendment to the income tax law, giving an option to partners who have plowed back their profits into the business. Could something like that not be done for farmers?

Mr. ELLIOTT: I do not know that I quite understand your question.

Hon. Mr. HAIG: In a number of partnerships the individual partners were earning, let us say, $10,000, a year, but were drawing out only $5,000, leaving the rest in there. I do not want to mention any specific cases. The statute now provides that these men can pay up so much and get credit for so much. You have, as it were, amortized the tax over a period.

Mr. ELLIOTT: The case I referred to a while ago was where a farmer had sold his whole herd in one year. If we say to him, "If you can go back and give us the number of cattle you had five years ago, we will start there and that will give an accounting basis for the last five years."

Hon. Mr. HAIG: That is the answer to the question raised by Senator Hayden, but it is not in the statutes.

Mr. ELLIOTT: Yes, that is true; there are two methods of accounting under the income tax law, namely the cash basis and the accounting basis. All business as such goes on the accounting basis. Lawyers go on the cash basis. However there is a choice. When we make this adjustment we say, "You should have chosen five years ago an accounting basis but we will now assist you in making that choice, because there is an unfair burden thrown on one year." I was perhaps a little grammatic when I said there was no legislative authority as a basis. There is that authority in the matter of an accounting basis to get at income; there is no specific legislation, but it is inherent in the law as a means of reflecting income.

Hon. Mr. BUCHANAN: There is no recognition of a basic herd in the statute?

Mr. ELLIOTT: No.

Hon. Mr. BUCHANAN: Do they not recognize the basic herd in Great Britain and the United States?

Mr. ELLIOTT: I think the United States have the basic herd.

Hon. Mr. BUCHANAN: And Great Britain has it, because this memoranda quotes from it.

Hon. Mr. HAYDEN: What memoranda?

Hon. Mr. BUCHANAN: It is attached to this memorandum of the farmer's income tax prepared by the Department of Agriculture. It mentions that in Britain there is recognition of the basic herd as cattle.

The CHAIRMAN: Is that in the statute?

Hon. Mr. BUCHANAN: I think so.

The CHAIRMAN: You apply it, but there is no statutory authority for it.

Mr. ELLIOTT: Yes.

Hon. Mr. CAMPBELL: Would not the averaging of profits with respect to farmers eliminate the problem?

Mr. ELLIOTT: It is a great alleviation.

Hon. Mr. CAMPBELL: If you spread it over say three to five years—two years one way and three the other—it would eliminate the problem?

Mr. ELLIOTT: It alleviates the losses that he has had, not one year back but several years.

Hon. Mr. CAMPBELL: I was thinking more of the particular problem of the sale of wheat. A great deal of wheat is being held back by the farmers as a hedge against possible losses in future years. In order to bring that wheat on the market we should have some provision for the averaging of profits, and then there would seem to be no object in holding it.

Mr. ELLIOTT: There is a provision for averaging, but averaging is hardly the word—you have to have losses.

Hon. Mr. CAMPBELL: I was not thinking of the losses. I am familiar with that phase of it.

Mr. ELLIOTT: You say that they should not mind the losses; if the farmers have some small profit over a series of years, and then a very large profit, they should be able to average their profits?

Hon. Mr. CAMPBELL: Yes, with respect to farmers. I understand there is such a provision in the statutes in England.

Mr. ELLIOTT: Of the averaging of profits?

Hon. Mr. CAMPBELL: In other words, assuming a man makes a thousand dollars which is taxable in 1945, and he makes three thousand dollars in 1946 and five thousand dollars in 1947, making a total of nine thousand dollars, or an average of three thousand dollars a year over those three years.

The CHAIRMAN: Are you suggesting class legislation there? While I have no brief for the manufacturers I know of a certain shoe manufacturer who made a profit of forty thousand dollars in one year. He happened to have a big stock of leather on hand and the price went up, and he made forty thousand dollars. The next year he lost forty thousand dollars. He could not set off the losses against the profits; he paid income tax on the profits, and paid it the next year when he had a heavy loss.

Hon. Mr. HAYDEN: That should happen now and he would be all right.

Hon. Mr. CAMPBELL: I think the farmer has an individual problem, and I think there is a responsibility before the country to try and solve the farmer's taxation problem.

The CHAIRMAN: We were talking about monopolies here the other day.

Hon. Mr. CAMPBELL: That is true, but having not succeeded in that argument, I might favour the farmer.

Hon. Mr. HAIG: May I point out to the Chairman that the diversified farmer does not face the problem that is raised here. It applies more to the farmer who is in an area that produces one basic crop. That especially applies to the western half of Manitoba, all of Saskatchewan and quite a bit of Alberta. So far this year the crop conditions are very bad in Manitoba. We must have rain and have it soon. No one can tell what will happen. But at the present time the wind is blowing and the dust is flying, and we have had the most severe frosts ever in the western provinces. The farmers may end up this fall with no crop at all. However if there is a good crop, and the prices are good, the farmer will have an immense amount of money. I have always felt that five years was not enough, and that is should run over a longer period. There should be provision as Senator Campbell suggested, for the averaging of profits and losses through the years. The people around Winnipeg are engaged in diversified farming, and they are not affected so much.

The CHAIRMAN: Have they not a three-year period where they can balance their profits and losses?

Mr. ELLIOTT: I think they have. If the farmer is going to suffer the great losses suggested, this year, he can carry that loss through the profitable years and to the extent of the profits he can absorb the losses. He can wipe out the profits and he is entitled to a refund. If the profits in the other years have not been large enough he can carry the remainder of his loss forward. He is going to be taken care of under the present system, that is if the situation is as bad as you have indicated.

Hon. Mr. HAIG: Of course rain can save that situation.

Hon. Mr. HAYDEN: Mr. Elliott, on the question of getting rulings the problem uppermost in my mind is that there are many taxation cases where it becomes absolutely necessary in the course of setting up a business venture to be able to calculate the incidence of taxation applied to the putting together of that business. Do you not think there should be some method or some procedure evolved whereby that could be rather conclusively dealt with?

Mr. ELLIOTT: Well, it is most desirable to aid business as far as possible in the future prospects that they have in contemplation, which, under today's rates of taxation is a major factor. Therefore in general I would say yes to that proposition, but during the last meeting I pointed out that to get a firm answer from the government, if you do so and so, factually the result in taxes will be as indicated, after consultation. We are somewhat like the architect who agreed to build a house in a certain manner. As the structure proceeds the business, judgment and architectural wishes of the owner cause changes to be made, and you end up with something different from the first plan. You then find yourself in the situation of saying the change that we made was not really basic, and therefore we pay no more. Then if the Crown says that the change is important, how could the taxes be prognosticated? It is pretty difficult to state before events what the taxes are going to be, because the events are never quite as contemplated.

Hon. Mr. HAYDEN: Of course the precedents in law follow the same basis. A principle is established, and you proceed from a certain set of facts, but that principle is applied afterwards in cases where some of the facts may be different, but where the underlying tone may be the same.

Mr. ELLIOTT: Just how far the facts change in the underlying principle is a point which I have to meet.

Hon. Mr. HAYDEN: I would be disposed to help the business man if I could in his plans, but how far can you go on that and bind the Crown to the future?

Hon. Mr. CAMPBELL: Does not the chief difficulty arise from the ambiguity of the law, and the uncertainty of the law with regard to certain sections?

Mr. ELLIOTT: No, I do no think so. If you were ever so clear on the law, there would naturally be changes with a new set of facts.

Hon. Mr. CAMPBELL: I was thinking of instances where it was found necessary to obtain a ruling. Section 32 (*a*) has made it necessary in a great number of cases to seek a ruling, which would not have been necessary before that section was in the act. Section 16 is another such section. It seems to me that some of the sections should be redrawn and clarified.

Mr. ELLIOTT: One would never object to clarification. If it is possible to clarify, let us do so.

Hon. Mr. CAMPBELL: Then let us clarify section 16.

Mr. ELLIOTT: All right, but would you kindly submit a draft that we might consider.

Hon. Mr. CAMPBELL: I think I suggested when it was passed that it refer to redeemable shares.

Hon. Mr. HAIG: You are giving certain advice, because I know the Canadian Industries Limited are splitting their stocks ten to one; and they say in their report that the income tax has approved of this without it being classified as taxable income. I can see no reason why they should not put ten shares for one.

Hon. Mr. HUGESSEN: They happen to be my clients, and it rather re-emphasizes Mr. Elliott's statement. But what Senator Campbell said about section 16 should be followed up. I think section 16 could be very easily clarified if it was stated that any corporation's reorganization which in any way had the effect of distributing amongst shareholders part of the undistributed surplus, would attract tax. As it is, the section is doubtful, and in that particular case of the Canadian Industries Limited, to which Senator Haig has referred, I had to get a ruling from the Department to the effect that section 16 did not apply. Would you not be disposed to agree that the purport of section 16 is to attract tax, if any organization distributes among shareholders a part of the previous undistributed profits?

Mr. ELLIOTT: If you change the section as you propose, you would open the door to evasion in a very major way. Let me explain further. Your comment was that they should be entitled to reorganize their share capital structure provided there was not a distribution of accumulated earnings. For instance, let us take a company that is closely held—or widely held—and that company states that they now wish to get supplementary letters patent to change half the common stock into a preferred stock. It does not matter whether the dividend is accumulative or not; they are just going to change half the common stock into preferred. At that point no one could suggest that there is a disturbing of earned surpluses, because there simply is not. I should add that they have changed the value of the common stock as reflected on the books of the company into preferred stock in the same value; so that the surplus was not disturbed in any way. After having done that, the company then decides to redeem the preferred stock. The redemption of the preferred stock means that these shareholders can take out of the company some of its profits or assets.

Hon. Mr. HAYDEN: But still not anymore than was paid in at that stage.

Mr. ELLIOTT: That is quite right, but the point is that they redeem all the preferred stock they have created. They do that because they do not want to really impair the asset value of the company, but they do want to get some money out of it.

Hon. Mr. HAYDEN: Commendable.

Mr. ELLIOTT: Yes. Now, having redeemed this preferred stock, they say that is capital. Before the change took place, if they had taken some quantity of money out it would have been money available because there was a surplus there. They say: "We don't want to take the surplus, we want to take the paid-in capital." It has lost its identity enterily; the original capital is generraly in bricks and mortar, machinery and equipment, and so on. Now let us say a company has all common stock and is permitted to redeem shares from day to day or year to year. A shareholder says: "I am redeeming my common stock, I am getting $20,000 or $10,000 a year, as the case may be, for common stock redemption." The thing is done among the shareholders, so that when the stockholder's stock is redeemed the same interests are there for the reduced amount of common stock as before the redemption. The result is that the shareholder gets a normal livelihood from year to year out of redeeming common stock; and no dividend it paid until the common stock gets so low that no more can safely be redeemed. That is what took place;

and when section 16 was enacted the shareholder said: "I won't redeem common stock and live on it from year to year, but I will change it into preferred; and I can redeem the preferred stock and still call it capital." So he just redeems this new preferred stock and lives from year to year on that, but the basis for that redemption is the accumulated earnings that are in the company, on which earnings he knows the company could pay dividends, but it will not pay dividends so long as he can live by redeeming preferred stock.

The CHAIRMAN: Out of surplus?

Hon. Mr. HUGESSEN: No.

The CHAIRMAN: It may be out of surplus.

Mr. ELLIOTT: Ne one knows.

The CHAIRMAN: To the extent that it may be out of surplus, he is evading income tax.

Mr. ELLIOTT: Exactly.

Hon. Mr. HUGESSEN: I see your point to some extent, but suppose he gets his common stock retired from year to year out of capital instead of having a dividend declared. Redemption of stock does not interest you, so long as it is done out of capital rather than out of accumulated surplus.

Mr. ELLIOTT: A man says, "I will redeem my common stock," but he only redeems it because there is money available in the company.

Hon. Mr. HUGESSEN: How much of that money are you interested in? Surely only the earnings. If he redeems it out of capital, that does not interest you?

Mr. ELLIOTT: Yes. If a shareholder takes money out of a company because there is a surplus available, that shareholder should pay tax on it now, because he has got the use of the money now.

Hon. Mr. HUGESSEN: If he is getting capital rather than income, what is your interest?

Mr. ELLIOTT: He is getting the money today and should pay the tax today.

Hon. Mr. LAMBERT: You are to some extent discounting the future?

Mr. ELLIOTT: I do not think there is any discounting done.

Hon. Mr. HAYDEN: To the extent that capital has been paid in, surely the shareholders are entitled to withdraw that capital, and it should not make any difference whether there is a surplus in the company or not.

Mr. ELLIOTT: I do not agree with that statement because we have found in fact that companies with a substantial amount of common stock keep on redeeming common stock, which postpones the tax. A man living among us today should bear his share of the common burden by paying a tax on the income that he is receiving now. A man says, "I am taking $10,000 a year out of a company which is writing down it common stock." But basically the company is only able to write down its common stock because there is a surplus of earnings. I fancy most people would agree that any person who is living on money that he draws out of a company capable of paying dividends, should pay a tax on it today.

Hon. Mr. HAYDEN: But you get the tax on the earnings of the company before they pass into surplus.

Mr. ELLIOTT: That is a corporate tax. We are talking about a tax on shareholders.

Hon. Mr. HAYDEN: A shareholder may say, "I choose to get back the capital that I have ventured in this business, but if I choose to take anything more it will be subjected to tax."

Mr. ELLIOTT: That would be in the future; but we say, "Because you have income today, you should pay tax today."

Hon. Mr. HAYDEN: You say that if there is any surplus, then no matter what is done so far as the company is concerned, you regard the shareholder's receipts as income?

Mr. ELLIOTT: That is right.

Hon. Mr. HAYDEN: If a company has preferred shares and common shares and has accumulated an earned surplus, how can you say that preferred shares redeemed by the company are redeemed out of surplus and not out of capital?

Mr. ELLIOTT: If years ago the shareholder paid $100 for preferred stock, we say that he can take it out up to that.

Hon. Mr. HAIG: I see the point that Mr. Elliott is making.

Hon. Mr. HAYDEN: I see the point too, but I do not agree with it.

Mr. ELLIOTT: And I do not agree with yours.

The CHAIRMAN: After the preferred shareholder gets his dividends and the common shareholder gets whatever he is entitled to, the preferred shareholder shares in any additional profits over and above that.

Mr. ELLIOTT: I have no doubt that in the C.I.L. case all they did was convert one share of common into ten shares of common. We say "All right; that is splitting bits of paper." But if they had converted it into preferred stock they could redeem that preferred stock within the next year or so, and technically that would be capital which we could not tax at all; but when you trace back the whole history of it you find there is a surplus that the common stockholder should have paid a tax on as and when he got the money.

Hon. Mr. HAIG: Mr. Chairman, I have a question to ask Mr. Elliott on a different point. If after I have asked it you rule that Mr. Elliott need not bother to answer it, I will not feel offended.

The CHAIRMAN: Go ahead.

Hon. Mr. HAIG: As I recall—I am speaking from memory—in the first brief he presented Mr. Elliott had a schedule of salaries paid throughout the service.

Mr. ELLIOTT: Throughout the income tax service.

Hon. Mr. HAIG: I for one was greatly shocked at the small salaries being paid, not only to men in the lower ranks but to men at the top. I am wondering whether this matter comes within policy or routine. If it comes within policy I will not press the question any further.

Hon. Mr. BUCHANAN: It would relate to the efficiency of administration by the department.

Hon. Mr. HAIG: That is what I am coming to. We people who live in the west or the east, at a considerable distance from headquarters at Ottawa, have to depend upon the men in the local income tax office when we want an interview or consultation about some matter. Of course, if the point is a very important one and involves a large sum of money we can come to Ottawa, but I am speaking of matters which can and ought to be dealt with locally. It seems to me that the salaries paid to the officials in our regional offices are altogether out of line with the responsibilities they have to assume; and, although I have no complaint, I do not think we get the service that we would get if better salaries were paid. The range of salaries in all branches of the civil service may be low, but it seems to me that in this income tax branch the range is ridiculously low. I was wondering whether the low salaries did not affect the service as a whole.

Mr. ELLIOTT: I agree that the salaries are entirely out of line with the responsibilities borne by the administrators across Canada of these very difficult, technical and important laws. I fancy you would like some further comment on that.

Hon. Mr. HAIG: I would.

Mr. ELLIOTT: From the time that the Civil Service was organized in England, people looked upon it as offering a worthwhile career. Civil servants held a position of trust, honourable positions, and there was a social status that went with the rendering of service to Her Majesty or His Majesty, as the case might be. I am inclined to think that that sentiment persists, even down to the present day. But in 1820, I think it was, the British Government realized that the collection of revenues was a little different from the service rendered in furthering the activities of the Crown in all other directions, and in that year the revenue authorities and their officials were paid higher salaries than those paid to persons of comparable rank in other branches of the service. That situation lasted until about 1870, when the whole Civil Service in England was reclassified and it was recognized that the civil servant should have not only his social standing but a salary more nearly commensurate with that payable in industry and general business at that time.

What I have said as to the early history of the Civil Service in England is true of the early service of the Crown in the right of the Dominion, and, I sincerely hope, in the right of the provinces also. Then, in 1915 the Business Profits War Tax Act—I underline the word "Business"—gave a new set-up to the requirements of the Civil Service. Civil servants became part and parcel of the warp and woof of the business of our country. The administration of the Business Profits War Tax Act and the Income War Tax Act in the years of the first great war was considered to be a heavy task, but there is an incomparably greater task to-day in the administration of the Income War Tax Act and the Excess Profits Tax Act. I think it is safe to say that in the consideration of the business world to-day nothing is of greater importance than the effect of taxes upon its affairs. Some members of this committee said a few moments ago they would like to lay down the business plans affecting the officials and place upon their shoulders the great responsibility of seeing how they shall stand in the future. I wish to point out that the Department of Revenue officials are getting into the warp and woof of business itself. In short, the Crown and the business world are becoming so intermingled that we must stand on greater parity, and we must eliminate the thought that the service is paid so low that it does not attract men with proper judgment to serve the Crown when they can be paid so much higher wages elsewhere. Therefore, I say that we should as far as possible foster the feeling that to serve the Crown is an honourable and a desirable thing to do.

When one comes to the revenue man there is a comment—and with some reticence I draw attention to this matter—that he is a tax gatherer. The connotation of that word comes down to us from time immemorial. In the Bible he was referred to as the tax gatherer. What honour has a servant of the Crown through the medium of a tax gatherer? He has neither honour nor pay. He has great responsibility, and business will not run without him. As Senator Haig has so forcefully said he is paid law salaries. Gentlemen, let us not delude ourselves, the revenues will be better, out country will run smoother if we recognize the intermingling of business and the government. Let us give to these men that to which they are entitled, and give no weight to the honour of serving the Crown. Give honour if you can, but pay on a just basis.

I know my words will be made public, and that other persons in the government will say, "We are as important as the revenue." I would not like to say that they are not, but it is not so intense; there are smooth parts of the

government services, and they have the results of their labour in their hands to their credit. If a scientist discovers something that is new and is of great value to the state it is a monument to him; for instance Saunders who discovered Marquis wheat. Salary did not mean anything to him; he had a monument to his name. But the poor tax gatherer, year in and year out, who grinds away with the affairs of business men, what monument does he have? There is no monument. You must pay him for the work he is doing.

The CHAIRMAN: Would you say the work of the tax gatherer was of greater importance than that of other civil servants who spend the money collected by the tax gatherer?

Mr. ELLIOTT: Mr. Chairman, if I offered you equal pay to spend money or collect money, which position would you take?

The CHAIRMAN: I am asking you.

Mr. ELLIOTT: My question answers your question.

Hon. Mr. HUGESSEN: In practice, Mr. Elliott, your department is not under the Civil Service and I assume that the salaries that are paid are really arrived at as a result of consultation between you and your minister.

Mr. ELLIOTT: No, that is not quite correct. We are subject to the Treasury Board and that board keeps us in the category commensurate with what the Civil Service Commission provides. We are not under the Civil Service Commission in the appointment of our staff, but in the compensation we come under the Treasury Board, who have power to say what salaries we shall pay.

Hon. Mr. ASELTINE: Mr. Chairman, before we leave this subject, might I be permitted to ask Mr. Elliott two or three questions about the Saskatoon office?

The CHAIRMAN: As long as it is in line with what has been said.

Mr. ELLIOTT: May I continue with one or two comments. I do not think this committee nor the public generally realize the importance of the responsibility placed in the hands of our assessors and senior officials across Canada. I say that most sincerely, because they are alone with the taxpayer. The assessor is a unit unto himself. He must meet business affairs on very short notice, in various complicated busineses and he must go through their annual activities, and his decisions as to what he will do with this item or that is a matter which amounts to many million dollars across Canada. Now having thrust the responsibility of multiple and intricate business matters before our assessors and inspectors annually, is it not proper to say to that important gentleman, doing that important duty, that he should have more than adequate compensation to be clear of all worries and all other factors that might come into his mind? I suggest therefore, Senator Haig, that you have raised a very important and major question.

Hon. Mr. HAIG: It goes to the very essence of the administration of the act and has a good deal to do with the complaints coming from the public against the administration of the act.

Mr. ELLIOTT: I could add more to the argument, but I will let the matter drop.

Hon. Mr. ASELTINE: May I ask a question about the Saskatoon office? I know my own office, and I suppose every other office in the neighbourhood has a great deal of business with your Saskatoon office. We are very anxious that Saskatoon shall be built up to be a very efficient office. At the present time I understand that it is placed in the number one category. Regina, for instance, is in number two and the salaries paid there for the same kind of work are much higher than those paid in Saskatoon. There is no chief assessor in Saskatoon, except in name, and he does the work but gets the ordinary assessor's pay.

There are rumours abroad now that another office may be built up in Prince Albert. We would prefer a real good office built in Saskatoon, rather than a new office in the province.

The CHAIRMAN: Maybe you will get that under the new plan for having more district offices.

Hon. Mr. ASELTINE: Could Mr. Elliott give us some information on that instance?

Mr. ELLIOTT: I would be very glad to, indeed. Subject to many flaws, the fact remains that we have graded our offices across Canada. The senior grade is called Grade IV.

Mr. WOOD: We call them A, B, C, and D.

Mr. ELLIOTT: We have senior grade offices and certain lower grade offices. For example, Toronto and Montreal would be senior offices. Then you come to a district such as London, Hamilton and Winnipeg who are in the next lower grade; then comes the lowest grade for Belleville and Saskatoon. These cities are graded on the size and volume of work that goes through the office.

One of the fallacies in that system is that a man in Belleville or Saskatoon may be dealing with a very large company, and because he happens to be at an office that has a low grade classification, he gets less salary. The fact is that he may be dealing with just as large a company as if he were in the higher classification. I am quite sure London handles some companies just as big as any that come through Toronto or Montreal. That man who is an assessor in the lower grade district of London is actually paid less although he is doing equally as important work as an assessor in Toronto or Montreal office.

There is a flaw in that arrangement which should be remedied. But the classification or grading of districts was done some years ago; and that system of classification ran through the whole service. We must recognize that assessors have equally as important duties to perform as assessors in any other district. Perhaps they may not have the same intensity throughout the year, but at times he is doing just as important duties, and has just as critical an analysis of the affairs of companies as has any assessor in any other part of Canada.

Hon. Mr. ASELTINE: Is there any possibility of Saskatoon being graded the same as Regina? In Saskatoon they have a territory of 170,000 square miles as compared to a much smaller territory around Regina. Our assessors are excellent men, doing a wonderful service and getting considerably less pay on account of the fact that they are graded lower.

Mr. ELLIOTT: I am happy to say that there is some hope; but, it isn't so much a question of area because we do not tax acreage, but we tax the business activities and incomes.

Hon. Mr. ASELTINE: I was thinking of square miles.

Mr. ELLIOTT: It does not make any difference, miles or acres.

The CHAIRMAN: I believe Senator Buchanan had a question.

Hon. Mr. BUCHANAN: I had passed on to me a letter addressed to you, Mr. Elliott, and Mr. Stikeman, and I should like to have the matter of this complaint cleared up. It has come to me from two or three sources. Order-in-Council 6020 has the effect of enabling a farmer to apply the proceeds realized from participation certificates to his income either in the year the money was received or in the year in which the wheat covered by the certificate was delivered. Is that Order-in-Council still in existence?

Mr. ELLIOTT: That is a very recent order-in-council. Could you give me its date?

Hon. Mr. BUCHANAN: August, 1944.

Mr. ELLIOTT: That is still in existence.

Hon. Mr. BUCHANAN: The farmers of Alberta inquired whether it would be possible to spread the receipts from wheat held because of the wheat quota, and apply this Order-in-Council 6020 policy by spreading the proceeds received as under participation certificates. The statement was made by you or someone in your department that you agreed with that procedure.

Mr. ELLIOTT: No, I do not think that is correct, Senator Buchanan.

Hon. Mr. BUCHANAN: The point I want to make is that in the information I have this letter is quoted, and the instructions sent out from the Income Tax Office in Calgary is also quoted; and the farmers proceeded to act on this information. Later on the order was rescinded.

Mr. ELLIOTT: No; I think this is the situation: so far as the wheat under the wheat participation certificate is concerned we would agree; but, as the order states, so far as wheat grown beyond that, and accumulated by the farmer, that would be taxable in the year in which it was sold. There are thousands of letters that go out of my department, and I sign not more than 10 per cent of those written over my name. Under those circumstances there may have been a letter go out saying that we will treat the excess beyond the participation certificate basis on the same basis as the participation certificate. If we did send such a letter, then I say it is wrong.

Hon. Mr. BUCHANAN: I will quote a paragraph from the reply received from the Deputy Minister:—

> Where a farmer sold and reported as income the proceeds of the maximum amount of wheat which he was permitted to sell under the quota system, then any surplus wheat which he had to carry over into subsequent years, may be reported as income of the year grown.

Mr. ELLIOTT: That is wrong. If such a letter was written, I am sorry it got out.

Hon. Mr. BUCHANAN: An order was sent out from Calgary based on that letter, and the farmers acted on that, and then the order was rescinded. There has been a good deal of protest over this procedure and I was asked to bring it to the attention of this committee. A copy of this letter has been addressed to yourself and to Mr. Stikeman.

Mr. ELLIOTT: If I may suggest—though in doing so I may be going a little beyond my position here—that is a matter between the taxpayers and ourselves. I doubt if the committee should make a decision on a specific case, even though some taxpayers may have been mislead by an erroneous order.

The CHAIRMAN: A matter of that kind is between the department and the taxpayer?

Mr. ELLIOTT: That is what I suggest.

Hon. Mr. BUCHANAN: Would it not be well to follow the same procedure as you do with participation certificates?

Mr. ELLIOTT: You mean, change the whole basic ruling? As you are all aware, participation certificates were designed for one specific purpose. If a farmer raised more grain and housed it, and if he sold it in a subsequent year on a cash basis, the transaction would be taxable in the year of sale.

Hon. Mr. HAIG: That has been the practice in Manitoba, that when you sold the grain you reported the transaction.

Hon. Mr. HUGESSEN: Mr. Chairman, I have one or two questions arising out of evidence given before the committee, and with relation to a few sections of the act. The first question arises out of a suggestion by one witness that the information called for on the T-2 form could be embodied in the ordinary corporation return, so as to make it unnecessary to file two returns at the same time.

Mr. ELLIOTT: I might perhaps give the history of the T-2 questionnaire. There is the ordinary corporate return, the T-2, which I think is familiar to everybody. That form asks general questions, upon the answers to which the tax is to be founded. After the Excess Profits Tax Act was passed, wherein capital and accumulating income became a necessary factor in determining the standard profit base from 1936 to 1939, we had to have much more detailed information than we had required under the general income tax law. We asked the accounting profession for assistance. Here I should like to pause and pay tribute to the magnificent manner in which the accounting profession co-operated in that necessary war effort. A committee was sent down to Ottawa, and in conjunction with departmental officials, accountants, they worked out this T-2 questionnaire. The thought was that if we could get a questionnaire substantially uniform for all companies it would do two things: it would crystalize our questions in the main to any and all companies, and it would give the accounting profession a uniform basis on which to work in preparing returns. The accomplishment of those objectives would of course make the handling of returns easier both for the accounting profession and for the department; and the uniform questionnaire would be useful to companies because they would know what was required in order to determine the taxes under the two laws, and particularly the Excess Profits Tax Act.

Now there is no doubt that every company must declare its full state of affairs in detail. All this detailed information has to be examined. Is it desirable —I am answering your question by asking a question—is it desirable so to expand the normal T-2 corporate return as to include the questions asked on the T-2 questionnaire? All companies in Canada must file the T-2 corporate return ,but all do not have to make a detailed statement. There are a great many small companies which, by using the normal form and attaching their financial statements, comply with the law satisfactorily so that we can get on with the job. If you incorporate the T-2 questionnaire into the ordinary T-2 return you are going to have a very complicated form, and we would be subjected to severe criticism on that ground. That complicated form would be getting into the hands of a lot of people to whom it is actually not applicable. Therefore the thought of that committee was—and I still think it is correct—that the T-2 questionnaire should be separate from the ordinary form.

The T-2 questionnaire has another advantage. Firms doing business of a substantial character often employ accountants. Now, we place great confidence in the accounting profession as a whole, and when this T-2 questionnaire is signed by accountants as well as by the company we feel that we do not have to go into detail in examining the company's affairs at the place of business. The T-2 questionnaire enables the accountant to get his business through more quickly, and it also enables the department to conclude its affairs more quickly. That is a great advantage. If a company refuses to answer that T-2 questionnaire we have to go to its place of business and dig up the information ourselves. That is undesirable, if it can be avoided. Some people have suggested that we are asking the accountants to do our assessing work, but of course that it not so. It must be remembered that the accountants are employed to reflect the affairs of the taxpayer in a manner which will most expeditiously get the business to the government, and the committee of accountants felt that this T-2 questionnaire was the most reasonable way of doing this. Some people say they would prefer to send in the more simple return and let the departmental officials do all the work that now has to be done in filing out the T-2 questionnaire. Well, that would require a larger staff in the department and would cause more delay. The most desirable thing is to have the company itself, in conjunction with its own paid accountants, make as complete and detailed a statement as possible.

The CHAIRMAN: The questionnaire was devised with the co-operation of the accountants themselves?

Mr. ELLIOTT: As I stated a few moments ago, they came to Ottawa and did splendid work. I am glad to pay my respects to them. They sent here men of high calibre, who stayed in Ottawa many days, without any compensation whatever, merely to help our war effort in this direction. I remember well the senior men who were here, men of large income and wide business connections. I was impressed by the fact that they gave up their time to assist our own assessors and accountants in devising this form, which has been most useful.

Hon. Mr. HUGESSEN: Do you feel you would still require it, even if the Excess Profits Tax were repealed in the near future?

Mr. ELLIOTT: Yes. I think that those who complain about it are in the minority.

Hon. Mr. HUGESSEN: There has not been any complaint, as I understand it.

Mr. ELLIOTT: Well, those who suggest that we abolish the form.

Hon. Mr. HUGESSEN: There was simply a question whether the T-2 questionnaire could not be included in the ordinary form.

Mr. ELLIOTT: We are always desirous of simplifying the form where possible.

Hon. Mr. HUGESSEN: There is another matter that I would like to discuss, one that has been referred to frequently here, namely section 6 (1) (*a*), which says "a deduction shall not be allowed in respect of disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income." I think we all agree, Mr. Elliott, that under modern conditions that wording is perhaps restrictive. I was interested in the evidence given to the committee by Mr. Oliphant, of Washington. According to him, the definition of expenses allowed in the United States is more to this effect: "expenses incurred in the conduct of the trade or business."

Mr. ELLIOTT: I think he was not quoting, but was stating the effect of the law from memory.

Hon. Mr. HUGESSEN: He said that in the United States a taxpayer is allowed to deduct expenses incurred in the conduct of trade or business. I was wondering whether wording of that kind might not be advisable to replace our present section 6 (1) (*a*), particularly since subsection 2 of section 6 gives the minister discretion to disallow any expense which he may determine to be in excess of what is reasonable or normal for the business carried on by the taxpayer.

Mr. ELLIOTT: I looked at the American law recently, and my recollection is that the word "necessarily" is in there. The thought occurred to me: What is the basic difference between expenses necessarily incurred in the conduct of the trade or business and expenses wholly, exclusively and necessarily expended.

Hon. Mr. CAMPBELL: But in our act the wording is "laid out or expended for the purpose of earning the income."

Hon. Mr. HUGESSEN: That is where the trouble arises. In business a good many expenses are not actually made for the purpose of earning the income. Take insurance premiums as an example.

Mr. ELLIOTT: I grant that. The idea is that expenses which may be necessary from a business point of view are often on the capital side. You and I know that certain kinds of expenses are regarded as necessary in order to get business—

Hon. Mr. HUGESSEN: Advertising expenses, for instance.

Mr. ELLIOTT: We allow advertising expenses. But let us take excessive expenditures upon entertainment.

Hon. Mr. HUGESSEN: But you can control those under subsection 2 of section 6, can you not?

Mr. ELLIOTT: It is better to state in the act that expenses of a capital nature will not be allowed, but we will allow expenses that go to the earning of the income.

Hon. Mr. HUGESSEN: Does the present definition say that?

Mr. ELLIOTT: Yes; you have just read the definition: "expenses, not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income." That is to say all expenses relating to the earning of the revenue are allowed; but other kinds of expense, not germain to the earning of the income but laid out for purposes of influence when it is thought that if the company will spend a certain sum in this direction it would not earn any more income this year but it will ultimately do so.

The CHAIRMAN: Would that include such advertisements as full-page ads in the newspapers and magazines, and advertisements on billboards, which are for the purpose of just giving information and have no definite connection with the business itself?

Mr. ELLIOTT: Yes, we allow those.

The CHAIRMAN: All that appears in these advertisements, so far as the company is concerned, is words to the effect that it is sponsored by such a company. Do you regard those as necessary expenditures to the earning of the income?

Mr. ELLIOTT: There is another play that comes in at that point, which is very important. When the tax was 100 per cent, less 20 per cent refundable, advertising went up very greatly. The reason being that if they did not pay out the money for advertising they must pay it to the Crown; the company could not keep the money. Therefore, advertising was deemed desirable for their point of view. It did not cost the company anything, except 20 cents on each dollar. It was necessary to control even that during the war, although we normally would regard advertising as a necessary expense. However when the company is spending our money, it is not necessary to do so in excess. When the rates go down, let us say, to 40 per cent and we cut out excess profits tax, the company would then spend 60 cents of its own money on each dollar; and if it goes down to 30 per cent they would spend 70 cents of each dollar of their own money. We say to the companies, "You exercise good judgment in that matter, when you are spending 70 cents out of the dollar, and we are content to leave it with you." Therefore we allow them the advertising expense.

Hon. Mr. HUGESSEN: Just to crystallize your thoughts on this point, would you say, Mr. Elliott, that you are satisfied with the present definition, or do you see any need for a change?

Mr. ELLIOTT: I think it is quite all right. I have heard objections to the word "exclusively"; I have also heard objections to the word "necessarily". In answer to those criticisms all I can say is that they simply relate to revenue, and if that is so, they will always be allowed; but, when expenditures go on the capital side they cannot be allowed as deductions.

Hon. Mr. CAMPBELL: But is it not a fact, Mr. Elliott, that you must go beyond the letter of the law to allow expenses which in your judgment are properly allowable?

Mr. ELLIOTT: That has grown up in the practice, to wit, insurance premiums.

Hon. Mr. CAMPBELL: Should not the law be brought into line, as it is in England?

Mr. ELLIOTT: It is desirable. I do not know whether to bring the law into line with the rulings, or the rulings into line with the law.

Hon. Mr. CAMPBELL: If you bring the rulings into line with the law you will have certain items which are now properly allowable.

Mr. ELLIOTT: That is right.

Hon. Mr. CAMPBELL: It would seem to me from all the evidence we have heard that that section should be clarified and brought in line with the present practice of the department, still leaving to the control of the minister the power to disallow any item which in his opinion is not properly allowable.

Mr. ELLIOTT: There is no question that the law should speak, and we should conform with the law. All rulings are a little out of line, because we are more liberal than the law warrants; but it is uniform.

Hon. Mr. LAMBERT: Following the question of Senator Campbell, as I understood it, Mr. Elliott, you said that the law has changed as the facts have changed. Now I would assume that those changes in the law, based on the changes of fact, have been reflected in any regulations that have been issued with the support of the ministerial decisions through the orders-in-council. Now is there any reason, or has there been any reason during the past six years, why those changes should not have been confirmed by statutory amendments in parliament?

Mr. ELLIOTT: As you well know, and as all of us are aware, in the throes of war many things have to be done very rapidly.

Hon. Mr. LAMBERT: Is that the crux of the whole situation?

Mr. ELLIOTT: I am answering your question. I wish to point out that in the throes of war many things have to be done very speedily. The War Measures Act was a measure to assist in getting things done rapidly; however, as a principle that should not be done in times of peace, when the law should be changed, and it should have the support of parliament. I would not criticize any government for using orders-in-council while in the throes of war.

The CHAIRMAN: Have they not the force of law?

Mr. ELLIOTT: Yes, they have.

The CHAIRMAN: That is if they are done under the proper statute, the War Measures Act or the act that succeeded it?

Mr. ELLIOTT: It has the force of law. But Senator Lambert wants that force of law passed upon him by parliament. I say, at the present time it is quite proper, but in wartime it may not be.

Hon. Mr. LAMBERT: The Income Tax as it stood before the war, was statutory. I am raising the point as to whether or not any time would have been lost if changes in the larw respecting income tax had been submitted each year to a committee of parliament to pass upon the suggested amendments to the act.

Mr. ELLIOTT: Oh, I think so. Senator Buchanan just read an order that was not submitted to parliament. There must be some exceptions in times of war; but, by and large I think all changes in law have been submitted following the budget of the day, and parliament has passed upon them.

Hon. Mr. LAMBERT: As far as the budget goes, yes, but not changes in law that were reflected through new regulations.

Mr. ELLIOTT: Let us put it bluntly. If you are suggesting that we change the law by ruling, I would forcibly say that is not so.

Hon. Mr. LAMBERT: I gather that the series of regulations were according to facts, and the law will change as the facts change. I took that reason from your remarks.

Mr. ELLIOTT: No, the law written in the statutes is not changeable by facts. It is necessary to interpret the facts in the light of a continuing law. I never heard of the proposition that, as the facts change the law changes.

Hon. Mr. CAMPBELL: I think Senator Lambert has in mind cases where you have a number of ambiguities in the law, and it becomes necessary to

interpret the facts, as you would in section 16; and that it would be more desirable to change the statute at the earliest possible moment than to continue under the interpretation which is beyond the scope of the law.

Hon. Mr. HUGESSEN: Does not the same argument apply to the point we were discussing a few minutes ago, where you allow insurance premiums as an expense for the purpose of determining income under section 16?

Mr. ELLIOTT: I found many things when I became Commissioner and later as Deputy Minister, that had grown up in the early days of 1915 and 1917, and they had been generally admitted as beneficial to the taxpayer. The item of insurance premiums as an example, technically I think should be in the law as allowable. That is the point I think you are raising. Secondly, it was never done because there was no apparent need for it and no one asked for it. We were going to parliament in the proper way and the substance of things was wholly in progress. Technically, that is not the way to run a country; we should go to parliament and confirm what we are doing regularly. When I became Commissioner I found these things existed, and I knew they were in existence long before I took that office; but, there was so much to do that was really progressive and necessary that one did not stop to do the things that the country accepted as beneficial to it. On the technical side you are quite right and on the practical side it works perfectly.

Hon. Mr. LAMBERT: There is one other point I should like to mention arising out of Mr. Elliott's observation about the remuneration to the service, in which he suggested that the ancient scriptural stigma attached to the tax gatherer still applied to the public thinking in this country; and that as a result of that attitude possibly some assessors and other valuable servants in the department were condemned to a lower rate of return than they might be getting in some other department. Now I think that the responsibility for that condition, if it exists, is that of the minister and his advisors who administer the department, and nobody else. I cannot agree that the old stigma referred to attaches itself to the public attitude throughout Canada. My experience has been—and I think I have had a fairly broad contact throughout this country—that not only an intelligent service but the most courteous service is given to those who seek information and help in making out their income tax returns.

I think there is a general restive feeling throughout the country regarding the weight of income tax, and the rather punishing quarterly payments that have to be made, as well as the annual adjustment. But certainly that feeling does not reflect itself in any attitude of depreciation of the men who ably represent this country in the branch offices of the Income Tax Department. Might I come back again to the question of the Terasury Board? It is within the hands of the minister and his advisors to at any time introduce, effectively I think, measures of recognition for these people in the department.

Hon. M. HUGESSEN: There is one further question upon which the committee, I think, should have Mr. Elliott's view. Many witnesses have dealt with the question of depreciation in section 6 of the act as not being allowed except to such an extent as the minister may permit. The suggestion was made, Mr. Elliott, that depreciation should be put back where it was until a year or two ago, as one of the deductions which is allowed subject to such a reasonable amount as the minister may determine; and that it is really more correct and gives a better picture of the positon of the taxpayer if he is given a positive allowance for depreciation rather than putting it in the negative way, that he is not allowed depreciation, except as the minister may permit. Let me add that I appreciate the fact that that change was made in the act because of the decision in the Pioneer Laundry case, and I fully agree that the minister was perfectly right in attempting to get around the decision in that case.

Mr. ELLIOTT: In my opinion the Pioneer Laundry case has been thoroughly misunderstood all across Canada. Like any decision that becomes the subject of common parlance, it soon lost its true legal position. I will comment upon that case, because I think it will help to answer your combined comment and question.

Hon. Mr. HUGESSEN: It is not my comment, but a comment made to us by other witnesses that I am putting to you.

Mr. ELLIOTT: I stand corrected on that. In the Pioneer Laundry case a company held by very few shareholders had over a series of years completely written down their assets that were subject to depreciation, so then a new company was formed and the assets were transferred to that new company in exchange for its shares.

Hon. Mr. HUGESSEN: Without any change of ownership?

Mr. ELLIOTT: You are making the same error that was the basis of that case. In stating that we would not allow further depreciation we said that the new company was the same person, and therein we went against the decision in Solomon v. Solomon. I read and sign the documents that come before me in the course of appeals, and in answering that appeal I made a technical error on a legal point that is so simple as to be elementary. We know that a new company is a different entity from an old company, whether or not the shareholders are the same. That case went through to the Privy Council, and the Privy Council's advice was that there had been a mistake in law and that the case should be referred back to the Minister. So the matter came back to us to be dealt with again. It was about that time that we switched from the old secion 5, in which depreciation was allowed, to the new section 6, which says that a deduction shall not be allowed in respect of certain things. I am speaking from memory as to the actual wording of that section. In the Pioneer Laundry case the new company said: "We are using this machinery, we are making a profit, and one of the things we are entitled to under the law is depreciation, even though we know that we have already had our assets written off when they were in the name of the old company." This was while the old section 5 was in effect. The minister cannot look at the fact that the same shareholders are in the new company as were in the old company, and under the old section 5 the new company could demand a depreciation allowance as a matter of right. So we decided to take depreciation out of old section 5 under which it could be demanded as a right, and put it in section 6, under which it could not be deducted, except in such amount as the minister in his discretion might allow. That took away the right of a taxpayer to demand a deduction for depreciation on asset with respect to which full depreciation had already been allowed.

Hon. Mr. HUGESSEN: You did more than that, for in addition to removing the right to depreciation from the old section 5 and making it a matter of ministerial discretion, under section 6, you inserted in section 6 a proviso to take care of such cases as the Pioneer Laundry case. A suggestion has been made to us that it was not necessary to do both. If you allow depreciation as a positive right, which is the common practice, you have sufficient protection in the proviso to which I have referred.

Mr. ELLIOTT: I do not quite follow that. If depreciation were still a matter of positive right, as under the old section 5, and the second company was using the assets on which depreciation had already been allowed to the first company, how would you be able to refuse depreciation to the second company?

Hon. Mr. HUGESSEN: The proviso in section 6(1) (*n*) would absolutely cover that case.

Mr. ELLIOTT: I have not got that before me. Would you be good enough to read it?

Hon. Mr. HUGESSEN: It is rather long, but I will read it:

> Provided, however, that the Minister shall not allow a deduction in respect of depreciation of assets owned by an incorporated taxpayer from the income of the said taxpayer if he is satisfied that the said taxpayer directly or indirectly had or has a controlling interest in a company or companies previously the owner or owners of the said assets or that the said previous owner (which term shall include a series of owners) directly or indirectly had or has a controlling interest in the said taxpayer or that the said taxpayer and the previous owner were or are directly or indirectly subject to the same controlling interest and that the aggregate amount of deductions which have been allowed to the said taxpayer and/or the said previous owner in respect of the depreciation of such assets is equal to or greater than the cost of the said assets to the said previous owner or to the first of the previous owners where more than one.

Mr. ELLIOTT: That was not put into the act until wartime, and the removal of depreciation from section 5 to section 6 took place before the war. I would say that the proviso you just read was put in about 1944.

Hon. Mr. HUGESSEN: No doubt as a result of the Pioneer Laundry case?

Mr. ELLIOTT: No, but as a result of the claims that were being made for depreciation by companies with new shareholders. They would bring in a small proportion of new shareholders and say, "This is a new company now, because it has some new shareholders."

Hon. Mr. HUGESSEN: Then I take it you would not object to putting the depreciation provision back among the allowable deductions, with that proviso?

Mr. ELLIOTT: With that proviso you have just read, I would not object; but without that proviso, I would object.

Hon. Mr. HUGESSEN: I fully agree.

Hon. Mr. CAMPBELL: Mr. Elliott, I would like to come back to section 16, and to your suggestion that we might give you a proposed amendment to that section. It seems to me to be a section that causes a great deal of difficulty. I recall that at the time it was before us for enactment I objected to the wording and suggested that it should be clarified so that there would not be any prohibition of the splitting of common shares. Subsection 1 of that section reads:—

> Where a corporation having undistributed income on hand reduces or redeems any class of capital stock or shares thereof, or converts any class of the capital stock or shares thereof into any other class of capital stock, shares or other security thereof,

and I would suggest that these words be added there:—

> which by the instrument converting them would make them redeemable . . .

That would have the effect of prohibiting anyone from converting common shares into redeemable stock of any kind. It seems to me that was the intention of the section at the time it was enacted.

Mr. ELLIOTT: Well, that is along the right line, but I wonder if it goes far enough. Let me give you an example. Here is the common stock of a company that has earned great profits during the war. I give this as an illustration because it is an active problem, about which I receive a number of letters. The owners of that company are aware that they would be heavily taxed if they took out the surplus. They are also aware of the fact that they cannot convert it into a preferred stock and later out of the assets of the company redeem the preferred stock. And they know it is very difficult to get the accumulated war

earnings reduced to possession as between themselves and the company, even though they create some new shares of a preferred character. So they contemplate splitting the shares and calling them common. Then they say, "To one part of the common stock we will give some right, say the right of $2 or $3 dividend." Now they have got two kinds of common stock. They are not of a redeemable character; they are common. But the one common has a preference position qua dividends. Then the owner says, "that is the kind of thing I can sell," and he wants to sell that to the public at large, which generally speaking, is not as wealthy as he. The purchaser not being as wealthy as the vendor, there is a great differential between the tax that the purchaser would pay on his dividends versus the tax that would be paid by the vendor; the man who wants to get this value out of the common stock that he has. He says: "I will sell my shares, and that is capital. I can sell them at less than their intrinsic value in the company, because if I took that value out the Crown might take 70 or 80 per cent of it, depending upon my position in the income tax brackets, whereas if I sell it to the multiple little fellow he will take the dividends and will probably pay a tax of 30 per cent." So there is a difference of 40 or 50 per cent that they can go. The owner says, "I will sell my shares to the public and will take less than their intrinsic value, but not so much less as to equal what I would have to pay if I took it directly myself." He gets a little more out of the other fellow, the purchaser. They are really trading on a 50 per cent differential. The purchaser says, " I will pay something less than the intrinsic value, and when I receive the dividends I will get that value out of it." The vendor figures he can take a little less than the intrinsic value because he is saving some taxes thereby. So there is a movement whereby the shareholder who held those shares during the war is seeking to get reduced to possession the value of that company through the medium of capital by the process of selling his shares to the public. Your amendment would not touch that fellow at all, because, as I read it, it had to do with preferred stock.

The CHAIRMAN: Does not the fact that you are dividing that common stock into two series, the one having certain rights, usually a preferred dividend of two or three dollars a share, in effect make it preferred stock, even though you do not call it that?

Mr. ELLIOTT: No, it is not preferred, for the reason that it is only preferred as to dividends, and the shareholder retains his right to an equal part in the accumulated surplus as and when it is wound up. Preferred stock has no right such as that.

The CHAIRMAN: Very often preferred stockholders have a right to share in the profits over and above the declared rate.

Mr. ELLIOTT: As a premium.

Hon. Mr. CAMPBELL: But, Mr. Elliott, is that not being done to-day, with the sanction of the department, under this section of the act.

Mr. ELLIOTT: I will say that there are people coming in now that desire rulings, more or less variations that are very clever and very subtle, and they say, "If we do that, will you give us your promise that there will be no tax involved?" We have to consider the matter; and I think, in one case, we have gone pretty far. That one case has become an embarrassing case, because others are adding to it, and they say, "There is no difference between this case and that one." Yet, factually there are differences.

The United States has allowed the splitting of stock into many parts with the same rights, with no taxation; but if they deviate ever so little in granting new rights then it is payment in kind and surtax. It is a very complicated section.

Hon. Mr. CAMPBELL: You get one feature in the United States which you do not get here, that of declared stock dividends to common stock shareholders without tax.

Mr. ELLIOTT: That is a splitting of the stock.

Hon. Mr. CAMPBELL: A declared stock dividend without tax. I am thinking of the economic effect of this section and the ruling. Let us consider, for instance, a company, which we will call A, with capital of a million dollars; the shares are represented by all common shares.

Mr. ELLIOTT: And no surplus?

Hon. Mr. CAMPBELL: We will say a million dollars capital and surplus of a million dollars.

Mr. ELLIOTT: A two million dollar company.

Hon. Mr. CAMPBELL: Yes, a two million dollar company. Then B company is represented by a million dollars capital preferred shares, and five hundred thousand dollars common shares at no par value, held by the same group of people who carry on the same enterprise. In the case of B company the shareholders can withdraw their capital.

Mr. ELLIOTT: The preferred shareholders, you mean.

Hon. Mr. CAMPBELL: Yes; they can withdraw their capital without tax and have it available for investment in another enterprise.

Mr. ELLIOTT: Yes.

Hon. Mr. CAMPBELL: In A company the shareholders cannot withdraw their capital and make it available for other investments without the levy of tax.

Mr. ELLIOTT: Yes, that is right.

Hon. Mr. CAMPBELL: Nor can a shareholder in A company capitalize his earned surplus by stock dividends.

Mr. ELLIOTT: That is correct.

Hon. Mr. CAMPBELL: It seems to me that, if you interpret this section 16 strictly and say that he cannot split that stock, so as to create a non-redeemable preference that it is going to bring about a tremendous hardship on him; and, the only alternative he would have, if he had a succession duty problem, would be to sell his stock in that form which would permit it to get into the hands of smaller shareholders and the public. Then when the dividend is paid the same thing happens as in the case where he splits it and puts it on a preferential dividend basis.

Mr. ELLIOTT: The only thought I would add to that is, why does he choose to create two kinds of common stock and give a preferential position qua dividends. The reason simply is to get a higher price on the market; therefore he is getting value because he has got a surplus there, and he wants to realize his full price if he can by selling his shares.

Hon. Mr. CAMPBELL: I do not think it is as much to get a higher price as to keep a proper control.

Mr. ELLIOTT: No, I can say that they have equal voting rights. I have had that proposition put up to me.

Hon. Mr. CAMPBELL: It does not seem to me that it should be under the act to discriminate between two companies.

Mr. ELLIOTT: The principal shareholder is making the discrimination. We say to him. "You may do two things. You may sell your common shares, if you like, on the open market and there is no tax involved; or you may split your common ten for one with exactly the same rights and sell some of the split stock. But what you may not do is create new common stock with different rights and sell it. Therefore, do not go into the realm of splitting

your common stock, or giving a preference to a portion of it so that you can sell it at a higher price, because by so doing you are trying to sweeten up part of the common stock by some preference as to dividends and thereby getting a higher price." Why should not the man who has the value and gets it pay the taxes? He can split his common stock and sell it if he likes.

Hon. Mr. CAMPBELL: I do not see where you would lose anything in the final analysis if you permit a split of common stock giving one class a preferential right as to dividend, as against the other. When the surplus is finally paid out, if he sells his stock, it is taxable. It may be true that he would get a few dollars more while operating the business, but you would not get any more taxes from him in the final analysis. On the other hand, is it not likely that in the case of some of these companies, usually those companies closely held—to distribute their stock to a corporation, in which case you would not get any tax at all.

Mr. ELLIOTT: That situation has been there all along.

Hon. Mr. CAMPBELL: That is the danger. It seems to me that a section as broad as this section being left to the interpretation of departmental officials, is contrary to the very principle and basis of taxation in our country.

I remember specifically raising the question at the time the section was enacted, and you said the main purpose of the section was to prevent the shareholders from converting their common stock into redeemable stock.

Mr. ELLIOTT: That is right.

Hon. Mr. CAMPBELL: It seems to me that is the way the law should be in this particular case.

Mr. ELLIOTT: That is the purpose of the section, and your words do perhaps make it a little more clear. It does not change the section within the scope we are talking about, but it does narrow it down when we get into these new kinds of common stocks with new attached rights, which are only coming to the surface because of the desire to put the value of those companies into the hands of the shareholders free of tax. It is not a business reason; it is a tax reason.

Hon. Mr. CAMPBELL: It is a business deal in this respect, that where the company is closely held and there is a succession duty problem hanging over his head, if they are to continue operating the company through the family it is necessary to get something liquid out of the company.

Mr. ELLIOTT: Yes; no doubt there is a succession duty problem even from 1939. We cured that pretty well up to 1939.

Hon. Mr. CAMPBELL: I am looking at it from the broad economic sense. It seems to me that it is not what you do, but the manner in which you do it. For instance, a man today would be foolish to incorporate a company, except with some of the redeemable preferred shares and his common shares represented by say just a nominal price of $2,000; whereas, it used to be sound policy to put everything in common stock if possible.

Mr. ELLIOTT: I cannot help correlating all these intricacies which we are discussing with the doing of these very things in practice all across Canada. Here we are discussing problems involving large sums of money which are met every day in the field by men receiving low salaries. I cannot help thinking that we are talking of things that should be dealt with by highly skilled and highly paid men.

Hon Mr. CAMPBELL: On that point may I ask you one question? Do you not think it would be advisable to have in each regional office across Canada an experienced chartered accountant and possibly a lawyer?

Mr. ELLIOTT: We have—I hope—an experienced chartered accountant in every district. As I told the committee in my earlier statement, we lose a great

many of these men because of the remuneration that can be paid elsewhere. However I am happy to say that we do retain some of them. We have a chartered accountant in every office with the possible exception of the Yukon.

We have not got lawyers in these offices for perhaps two reasons, the first is that they become the centre of advice in the particular community, and all the members of the legal fraternity would like to go down and have a chat with them, not about things that are but about things that might be. The question was whether we should supply that service. I am not saying no to it, but that is the way it works out in practice.

In the second place, these lawyers would write into head office all kinds of problems and we would become an interpreter of our own laws; they would raise intricate questions from across Canada, would write lengthy letters and attach briefs. Under those circumstances we have felt that we should avoid employing members of the legal profession.

Hon. Mr. BUCHANAN: May I ask Mr. Elliott one question on the matter of the basic herd? Would that provision be enacted in law or could it be recognized as a departmental ruling?

Mr. ELLIOTT: I think that would have to be law. That is not an interpretation, but a new basis of tax.

Hon. Mr. CAMPBELL: The evidence before us, Mr. Elliott, has all been strongly in favour of an independent board of appeal. If I have interpreted your testimony correctly, it is to the effect that you feel that the board should be more or less of a departmental board, independent and set up specifically for the purpose of dealing with appeals, but under the control and jurisdiction of the department.

Mr. ELLIOTT: An appeal board as to discretion or law and fact?

Hon. Mr. CAMPBELL: Law and fact.

Mr. ELLIOTT: You have quite misunderstood me. I should like to speak on that point again, because I know of no suggestion raised here of more importance than the establishment of these two kinds of boards. One board that would deal with the law and the facts, or a mixture, and the other to deal with discretionary powers.

Now it is the duty of the department to interpret the law and the facts first, and come to a conclusion and advise the taxpayer. Then the court, if you recommend the setting up of one, should be entirely independent of the Income Tax Division—just as independent as the Exchequer Court. It would be my policy of administration to try and keep it independent although the people will want to come and discuss matters with you. I think we should draw the line and say, "No, you cannot come to us any more than an Exchequer Court Judge could come, or any other judge. You have got the case before you. Now you handle it." When these lesser courts are established they will be so close to the information in the department that perhaps they will be asking us for further material. Well, we should adopt a cold, arm's-length attitude if we do give them any additional information, but I would go so far as to say that they should not want any additional information at all. They should be thoroughly independent.

I do suggest to this committee that the findings of these courts on matters of discretion should not be final and conclusive. Discretion is a matter of opinion, not a matter of law at all; there are no principles running through it. If you could take a matter of discretion to the courts, you might finally appeal it to the highest court in the land; indeed, you might ask the Privy Council to express an opinion as to how the discretion should be exercised. If the courts of law say that such and such a thing is law, parliament can make the statutes conform with that; but if the courts are charged with the duty of expressing

opinions, parliament will be impotent, for it cannot legislate as to what opinion ought to be. Therefore I make the submission—and it is fairly important—that the minister in giving his opinion is responsible to the people for that opinion. Parliament is the only forum then left to deal with it.

The CHAIRMAN: Could the same thing not be said of decisions made by the proposed board or court? There would still be an appeal to parliament. We know that the courts will not review the exercise of discretion by the minister. If the discretion were exercised by the appeal board, the courts could still refuse to interfere with the exercise of discretion and the only remedy for an aggrieved taxpayer would then be an appeal to parliament, just as it is now when the discretion is exercised by the minister. Would the situations not be parallel?

Mr. ELLIOTT: I do not think so.

The CHAIRMAN: I am simply trying to get your view. You have told us that once the minister exercises his discretion, that is final, and the taxpayer has no remedy except in an appeal to parliament. If the situation remained unchanged except that the discretion of the appeal board would replace the discretion of the minister, would not everything else remain the same as it is now?

Mr. ELLIOTT: I would not think so, because, as I understand it, if the final court says, "Our opinion is that you should have done so and so," parliament cannot change that. Parliament cannot so word a section as to say that in matters of opinion dealing with such-and-such a thing, the opinion should be such-and-such.

Hon. Mr. CAMPBELL: I think Mr. Elliott put it very well the other day when he said that what we must determine is, who is to have the final responsibility for exercising the discretion. He suggested that there should be an advisory board to advise the minister, but recommended that the board's advice should not be binding upon the minister, that he should be free to accept it or reject it. From the point of view of the present I can see a good deal of force in that, but I would like to ask you this question: Do you not think that after the advisory board had been carrying on for some time and had gained considerable experience it would be better for it to exercise discretion under the act or to review the minister's exercise of discretion, the board substituting its opinion for the minister's where it considered that advisable?

Mr. ELLIOTT: No, I do not think so. I think the board should be advisory, and if perchance the minister said, "For reasons in the public interest I disagree with the board's advice," his decision should be the final one. If he is called upon to defend his position in the house, he will have to do so. We are without experience in those things. In my own department we have a Board of Referees, than which there is no more important body functioning in Canada to-day, for it determines the base or standard profit, above which the Crown takes 75 or 100 per cent, or whatever it may be. The findings of that board are not final. The board recommends to the minister that the standard profit should be so-and-so, and in every instance the minister has accepted the recommendation.

Hon. Mr. CAMPBELL: I think he would accept the recommendation of the proposed tax appeal board also.

The CHAIRMAN: That is Mr. Elliott's argument.

Mr. ELLIOTT: I am the salaries controller. About a year ago the salaries order was amended, and the controller was given such a wide discretion that I considered I could not possibly exercise this; it was so far removed from the salaries order, as a matter of law, that we decided to set up boards. For a year or more we have had seven boards across Canada, and these boards hear cases and send in their recommendations to Ottawa. In surveying those reports our principal duty is to see that Vancouver, let us say, does not get out of line with Nova Scotia or any other place in between. The members of the board exercise

their business judgment in the cases that come before them and we take their advice, but the salaries controller—and through him, the minister—is responsible. When appointing those boards we reached out for experienced gentlemen all across Canada. The men appointed were, in fact, retired business men. They have no competitors to sit upon, and they are not likely to recommend a salary increase on the ground of favouritism. They are retired gentlemen, with nothing but their conscience to guide them.

The CHAIRMAN: Must their decisions be formally approved by you?

Mr. ELLIOTT: Yes.

The CHAIRMAN: Are there many appeals from their decisions?

Mr. ELLIOTT: No. There are some, but not many. The system is well accepted. Take another case. If a man's right to retain his citizenship comes into question, there is a board to hear the case. The question before the board is, "Has that man misbehaved himself in such a way that he should lose his citizenship?" The board simply reports to the minister; there is no law about it, it is an opinion. I would not say you should be able to appeal that opinion to the courts, for the minister has the responsibility of depriving a man of his citizenship.

Hon. Mr. CAMPBELL: It seems to me that in the exercise of discretion under the income tax act the minister has a responsibility to the taxpayer as well as to the state.

Hon. Mr. LAMBERT: I think the Board of Transport Commissioners is a very good instance of a body to which authority has been delegated by parliament. Occasionally an appeal is made from the decision of the board to the Governor in Council, but very rarely does the minister overrule the board.

The CHAIRMAN: The minister cannot do that. Appeals from the Transport Board can be made only to the Governor in Council.

Hon. Mr. CAMPBELL: Another suggestion is that if you constitute an advisory board, its advice should be available to the taxpayer as well as to the minister, before it is approved by the minister. I have in mind some cases under the Excess Profits Tax Act where I am sure that if the taxpayer had known of the award and had had an opportunity to show the minister what extreme hardship it would cause, the minister would never have approved it. Once the award is approved, there is no remedy. If the minister is left free to refuse to accept the advice of the board when it is in favour of the state, he should be free to accept it when it is in favour of the taxpayer?

Mr. ELLIOTT: Yes.

Hon. Mr. CAMPBELL: I think the evidence before us suggests that if a board of tax appeals is set up, the right of appeal to it should be in substitution of the right which the act now gives of appeal to the minister. You do not see any reason why there should continue to be an appeal to the minister in the first instance?

Mr. ELLIOTT: No, but that would mean cutting out a lot of useful work that I would not like to see cut out. In theory that is sound, but in practice it would not work.

Hon. Mr. CAMPBELL: Is there not some way by which any appeal before the board could be reviewed by the minister?

Mr. ELLIOTT: That would be useful, but in the technical set-up once the board had given its decision the minister would be *functus officio*.

Hon. Mr. CAMPBELL: It seems to me that from the minister's standpoint and from a practical standpoint the minister should have the privilege of reviewing these matters before they are finally decided by the board. It seems to me we

should try and eliminate double appeals. There should not be an appeal to the minister, as there now is under the act, and an appeal from the minister to the court.

Mr. ELLIOTT: I would not suggest that, and I do not think it has been suggested. Are you not criticizing something that has not been suggested? The appeal would be to the minister, because it is his assessment with which you would not agree. The taxpayer would appeal to the one who made the assessment and had the authority to make it. The minister either says, that the assessment will be adjusted or it will not. If it is not adjusted then it goes to the new court. The new court will consider it and give judgment—perhaps still dead against the taxpayer. In the more formal hearings, with extensive argument, some arrangement might be made whereby it was deemed advisable to refer the whole matter back to the minister with certain comments. I think some useful arrangement could be worked out, and the job would be completed by way of adjustment; otherwise if the taxpayer gets into court and cannot get back to the department on a reasonable basis he is obliged to go on into a higher court.

Hon. Mr. LEGER: I move we adjourn.

The CHAIRMAN: This concludes our public hearings. Mr. Stikeman suggests that the drafting committee should meet this afternoon when the house rises.

The committee adjourned.

1946

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

## SPECIAL COMMITTEE

Appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon.

No. 12

TUESDAY, MAY 28, 1946

CHAIRMAN

The Honourable W. D. Euler, P.C.

## Part One, Final Report of the Special Committee of the Senate on Taxation

OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1946

## ORDER OF APPOINTMENT

*(Extracts from the Minutes of Proceedings of the Senate for 19th March, 1946)*

Resolved,—That a Special Committee of the Senate be appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon;

(2) That the said Committee be composed of the Honourable Senators Aseltine, Beauregard, Bench, Buchanan, Campbell, Crerar, Euler, Farris, Haig, Hayden, Hugessen, Lambert, Léger, McRae, Moraud, Robertson, Sinclair and Vien;

(3) That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. MOYER,
*Clerk of the Senate.*

64608—1½

# MINUTES OF PROCEEDINGS

TUESDAY, 28th May, 1946.

Pursuant to adjournment and notice the Special Committee appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, met this day at 9.30 a.m.

*Present:* The Honourable W. D. Euler, P.C., Chairman, The Honourable Senators Aseltine, Bench, Buchanan, Campbell, Crerar, Haig, Hugessen, Léger, McRae, Sinclair and Vien—12.

*In attendance:*

Mr. H. H. Stikeman, Counsel to the Committee.

A draft of Part 1 of the Final Report of the Committee was again considered, amended and adopted.

At 10.30 a.m., the Committee adjourned to the call of the Chairman.

ATTEST:

R. LAROSE,
*Clerk of the Committee.*

# PART ONE, FINAL REPORT OF THE SPECIAL COMMITTEE OF THE SENATE ON TAXATION

TUESDAY, May 28, 1946.

On October 31, 1945, a Special Committee of the Senate was constituted with the purpose, as expressed in its Terms of Reference, "of examining into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment and collection of taxes thereunder."

On November 15, 1945, the Terms of Reference were amended by the addition of the following words after the word "thereunder"

"And the provisions of the said Acts by redrafting them, if necessary,"

Since its inception on October 31, 1945, your Committee has heard briefs from the following organizations and individuals:

C. Fraser Elliott, K.C., C.M.G., Deputy Minister of National Revenue for Taxation;
Canadian Federation of Agriculture;
Trades and Labour Congress of Canada;
National Life Insurance Company;
Senator A. N. McLean;
Income Taxpayers' Association;
D. A. McGibbon;
Canadian Federation of Labour;
Edmonton Chamber of Commerce;
Canadian Manufacturers' Association;
Dominion Association of Chartered Accountants;
Canadian Bar Association;
Montreal Stock Exchange and Montreal Curb Market;
Joint Stock Insurance Companies;
Canadian Chamber of Commerce;
Toronto Board of Trade;
Certified Public Accountants Association of Ontario;
Canadian Electrical Association;
Senator John T. Haig;
Regina Board of Trade;
Canadian Federation of Insurance Agents;
Confederation Canadienne et Catholique du Travail;
Montreal Chamber of Commerce.

In the main these briefs dealt with those aspects of the Dominion Tax system which impose hardship as being in the opinion of their proponents, inimical to a healthy economic development of this country and to certain rights of the individual. Some of the briefs have suggested remedies or alternative courses of action which might be taken by the Government to remove the objects of criticism.

Having considered the objections, criticisms and remedies stressed by the various organizations heard, it has been thought fit to prepare a report embodying certain conclusions and setting forth certain possible courses of action which might commend themselves as suitable means of reaching a number of the objectives for which your Committee was set up.

Before considering hypothetical suggestions relating to any reorganization of the tax administration or a redraft of the law itself, it is necessary to consider briefly the factors in the field of Dominion taxation which appear to underly the criticisms voiced by the witnesses. Briefly, public dissatisfaction appears to concern itself with three broad general heads.

1. There is dissatisfaction with the appeal procedure as now found in the Income War Tax Act and with the lack of facilities afforded taxpayers to have cases decided rapidly and objectively. Co-existing with this feeling is the more technical and less widely held objection to the use of ministerial or administrative discretion and to the absolute authority of the administration in many matters of substantive importance.

As exemplifying the widespread discretionary jurisdiction now granted to the Minister of National Revenue, representations have been made which categorize the fields of administrative and ministerial discretion under the following heads:—

A. Administrative and punitive powers;
B. Powers which make the minister the judge of reasonableness or equity;
C. Powers which constitute the minister the judge of the facts;
D. Powers to grant or refuse exemptions and allowances;
E. Power to approve a pension fund or plan.

For a detailed analysis of the number and degree of discretionary powers accorded to the Minister of National Revenue, see Appendix A.

2. Secondly, a portion of the criticism which has been received deals with the phraseology of the statute itself. There appears to be a growing feeling among economists, lawyers and accountants throughout Canada that the language of the present Dominion Income War Tax Act is no longer capable of permitting the legislation to fill its proper place in the vastly changed economic structure of the country in the face of concepts of profit and necessary expenditures which now exist when compared with those whose presence helped to shape the original statute in 1917.

3. The third head under which criticism falls is that pertaining to the administrative framework of the Taxation Division itself. Most of those objections are directed to the low salaries paid, delays within the Department, in assessing and the disposition of individual cases, and to the inability of the public to obtain the various inter-office administrative directives that are issued to the District Offices by the Deputy Minister at frequent intervals.

It is our proposal, therefore, that the report be submitted in three parts, each part dealing with remedies applicable to the three main phases of the criticisms received. While this part of the report will be chiefly confined to the criticisms and proposed remedies relating to appeal procedure and the exercise of ministerial discretion, it is felt by your Committee that certain of the suggestions and recommendations made with respect to matters which properly fall into categories 2 and 3 above are of such prime importance that they should be noted briefly at this stage. As much as possible, the suggested solutions are drawn from the briefs presented to us. In a substantial measure, however, the contents of this report also necessarily reflect the conclusions of the committee.

Almost without exception the witnesses who appeared before your Committee urgently advocated a complete revision of the taxing statute to the end that not only may clarity and coherence be achieved but that its provisions be brought into conformity with modern business practice. With this suggestion your committee is in complete accord.

Specific examples cited as illustrative of this need are the present limitative forms of Sections 6 (1) (*a*) and 16 of the Income War Tax Act. It is suggested

that Section 6 (1) (*a*) be amended to conform with modern accounting practice. While your Committee does not put forward at this time a concrete suggestion in legislative form, it is suggested that the general principles underlying the proposal which was made by Lord Macmillan who presided over the Income Tax Codification Committee appointed in 1926 in England be given serious consideration. This recommendation reads as follows:—

> The amount of the profits of a business shall be computed in accordance with the ordinary commercial principles applicable to the computation of the profits of that business.

Moreover, at the present time, there would appear to be no provision in the Income War Tax Act which would allow the taxpayer as a matter of right to maintain his accounts and report his profits on an accrual basis. While the taxing authorities have in most cases recognized this to be a practical necessity for the efficient conduct of modern business, it is recommended that the statute be amended to give clear statutory authority for such practice.

It is also recommended that Section 16 should be so amended as to clearly define a liability which shall be certain and subject to accurate computation arising out of certain alterations in corporate capital structure already referred to in that section. For example, a measure of the liability might be the monetary gain to shareholders occasioned by any capital reorganization or share split which increased their potential equity participation in existing earned surplus rather than by the present ambiguous form of the Section which imposes a charge whose severity lies in the interpretation placed upon the facts by departmental officials.

The continued presence in the statute of Section 32A has been sharply criticized on the grounds that it has created grave uncertainty among taxpayers as to their liability to tax and accordingly your Committee recommends that the Section should be wholly eliminated from the statute.

A further criticism repeatedly voiced by witnesses appearing before your Committee was related to the question of an allowance for depreciation. At the present time, depreciation is referred to under Section 6(1) (*n*) where it is expressly prohibited as a deduction save as to such amount as the Minister in his discretion may allow. It is recommended that depreciation be recognized as a charge against profits to which every taxpayer is entitled as of right and that the Income War Tax Act be amended accordingly.

Another recurring complaint in the representations made to your Committee was that directed to the delay which many taxpayers experience in obtaining their assessments. Instances were cited where as many as five years had elapsed before assessment notices issued. While it is recognized that there are situations where such delays might well be unavoidable, it is recommended that the period within which the department must issue a Notice of Assessment be reasonably limited by statutory provision. Closely allied with the criticism directed at these delays is the suggestion that interest charges which are now contained in the taxing statutes with respect to underpayment of taxes should be imposed for a period of two years only, unless before the expiration of that period an Interim Notice of Assessment has been mailed to the taxpayer.

Upon the mailing of the Notice of Assessment within the two year period, it is felt that interest should continue to be assessed on any underpayment until the tax is paid in full; or if mailed after the two year period the liability to interest on such underpayment should revive until payment of the amount finally determined to be due. It is further felt that the present rate of interest is too high and that it should be lowered to 4 per cent, at simple interest, a recommendation which your Committee endorses.

One further matter which may be mentioned at this point is that dealing with the deduction of tax at the source. It is felt that this system has met with the endorsation of taxpayers in general throughout the country and should be maintained as a permanent policy in the administration of the Act.

## Appeals

In order that the suggestions and recommendations of your Committee in regard to appeals may be fully appreciated, a summary of the chronological steps involved in the appeal procedure, as presently provided in the statute, is here outlined.

(*a*) The taxpayer estimates his income, files a return and pays tax thereon.

(*b*) An Assessment Notice is forwarded to the taxpayer over the signature of the Deputy Minister which shows any arrears in the tax estimated or confirms the amount which has been paid.

(*c*) If the taxpayer wishes to contest the assessment before the Exchequer Court or to preserve his legal rights of resource thereto while discussing the assessment on its merits with departmental officials, he must file a Notice of Appeal with the Minister of National Revenue within one month after the date of mailing of the Notice of Assessment. This Notice of Appeal sets out all the facts involved and contains a full statement of the reasons upon which the taxpayer intends to rely. If the Notices of Appeal or Dissatisfaction are not filed within the time stipulated by the statute, the taxpayer is barred from further action and the assessment becomes valid and binding, notwithstanding any error, defect or omission therein.

(*d*) The taxpayer may and usually does discuss the assessment with departmental officials in the District Office and at Ottawa in an informal way. In the event that a satisfactory solution is not found, the taxpayer may continue with his appeal.

(*e*) Following the mailing of the Notice of Appeal, the Minister issues his decision which is a formal document based on a review of the assessment. The decision may either affirm or amend the assessment.

(*f*) Within one month from the date of mailing of the Minister's decision, the taxpayer must send by registered mail a Notice of Dissatisfaction. This notice must state all further facts, statutory provisions and reasons which the taxpayer intends to submit to the Court in support of the appeal and which were not included in the Notice of Appeal.

(*g*) Within one month after the mailing of the Notice of Dissatisfaction, the taxpayer is required to give security for costs in a sum of not less than $400.00.

(*h*) In the light of all the facts and reasons submitted the Minister sends a reply to the taxpayer and the issues are joined.

(*i*) Within two months from the date of mailing the reply, the Minister is required to transmit to the Exchequer Court, all the documents set out above and any other material which may affect the disposition of the appeal.

While pleadings are the general rule in practice, technically the Exchequer Court Act appears to permit of trial without pleadings and thus necessitates a Court order that pleadings be filed if they are desired. Consent must, therefore, be obtained to the order for pleadings.

Generally speaking, the rules of practice before the Exchequer Court are elastic and, provided that both sides are given adequate opportunity to object, it would seem that application may be made to the Court for the extension or varying of specific rules according to the extenuating circumstances present in any particular case.

From the decision of the Exchequer Court, an appeal lies to the Supreme Court of Canada if the amount in dispute is in excess of $500.00. A further appeal lies to the Judicial Committee of the Privy Council, but it should be noted that this is not an appeal as of right, special leave to appeal being required from that body.

*Effective Remedies upon Appeal.*

Since the appeal from the assessment may, as already indicated eventually find itself a cause in issue before the Exchequer Court, it becomes important to consider the jurisdiction of this Court as granted to it in matters of income taxation by Section 66 of the Income War Tax Act.

Section 66 reads as follows:

> Subject to the provisions of this Act, the Exchequer Court shall have exclusive jurisdiction to hear and determine all questions that may arise in connection with any assessment made under this Act and in delivering judgment may make any order as to payment of any tax, interest or penalty or as to costs as to the said Court may seem right and proper.

An ancillary power of the Court in connection with the disposition of an appeal by a taxpayer is found in ss (2) where it is stated that

> The Court may refer the matter back to the Minister for further consideration.

It will be noted from the above that under the express language of the statute an appeal is stated to be from an assessment only. This has been confirmed on a number of occasions by the Exchequer Court of Canada and the inference is clear that there is no direct appeal from the exercise of the Minister's discretion per se. The only method by which a taxpayer can attack or even question the exercise of ministerial discretion under the law as presently constituted is by means of taking an appeal to the Exchequer Court and urging that the Court consider the exercise of discretion as one of the factors in the assessment which is appealed against.

The practical effect of such an appeal involving discretion may be judged by the fact that the leading decisions of the Courts in Canada and the United Kingdom in this connection disclose that a Court may only interfere with the exercise of a discretionary power where it appears that

1. The discretion has not really been exercised.

2. It has not been exercised honestly and fairly.

3. The person exercising the discretion was influenced by extraneous and irrelevant facts.

4. The decision was based on principles incorrect in law. Important Canadian cases in this connection are: Pioneer Laundry and Dry Cleaners Limited v. Minister of National Revenue (1940) A.C. 127; Pioneer Laundry and Dry Cleaners Limited v. Minister of National Revenue (1942) Canada Tax Cases 201; The King v. Noxzema Chemical Company of Canada Limited (1942) Canada Tax Cases 21; Nicholson v. Minister of National Revenue (1945) Canada Tax Cases 263, and Wrights' Canadian Ropes Limited v. Minister of National Revenue (1945) Canada Tax Cases 177; (1946) Canada Tax Cases 73.

Accordingly, it is now well established in law that, if the Court determines, by applying the canons of the proper exercise of ministerial discretion, that such discretion has not been properly used, it may only state that the assessment has been erroneously or wrongly levied and refer the matter back to the Minister of National Revenue under subsection (2) of Section 65. In no case may the Court adjudicate upon or substitute its own opinion for the discretionary opinion of the Minister. If the element of discretionary consideration in the assessment has satisfied all the tests of legal propriety as above set forth then, assuming the assessment to be otherwise in order, the court may not interfere in any way with the conclusions of the Minister or the issue of the assessment. If however, discretion has been improperly exercised in the light of the established legal principles all that the Court may do is to refer the assessment back to the Minister to be considered again.

Thus, under the present statute and the case law, there does not appear to be an instance where the Court can review the actual substance of the Minister's discretion, even if improperly exercised, or substitute its opinion for the Minister's, if it so desires.

## Suggested Remedies

Your Committee has been greatly impressed by the urgency of the criticism directed at the appeal provisions as presently existing in the taxing statutes and the lack of an independent tribunal to which the taxpayer may appeal in the first instance when dissatisfied with his assessment. The effective bar to a successful appeal to the Exchequer Court of Canada under the present law in cases where the taxpayer is dissatisfied with the exercise of discretionary powers has already been pointed out.

The Deputy Minister of National Revenue for Taxation, who in the initial hearings of the Committee gave evidence touching on various aspects of the administration of the taxing statutes, appeared again at the request of the Committee after the other witnesses had been heard and presented his views as to the advisability of establishing a Board of Tax Appeals. In this connection, he expressed himself as being in favour of establishing a Board which would operate as a court of first instance to hear appeals from assessments on questions of law only. Insofar as appeals from assessments which originated from the exercise of ministerial or administrative discretion were concerned, however, he indicated that he was not in favour of superimposing an appeal board to consider or review the exercise of discretion as to its substance. He indicated, however, that it might be possible to establish a committee which would act in an advisory capacity to the Minister and to which the taxpayer or the Minister might refer questions arising from the exercise of discretion for consideration and advice. This committee, he thought, would function in a somewhat similar manner to the Board of Referees as described in Section 13 of the Excess Profits Tax Act, 1940, but should not be independent of the Minister of National Revenue.

It was suggested by the Deputy Minister that should a matter of discretion arise with which the taxpayer was dissatisfied, he might apply to the Minister to have the application of the discretionary power reviewed by this advisory body and that the taxpayer should be permitted to make all necessary representations thereto. Mr. Elliott indicated, however, that the findings of the Board or Committee should, in essence be advisory only and that should the Minister of National Revenue desire to adhere to a conclusion differing with the findings of the Board, no further review or appeal should be provided but that, as is the case under the presently enacted legislation, the decision of the Minister in respect thereto should be final and conclusive.

Your Committee has given consideration to these submissions of the Deputy Minister and has concluded that they represent a direct conflict of opinion with the suggestion advanced by other witnesses in briefs and examinations, with which suggestions your Committee agrees in principle as will be hereafter shown.

## Board of Tax Appeals

As a result of the consideration and study of the Appeal Procedure and Tax Court suggestions made to your Committee by all the witnesses during the aforementioned hearings, and benefiting from assistance provided in the brief's submitted, it is recommended that the following principles be adhered to as conditions precedent to any solution that may be reached in this phase of the problem.

The first important consideration which appeared repeatedly throughout the hearings and which is felt to be a fundamental principle in this connection is that

the Board of Tax Appeals, when established in whatever form considered desirable, should be entirely divorced from and independent of the control of that Department of Government which is charged with the levying and collecting of taxes.

The second consideration which is equally important is that the administering officials of the Department which levies and collects the taxes be not accorded any authority relating to the exercise of administrative or ministerial discretion, the levying of assessments, or the imposition of penalties which is not subject to the immediate, effective and conclusive jurisdiction of an independent tribunal. It is felt that this jurisdiction should relate not only to the formal proceedings and departmental directives but to the underlying considerations of fact which enter into the exercise of such authority by the Minister of National Revenue and his administering officials.

With these two cardinal principles in mind, your Committee recommends that there be constituted a Board of Tax Appeals either by a separate Statute of the Dominion Parliament or by some appropriate amendment to the taxing statutes. It is felt desirable that this Board should bear such a name as that of "Board of Tax Appeals for Canada" and that it should have the authority and jurisdiction in matters of fact and of law of a court of record.

It is further recommended that, in addition to having the judicial powers of a court record, such Board be also empowered to dispose of questions arising on matters of fact which may enter into a determination of the law relating to the proper construction of the aforementioned statutes, and, moreover, that it have full power to hear and determine any appeal made by a taxpayer from an assessment under the Act. In this connection it is also recommended that the Board should, for the purposes of entertaining and disposing of appeals from assessments have the statutory authority to exercise all the powers and discretions of whatever nature as may now be vested in the Minister of National Revenue under any of the provisions of the Income War Tax Act or the Excess Profits Tax Act, 1940, or any such powers as may be imported into them at any subsequent time by legislative or administrative authority.

It is recommended that the Board should be composed of not less than 7 members. There should be sufficient authority in the statute setting up the Board to increase the total number where circumstances make it desirable. In the opinion of your Committee, the Chairman, Deputy Chairman and one other member of the Board should be qualified legal practitioners of any Province of Canada with at least ten years' standing. Two additional members, it is felt should be professional accountants of at least ten years standing and that the remaining members be representatives of the taxpaying community. At least two of the members so appointed should be bilingual. It is further recommended that in order to ensure the appointment of experienced and properly qualified men, provision should be made for the payment of adequate salaries commensurate with the positions created. It is suggested that the members of the Board be appointed for a term of 10 years and that they should be eligible for reappointment.

It is recommended that the Board be established at Ottawa but that it be given full authority to travel and to hold sittings at any place in the Dominion of Canada as circumstances may demand. At any hearing of the Board, a quorum of three should be required to be presided over by either the Chairman or the Deputy Chairman.

The Board of Tax Appeals as here contemplated would thus take its place as a court of first instance below the Exchequer Court of Canada.

Instead of a taxpayer receiving, as is now the case, a Notice of Assessment after his return has been filed and the appropriate auditing on the part of the departmental officials has been effected, it is recommended that the Minister of National Revenue issue to each taxpayer at that point in the proceedings, a

document entitled a "Notice of Intention to Assess." This "Notice of Intention to Assess" should, like the Notice of Assessment under the present statute, verify or alter the amount of the tax as estimated and reported by the taxpayer in his return. It is recommended that the taxing authorities be required to issue such notice to every taxpayer within two years from the date of mailing of his income tax return. Following the issue of such "Notice of Intention to Assess," provision should be made that the taxpayer have 30 days from the date of mailing of such Notice within which to lodge a "Notice of Objection" with the Minister, should he be of the opinion that the amount of tax to which the "Notice of Intention to Assess" indicates him to be liable is excessive or for any reason unwarranted.

The Notice of Objection should be in writing and should set out in detail the grounds upon which it is based. Service of such Notice should be effected by mailing the same by registered post addressed to the Minister of National Revenue at Ottawa.

Upon receipt of the said "Notice of Objection," the Minister of National Revenue should duly consider it and, within 60 days from the date of mailing thereof, forward by registered post to the objecting taxpayer a formal Notice of Assessment either affirming or amending the Notice of Intention to Assess.

If the objector, after receipt of the said Notice of Assessment, is dissatisfied therewith it should be provided that he may, within 30 days from the date of the mailing of such Notice of Assessment forward, addressed to the Minister by registered mail, a formal Notice of Appeal to the Board of Tax Appeals which should set out any additional facts, statutory provisions or other information upon which he wishes to rely and which were not included in the original Notice of Objection.

It is recommended that within 15 days from the date of mailing of the Notice of Appeal, the Minister be required either to allow the appeal or to refer it to the Board of Tax Appeals notifying the appellant taxpayer accordingly. In the event that the appeal is referred to the Board, the following documents should be forwarded by the Minister to the Registrar of the Board:

A. The income tax return of the appellant, if any, for the period under review.
B. The Notice of Intention to Assess.
C. The Notice of Assessment.
D. The Notice of Appeal.
E. All other documents and papers relative to the assessment under appeal.

It is recommended that the appellant be required to furnish security for costs to the satisfaction of the Board in a sum of not more than $10.00 when the amount in dispute is less than $200.00 and not more than $25.00 when the amount in issue is in excess of $200.00. The matter should then be deemed to be an issue before the said Board ready for hearing provided however that if it be deemed advisable by the Board or a member thereof that pleadings be filed an order may issue directing the parties to file pleadings.

Within 15 days from the receipt by the Board of all the aforementioned documents and papers relative to the assessment, the Board should notify the Minister of National Revenue and the appellant of a date for hearing. After the appeal has been set down for hearing, as above provided, any fact or statutory provision not set out in the said Notice of Objection or Notice of Appeal may be pleaded or referred to in such manner and upon such terms as the Board or any member thereof may direct. Either party to the appeal might appear in person or by his agent. All hearings of the Board should be held in camera, unless the parties otherwise agree.

Rules of procedure relating to the conduct of the hearings should be those as may be issued from time to time by the Board of Tax Appeals.

Following the hearing and consideration of the appeal by the Board, it is recommended that the decision and the reasons in support of it should be given in writing and made public and that copies be forwarded to the Minister of National Revenue and to the appellant. Such decision would be conclusive in its determination of the issue before the Board and binding on both parties.

It is recommended that provision should be made for an appeal from the decision of the Board of Tax Appeals to the Exchequer Court of Canada similar to the presently existing right of appeal to that Court from the decision of the Minister. Accordingly, if either the Minister of National Revenue or the taxpayer is dissatisfied with the decision of the Board of Tax Appeals, an appeal would lie from its decision to the Exchequer Court. The party launching such an appeal should be required, within 30 days of the date of mailing of the Board's decision, to file a Notice of Appeal with the Registrar of the Board who would thereupon transmit the record of the proceedings to the Exchequer Court. For a specific suggestion as to the form which the legislation may take in setting up the Board of Tax Appeals see Appendix B.

It is felt by your Committee that if a Board of Tax Appeals is established as indicated above, three principal objections raised by the majority of witnesses, as already described, will be suitably met.

1. The taxpayer will be provided with a speedy and inexpensive tribunal to which he may take all disputes arising from assessments including questions of fact, of law and of the exercise of ministerial or administrative discretion, and he will be assured of an impartial and considered adjudication in the course of which the Board may substitute its opinion on all matters for that of the Minister of National Revenue, or of any administrative tribunal whose decision has entered into the making of the assessment.

2. By the fact that the decision of the Board will have considered and, if necessary, varied or confirmed the exercise of discretionary power, the flexibility of the statute will remain unimpaired since the necessity to remove entirely the discretionary authority now contained therein will be somewhat modified while the administering official acting for the Minister of National Revenue will be afforded guides of increasing usefulness as a body of jurisprudence is established relating to the proper exercise of such discretion in a variety of instances.

3. The accumulation of a body of precedent through publication of the decisions and their supporting reasons of the Board of Tax Appeals, which decisions will in many cases inevitably be the result of contestations arising out of the application of departmental directives and rulings, will tend to diminish the force of and the need for such rulings within the Department. In addition thereto, this body of precedent will assist in the clarification of many sections of the taxing statutes now obscure for want of official interpretation and will in turn diminish to some extent the need to redraft portions of the statutes since those sections, which are now charged with ambiguity by the public and administering officials, will perforce obtain certainty, if not clarity, from the application to them of the decisions of the Board.

The whole respectfully submitted.

W. D. EULER,
*Chairman.*

## APPENDIX "A"

### Discretion of the Minister

*Sections of Income War Tax Act*

2(1) (i)
2(1) (s) (ii)
3(2)
3(4)
3(6)
4(1) (i)
4(1) (k)
4(1) (m)
4(1) (o)
4(1) (r)
5(1) (a)
5(1) (b)
5(1) (ff)
5(1) (g)
5(1) (j)
5(1) (k)
5(1) (m)
5(1) (p)
5(1) (s)
5(1) (u)
6(1) (d)
6(1) (i)
6(1) (k)
6(1) (n)
6(1) (o)
6(2)
6(3)
6(4)
6(5)
7A(1) (b) (ii)
7A(1)
8(1)
8(2A)
8(2B)
8(3)
8(5)
8(9)
8(11)
9A (b)
9B(1)
9B(7)
9B(11)
10(2) and (3)
11(2)
11(5)
13(1) and (2)
21(3)
23
23A
23B
26
27A
31(1)
32(1)
32B
36(3)
39(2) (B)
39(5)
39A(3)
40
41(1)
42
43
44
45
46
46A
47
55
59
74(1)
75(1) and (2)
76A(1) and (2)
77(3) and (4)
82
84(3)
88(5)
88(7)
89(1) (2) and (4)
90(3)
90(4) (x)
90(5)
90(6)
92(2)
92(8)
92(12) (b)
Rule 6, S, 1, 1st Sch.
Rule 7, S, 2, 1st Sch.

*Sections of the Excess Profits Tax Act*

2(1) (d)
2(1) (h)
2(1) (i)
3(1)
4(1) (a), (b) and (c)
4(2)
4A (1)
5
5(1)
5(2)
5(3)
5(4)
5(5)
6(1) (b)
6(2) (b)
6(2) (c)
7(1) (b)
7(1) (g)
8(1) (b)
9(1) (2) and (3)
10
13
15A
1st Sch., S, 3(b)

MINISTER'S DISCRETIONARY POWERS

Generally speaking these sections may be categorized as follows:

CATEGORIES OF DISCRETION

1. *Allowance of Reserves*:

| | |
|---|---|
| 5(1) (a) | a. Depletion; |
| 6(1) (n) | b. Depreciation; |
| 6(1) (d) | c. Bad Debts. |
| 6(2) (c) E.P.T. | d. Inventory. |

2. *Limitation of Expenses*:

| | |
|---|---|
| 6(2) | 1. Expenses. |
| 6(3) | 2. Salaries; |
| 90(4) (x) | 3. In capital expenditure allowance; |
| 5(1) (b) | 4. Interest. |

3. *Determination of the true nature of transactions where lessening of tax may be involved with reference to companies and individuals*:

| | |
|---|---|
| 23 | 1. Inter company purchases and sales; |
| 21(3) | 2. Value of shareholders' property transferred to company; |
| 23(b) | 3. Unreasonable payment to non-resident companies; |
| 31(1) and 52(1) | 4. Transactions between husband and wife and parent and child. |

4. *Determination of the nature of Income*:

| | |
|---|---|
| 3(2) | 1. Interest portion; |
| 3(4) | 2. Tax free living allowance. |

5. *Determining nature and effect of certain legal documents and reciprocal acts*:

7A(1) (d)
4(1) (m)

6. *Approval of Pension Schemes.*

5(1) (m)

7. *Minor Administrative Discretions*:

| | |
|---|---|
| 40 | 1. Extending time for making return; |
| 42 | 2. Require production of letters and documents involved in assessment; |
| 46 | 3. Require keeping of books; |
| 74(1) | 4. Demand payment of taxes for a person suspected of leaving Canada. |

8. *Regulations to carry Act into effect.*

75(2)

9. *Waiving of Penalties*:

| | |
|---|---|
| 77(3) (b) | 1. Failure to file return. |

10. *Determination of Standard Profits*:

| | |
|---|---|
| 2(1) (h) E.P.T. | a. Commencement of business; |
| 4(2) E.P.T. | b. Nature of business. |

11. *Adjust Standard Profits*:

| | |
|---|---|
| 4(1) (a) E.P.T. | 1. Basis of partial fiscal period; |
| 4(1) (b) E.P.T. | 2. Alteration of capital. |

12. *References to Board of Referees in case of new or substantially different business.*

5(2) and (4) E.P.T.

(The sections listed are from the Income War Tax Act unless they are marked E.P.T. which signifies Profits Tax Act.)

## APPENDIX "B"

### Suggested Legislation Setting Up Board of Tax Appeals and Appropriate Procedure for Assessment

*Constitution of Board of Tax Appeals*

1. There shall be a Board appointed by the Governor in Council to be called the Board of Tax Appeals of Canada consisting of seven members and such additional number as may be required from time to time, the members of which shall jointly and severally have all the powers and authority of a Commissioner appointed under Part I of the Inquiries Act.

(2) The Governor in Council shall appoint one of the members of such Board as Chairman and another as Vice-Chairman. The Chairman and the Vice-Chairman and one other member of the Board, including the Chairman and the Vice-Chairman shall be qualified legal practitioners of any Province of Canada of at least ten years' standing. In the absence of the Chairman, the Vice-Chairman shall be vested with all the powers conferred upon the Chairman.

(3) Each member shall hold office for a term of not more than 10 years but shall be eligible for reappointment. Any member may be removed for cause at any time by the Governor in Council.

(4) The Chairman, Vice-Chairman and other members of the Board shall be paid such annual salaries as the Governor in Council may determine.

(5) If any member by reason of illness or other incapacity is unable at any time to perform the duties of his position, the Governor in Council may make a temporary appointment of a qualified person to sit in his place and stead upon such terms and conditions and for such term and at such salary as the Governor in Council may prescribe.

2. The Board shall act as a Court of Appeal to hear and determine any appeal made by a taxpayer from an assessment under the Income War Tax Act or the Excess Profits Tax Act, 1940.

(2) The Board shall have power to determine all disputes between taxpayers and the Department of National Revenue with respect to taxes payable under the Income War Tax Act or under the Excess Profits Tax Act, 1940.

(3) The Board in determining any question before it shall have and may exercise all the powers and discretions vested in the Minister of National Revenue by the Income War Tax Act or by the Excess Profits Tax Act, 1940 and, notwithstanding any previous exercise or purported exercise thereof by the Minister, shall exercise such powers and discretions in the manner in which in the opinion of the Board the Minister should have exercised the same in the first instance.

(4) At all sittings of the Board, three members shall constitute a quorum one of which shall be the Chairman of the Board or the Deputy Chairman and the decision of the majority shall prevail.

(5) An appeal shall lie from any decision of the Board of Tax Appeals to the Exchequer Court of Canada.

PROCEDURE

3. Within 2 years of the date of mailing of the taxpayers return, the Minister shall examine the said return and shall forward to the taxpayer, by registered mail, a Notice of Intention to Assess verifying or altering the amount of tax as estimated in the said return.

4. Any person who objects to the amount as set out in the said Notice of Intention to Assess may within 30 days of the date of mailing of the said Notice lodge with the Minister a Notice of Objection.

(2) Such Notice of Objection shall be in writing and shall set out clearly the reasons for the objection and all facts relative thereto.

(3) Such Notice may be served on the Minister by mailing the same by registered mail addressed to the Minister of National Revenue at Ottawa.

5. Upon receipt of the said Notice of Objection the Minister shall duly consider the same and shall within 60 days from the date of mailing thereof forward by registered post to the objecting taxpayer a formal Notice of Assessment either affirming or amending the Notice of Intention to Assess.

6. If the objector, after receipt of the said Notice of Assessment, is dissatisfied therewith he may within 30 days from the date of mailing of the Notice of Assessment lodge with the Minister of National Revenue a Notice of Appeal to the Board of Tax Appeals. Such Notice shall be in writing and shall set out any additional facts, statutory provisions or other information relative to the appeal upon which the taxpayer wishes to rely and not set out in the Notice of Objection.

7. Within 15 days from the date of mailing of the said Notice of Appeal, the Minister shall either allow the appeal or transmit the same to the Board of Tax Appeals and shall forthwith notify the taxpayer accordingly.

(2) Upon the appeal being transmitted to the Board of Tax Appeals the Minister shall at the same time cause to be transmitted to the said Board copies of the following documents:

(*a*) The income tax return of the appellant, if any, for the period under review.

(*b*) The Notice of Intention to Assess.

(*c*) The Notice of Assessment.

(*d*) The Notice of Appeal.

(*e*) All other documents and papers relative to the assessment under appeal.

(3) Upon notification by the Minister that the appeal has been transmitted to the Board, the taxpayer shall forthwith give security for costs to the satisfaction of the Board in a sum of not more than $10.00 where the amount in dispute is $200.00 or less and not more than $25.00 where the amount in dispute is in excess of $200.00.

8. The matter shall thereupon be deemed to be an action before the said Board provided however that if it be deemed advisable by the Board or a member thereof that pleadings be filed an order so directed may be made by the Board.

9. Within 15 days from the receipt by the Board of the aforementioned documents the Registrar of the said Board shall notify the Minister of National Revenue and the appellant of a date for hearing.

10. After the appeal has been set down for hearing any fact or statutory provision not set out in the Notice of Objection or in the Notice of Appeal may be pleaded or referred to only upon such terms and in such manner as the Board or any member thereof may direct.

11. The Board of Tax Appeals shall duly consider the appeal and upon hearing the evidence adduced and upon such other enquiry as it deems advisable shall determine the matter affirming or amending the assessment and shall state its decision in writing together with reasons therefor.

(2) Copies of the said decision and reasons shall be forwarded forthwith to the Minister of National Revenue and the taxpayer.

(3) Subject to the provisions of Section 2(5) the decision of the Board shall be final and conclusive in its determination of the issue before the Board and binding on both parties.

12. Either party may appear in person or by their agent.

13. If the Minister or the taxpayer is dissatisfied with the findings of the Board he shall within 30 days from the receipt of the decision of the Board file a Notice of Intention to Appeal to the Exchequer Court of Canada with the Registrar of the Board of Tax Appeals and the said Registrar shall thereupon deliver to the Registrar of the Exchequer Court of Canada the record of the appeal then in the possession of the said Board.

14. The Board of Tax Appeals may with the approval of the Governor in Council make all necessary rules and regulations respecting,

(*a*) the sittings of the Board and divisions thereof throughout Canada,

(*b*) the practice and procedure in all matters of business to be dealt with before the Board,

(*c*) the apportionment of the work of the Board among its members, the allocation of members to divisions and the assignment of divisions to sit at hearings,

(*d*) the publication of the decisions of the Board

(*e*) generally, the carrying on of the work of the Board, the management of its internal affairs and the duties of its officers and employees,

(*f*) any other matter or thing deemed necessary in the performance of the function of the Board as a court of tax appeals.

15. The Governor in Council may appoint such officers, clerks and other assistants as may be necessary for the proper carrying out of the duties of the said Board.

16. The remuneration of all officers, clerks and assistants, and all the expenses of the Board incidental to the carrying out of the provisions of this Act including all actual and reasonable travelling expenses of the members of the Board and the Registrar and Assistant Registrars and of such members of the staff of the Board as may be required by the Board to travel, necessarily incurred in attending to the duties of their office, shall be paid monthly out of moneys to be provided by Parliament

17. No member of the Board or Registrar or clerk or assistant shall communicate or allow to be communicated to any person not lawfully entitled thereto any information obtained under the provisions of this Act or allow any such persons to inspect or have access to any written statement furnished thereunder.

18. No member of the Board of Tax Appeals shall, either directly or indirectly, as director, manager, partner or employer of any corporation, company or firm, or in any other manner whatever for himself or others, engage in any occupation or business other than his duties as a member of such Board of Tax Appeals but every such member shall devote himself exclusively to such duties.

1946

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

## SPECIAL COMMITTEE

Appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon.

No. 13

WEDNESDAY, JULY 31, 1946

CHAIRMAN

The Honourable W. D. Euler, P.C.

## Part Two, Final Report of the Special Committee of the Senate on Taxation

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1946

## ORDER OF APPOINTMENT

*(Extracts from the Minutes of Proceedings of the Senate for 19th March, 1946)*

Resolved,—That a Special Committee of the Senate be appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, and to report thereon;

(2) That the said Committee be composed of the Honourable Senators Aseltine, Beauregard, Bench, Buchanan, Campbell, Crerar, Euler, Farris, Haig, Hayden, Hugessen, Lambert, Léger, McRae, Moraud, Robertson, Sinclair and Vien;

(3) That the said Committee shall have authority to send for persons, papers and records.

ATTEST:

L. C. MOYER,
*Clerk of the Senate.*

# MINUTES OF PROCEEDINGS

WEDNESDAY, 31st July, 1946.

Pursuant to adjournment and notice the Special Committee appointed to examine into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and to formulate recommendations for the improvement, clarification and simplification of the methods of assessment, collection of taxes thereunder and the provisions of the said Acts by redrafting them, if necessary, met this day at 2 p.m., The Honourable W. D. Euler, P.C., Chairman, presiding.

*In attendance:*

Mr. H. H. Stikeman, Counsel to the Committee.

A draft of Part II of the Final Report was considered, amended and adopted.

At 3.45 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

A. H. HINDS,
*Chief Clerk of Committees.*



65438

# FINAL REPORT OF THE SENATE COMMITTEE ON TAXATION

## PART II

WEDNESDAY, 31st July, 1946.

On October 31, 1945, a Special Committee of the Senate was constituted with the purpose, as expressed in the terms of reference "of examining into the provisions and workings of the Income War Tax Act and The Excess Profits Tax Act, 1940, and of formulating recommendations for the improvement, clarification and simplification of the methods of assessment and collection of taxes thereunder."

On November 15, 1945, the terms of reference were amended by the addition of the following words after the word "thereunder":

"and the provisions of the said Acts by redrafting them if necessary".

Part I of the Final Report of your Committee was presented to the Senate by the Chairman, the Honourable W. D. Euler, on May 28, 1946. Senator Euler then indicated that Part II will deal with the necessary changes to the Act recommended by the Committee and Part III will relate to the administration of the taxing statutes.

Since the adoption by this Chamber of Part I of the Report, the Minister of Finance has introduced certain resolutions indicating the propositions upon which the Government proposes to found its amending legislation in respect of the Income War Tax Act and The Excess Profits Tax Act, 1940. In the speech introducing the Budget Resolutions the Minister of Finance stated that "instructions are being given to the inter-departmental drafting committee to explore carefully the possibility of reducing the number of discretions now vested in the Minister or at least of providing for their exercise under regulations approved by the Governor in Council." It has also been indicated that such an inter-departmental drafting committee has been requested to consider the possibility of generally clarifying the Income War Tax Act.

Since the Government proposes to take certain measures, as described above, which will, it is hoped, to some extent achieve the objects for which your Committee has been constituted, it is thought desirable to direct the Second Part of the Final Report to assisting the Government in carrying out its intention in this direction. In doing so, however, your Committee wishes to go on record that although it here confines itself to a number of limited suggestions regarding the treatment of certain sections of the Income War Tax Act and The Excess Profits Tax Act, 1940, it requests the opportunity of reviewing whatever proposals may be made by the inter-departmental committee in order to determine whether in its opinion the proposals might benefit from further study or from additional recommendations by a committee of this Chamber.

As stated in Part I of the Final Report, your Committee has heard Briefs from twenty-three organizations and individuals. Your Committee has considered the representations made in these Briefs insofar as they relate to certain aspects of the Appeal provisions in the two Statutes and in a more limited manner insofar as they refer to the desirability of specific changes in the legislation and improvements in the administrative techniques employed by the Taxation Division of the Department of National Revenue.

It is proposed, therefore, that Part II of this Report be confined to a statement of those sections which in the opinion of your Committee, after giving study to the briefs and representations made to it, require amendment, clarification or repeal.

Insofar as the details of administration within the Department are concerned, which, it has already been stated, will be dealt with in Part III of this Report, your Committee feels that it requires further opportunity to hear witnesses and to study their representations with a view to making an analysis of the methods of operation and administration of the Department before making recommendations in this connection.

After hearing the statements of a number of witnesses on the question of the renumeration now being paid to various classifications of the Staff of the Taxation Division, however, your Committee is impressed with the fact that current salaries appear in the main to be inadequate in view of the national importance and the high degree of responsibility inherent in the nature of the functions performed by officers of that Division.

In view of the impossibility of completing its task in this connection before the end of the present Session of Parliament, your Committee recommends that, if it is the wish of this Chamber that Part III of this Report be made, your Committee be reconstituted for that purpose.

Insofar as the desirable changes in the legislation are concerned, the representations made may be divided into three broad categories:—

(1) Those recommending that certain sections of the taxing statutes be amended in certain directions.

(2) Those recommending that certain sections be clarified and more particularly with regard to the exercise of Ministerial discretion thereunder; and

(3) Those recommending that certain sections be repealed.

Accordingly, your Committee recommends:—

(i) That a complete review of the taxing Statutes be effected to the end that not only may clarity and coherence be achieved but that their provisions may be brought into conformity with modern business practice. In this connection it is recommended that the following sections of the Income War Tax Act be amended to reflect the above principle:

| *Section* | *Subject Matter* | *Reference to Page of Evidence Before Committee* |
|---|---|---|
| 2 (1) (*j*) | Definition of self contained, domestic establishment. | 1946, p.123, Canadian Bar Association. |
| 6 (1) (*a*) | Expenses not laid out to earn income. | 1946, p.119, Canadian Bar Association; p.248, Toronto Board of Trade; 286, Senator Haig. |
| 6 (*d*) | Reserves, Contingent Accounts or Sinking Funds. | 1946, pp.113, 114, Canadian Bar Association. |
| 6 (*n*) | Allowance for depreciation. | 1946, p.81, Dominion Chartered Accountants Association, p.248, Toronto Board of Trade. |
| 16 | Capital Stock changes by Company with undistributed income. | 1946, p.249, Toronto Board of Trade. |
| 55 (*b*) | Continuation of Liability for Tax. | 1946, p.306, Income Taxpayers' Association. |

In connection with section 55 (b), it is recommended that the six-year limitation be amended to provide that an assessment may not be re-opened after three years from the day upon which it was mailed to the taxpayer in cases other than those in which the taxpayer has made a misrepresentation of fact or has committed fraud in making his return or supplying information under the Act.

(ii) That the following sections of the Income War Tax Act be clarified in such a manner that their interpretation is not subject to doubt and that they do not come into conflict with other sections of the said Act:

| *Section* | *Subject Matter* | *Reference to Page of Evidence Before Committee* |
|---|---|---|
| 9B | Withholding tax on Non-Residents. | 1946, p.122, Canadian Bar Association; p.249, Toronto Board of Trade. |
| 16 | Capital Stock Changes by Company with undistributed income. | 1946; p.249, Toronto Board of Trade. |
| 88(8) | Deductions from Gift Tax. | 1946; p.126, Canadian Bar Association. |

(iii) That the following sections of the Income War Tax Act be repealed:

| *Section* | *Subject Matter* | *Reference to Page of Evidence Before Committee* |
|---|---|---|
| 10 | Distinction between income from chief occupation and secondary activity. | 1946; p.118, Canadian Bar Association. |
| 32A | Transactions to avoid taxation. | 1946; p.82, Dominion Association of Chartered Accountants; p.249, Toronto Board of Trade; p.285, Canadian Electrical Association. |

(iv) That the following sections of the Excess Profits Tax Act, 1940, be repealed:

| *Section* | *Subject Matter* | *Reference to Page Evidence Before Committee* |
|---|---|---|
| 15 | Transactions to Avoid Taxation. | 1946; p.82, Dominion Association of Chartered Accountants; p.249, Toronto Board of Trade; p.285, Canadian Electrical Association. |

It is pointed out that the foregoing sections should not be regarded as necessarily comprising all the sections, which require amendment, clarification or repeal. The list above set forth is composed of those sections which, in the opinion of your Committee, and of the witnesses who came before it, are most urgently in need of attention by the Governmental draftsmen in order to facilitate a uniform, clear and reasonable administration of the taxing Statutes as they presently exist.

Your Committee wishes to go on record in connection with any revision which may be proposed or effected by the Government in respect of the two taxing Statutes above mentioned as being in complete accord with the statement of the Minister of Finance with respect to his instructions to the interdepartmental drafting committee regarding the reduction in the number of discretions now vested in the Minister of National Revenue and wishes further to endorse his desire to explore the possibility of providing for their exercise under regulations approved by the Governor in Council. Such a limitation of Ministerial discretion becomes all the more necessary, since, much to the regret of your Committee, the Minister of Finance has not seen fit to adopt the recommendations made by your Committee in Part I of this Report relating to the establishment of a Board of Tax Appeals with authority to review administrative discretions.

All which is respectfully submitted.

W. D. EULER,
*Chairman.*

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