Canada. Parl. Senate. Standing Comm.on Banking and Commerce, 1958.

1958

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

To whom was referred the Bill (C-37), intituled:
An Act respecting the Taxation of Estates.

The Honourable SALTER A. HAYDEN, *Chairman*

No. 1

MONDAY, AUGUST 18, 1958.

WITNESSES:

The Honourable Donald Fleming, P.C., Mr. H. Roy Crabtree, Mr. W. J. Hulbig, Mr. C. D. Paxton, Mr. W. I. Linton, Mr. J. K. Allison, Mr. A. R. Courtice, Mrs. W. H. Gilleand, Mrs. J. F. Flaherty, Mrs. G. D. Finlayson.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1958

62190-4—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

*Aseltine	Golding	Monette
Baird	Gouin	Paterson
Beaubien	Haig	Pouliot
Bouffard	Hardy	Power
Brunt	Hayden	Pratt
Burchill	Horner	Quinn
Campbell	Howard	Reid
Connolly (*Ottawa West*)	Howden	Robertson
Crerar	Hugessen	Roebuck
Croll	Isnor	Taylor (*Norfolk*)
Davies	Kinley	Turgeon
Dessureault	Lambert	Vaillancourt
Emerson	Leonard	Vien
Euler	*Macdonald (Brantford)	White
Farquhar	McDonald	Wilson
Farris	McKeen	Wood
Gershaw	McLean	Woodrow—49.

(Quorum 9)

**ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, August 14th, 1958.

"The Senate resumed the debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Emerson, for the Second reading of the Bill C-37, intituled: An Act respecting the Taxation of Estates.

After further debate, and—

The question being put on the motion for the second reading of the Bill, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

62190-4—1½

MINUTES OF PROCEEDINGS

MONDAY, August 18, 1958.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 2.00 P.M.

Present: The Honourable Senators: — Hayden, *Chairman;* Aseltine, Baird, Bouffard, Brunt, Connolly (*Ottawa West*), Croll, Farquhar, Haig, Howard, Lambert, Leonard, Macdonald, McDonald, McLean, Monette, Turgeon, Vaillancourt and White. 19.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel, the Senate, and the official reporters of the Senate.

Bill C-37, An Act respecting the Taxation of Estates, was considered.

On motion of the Honourable Senator Aseltine it was RESOLVED to report recommending that authority be granted for the printing of 1,000 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

The Honourable Donald Fleming, P.C., Minister of Finance, was heard in explanation of the Bill.

At 3.00 P.M. the Committee adjourned.

At 3.30 P.M. the Committee resumed.

The following witnesses were heard and questioned:—

Mr. H. Roy Crabtree, Chairman; Executive Council, Canadian Chamber of Commerce.

Mr. W. J. Hulbig, Associate General Counsel, Sun Life Assurance Company, presented a brief on behalf of the Canadian Chamber of Commerce.

Mr. C. D. Paxton, Assistant General Manager, The Royal Trust Company, also heard on behalf of the Canadian Chamber of Commerce.

Mr. W. I. Linton, Administrator, Succession Duties, Department of National Revenue.

Mr. J. K. Allison, Montreal Trust Company, also heard on behalf of the Canadian Chamber of Commerce.

Mr. A. R. Courtice, Assistant General Manager, Toronto General Trust Company, presented a brief on behalf of The Trust Association of Canada.

Mrs. W. H. Gilleand, Vice President, Canadian Federation of University Women.

Mrs. J. F. Flaherty, Executive, Canadian Federation of University Women.

Mrs. G. D. Finlayson, Chairman, Canadian Committee on the Status of Women and Vice President, National Counsel of Women.

At 5.45 P.M. the Committee adjourned until tomorrow, Tuesday, August 19th, 1958, at 10.30 A.M.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, MONDAY, August 18, 1958

The Standing Committee on Banking and Commerce, to which was referred Bill C-37, an act respecting the taxation of estates, met this day at 2 p.m.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Gentlemen, we have before us Bill C-37 respecting the taxation of estates. There are one or two preliminary observations I should make. One is that the committee at this time intend to sit until the 3 o'clock bell goes and at that time we will adjourn for approximately half an hour and then come back here and resume the sittings of the committee until 6 o'clock. At that time we will adjourn until 10.30 tomorrow morning.

Now, that is the proposal subject to the wishes of the committee in that regard. The Senate will be sitting this evening and I understand that there is a full agenda before it. Under those circumstances that is the proposal for the foreseeable future as to the sittings of the committee.

Senator ASELTINE: That is the suggestion?

The CHAIRMAN: Yes, we will sit all afternoon with the exception of half an hour and start again tomorrow morning at 10.30.

May we have a motion from the committee to print 1,000 copies of our proceedings in English and 200 in French?

Senator ASELTINE: I so move.
Carried.

The CHAIRMAN: We have with us this afternoon representatives from a number of organizations who wish to be heard. First, we have the Minister of Finance and at this stage the suggestion is, again, if the committee approves, to call on the Minister of Finance for something in the way of a general statement.

Senator ASELTINE: I move that we call on the Minister of Finance for a preliminary statement.

The CHAIRMAN: Does that meet with the approval of the committee?
Carried.

The CHAIRMAN: Mr. Minister, you have the floor.

Hon. Donald Fleming. (*Minister of Finance*): Mr. Chairman and honorable senators, first let me thank you for the opportunity of appearing before you to make what will be just a brief preliminary statement concerning this Bill C-37, the new estate tax bill.

May I say at once that having made this preliminary statement, I will be at your service if you should need me at any later stage of the proceedings. If you care to send for me at any time I hope to be able to make myself available.

The officials who are well acquainted with all aspects of the bill are before you and will be in constant attendance upon you as you may desire.

I think I should say that the officials who are before you are drawn from both the Department of Finance and the Department of National Revenue. I am sure all members of this committee are well acquainted with Dr. A. K. Eaton, Assistant Deputy Minister of Finance, who is on retirement leave at the present time, and who was good enough—and I do want to record this fact if I may—to come back in connection with the various bills arising out of the budget, to help us see them through at this present session, and I have had occasion elsewhere to record my own deep sense of gratitude to Dr. Eaton, and I mention that here as well, Mr. Chairman.

Then as well we have from the Department of National Revenue Mr. W. I. Linton and Mr. A. L. DeWolf and Mr. D. H. Sheppard. Mr. Sheppard is the Assistant Deputy Minister. Mr. Linton and Mr. DeWolf are the officials of that department who have had most to do directly with the administration of the Succession Duty Act and with the advice upon which a new estate tax bill is based. And then, from the Department of Finance here are Mr. F. R. Irwin and Mr. E. H. Smith. Then there is Mr. D. S. Thorson, who is the draftsman of the bill. Mr. Thorson is one of those officials on loan from the Department of Justice to the Department of Finance.

Mr. Chairman and honourable senators, there has long been need of a searching review of legislation pertaining to federal taxation in the case of death. The present Dominion Succession Duty Act was enacted in 1941. It has been submitted to amendments on only very rare occasions since. It was about a decade ago that a change was made in the exemption, but this is one of the acts which had had very little examination in Parliament from that time.

I can say that in the other place there have been particularly in recent years many requests for a review of the Act, and two of my predecessors have indicated to the other place that it was their intention in the succeeding session to bring before Parliament extensive amendments or new legislation in that respect. At the last session it was my privilege to bring before the house a bill based upon studies that had been going on for a considerable period of time. They did not just begin in June; they had been carried on for several years; and these studies were embodied in Bill 248, which was introduced at the last session. In introducing it in the other place I made the statement on behalf of the Government that it was not our intention to ask the other place to carry the bill beyond first reading. It was given first reading; the bill was circulated; and I asked that the interval between that time and the next following session, namely the present one, should be employed by interested organizations in an examination of the bill, and coupled it with the request that they would give us the assistance of their comments upon the bill. The response to this request was most gratifying, Mr. Chairman, and we have received, in the period of the last six months, particularly this spring, a great many briefs and representations. I believe that virtually all the national organizations that have shown an interest in the subject submitted briefs, and we had many individual submissions by letters and otherwise.

Virtually all of the national organizations had a hearing. They sent delegations, and they were heard, in many cases by my colleague the Minister of National Revenue, and myself, as well as the officials. I should like to express here, as I have on other occasions, Mr. Chairman, my own very deep gratitude, as well as that of the Government, for this public response, reflecting as it does not only public interest but a deep sense of public responsibility on the part of many of these national organizations. I might say that every point raised in every brief in every letter by every delegation was carefully reviewed. These studies that were carried on in the two departments principally concerned extended over a period of some time. It was part of the work of preparation for the budget. There were meetings daily, sometimes twice a

day; meetings of 15 or 16 men, going over all aspects of the representations that had been made. In the end, as a result of these extensive reviews, a new bill was introduced, in the form of C-37, almost exactly in that form. This bill embodies extensive changes as compared with Bill 248 which had been introduced at the last session. Many of the points that were put forward by these national organizations were adopted. There were others, of course, that we did not adopt and, I think, in every case for ample reasons. It was not that in many cases we would not have liked to adopt the others but it got down to a question of revenue. While this bill does reduce the taxation on estates substantially, under the pressures that exist at a time like this, with an estimated deficit this year of $650 million, there is a limit to the distance one can go in giving effect to many representations, however much one would like to give effect to them, that do involve further curtailment of national revenues. Of these extensive changes that have been made in the bill as compared with Bill 248, the taxpayer derives very substantial benefits.

The editor of the *Canadian Tax Journal,* with which publication I am sure all members of this committee are familiar, in his opening paragraph in the July-August issue, speaking of the comparison of Bill C-37 with the former Bill 248, had this to say:

> Several of the changes go to the fundamentals of death taxation and are more sweeping in their effect than most of the innovations in the first measure. On the whole the taxpayer has come off quite well. Of a dozen or so major changes most are to his advantage.

One could point as well to similar expressions on the part of other national organizations who made submissions, many of whose suggestions were adopted while others were not adopted. One could mention, for instance, the news letter for the July-August period issued by the Canadian Chamber of Commerce in which they draw attention to the number of suggestions which they put forward which were adopted, as well as others that the Government found it could not adopt under the circumstances I have described.

Mr. Chairman, it would not be appropriate at this time to launch into any detailed comment upon any of the provisions of this bill. May I say in quite general terms, however, that I do respectfully commend this bill to the committee. It is a good bill. I don't say it is a perfect one. I don't know how anyone could draw a perfect bill with respect to a tax measure, least of all with respect to taxing the estates of deceased persons, for there are many difficult situations that arise and one must in these circumstances be guided on the one hand by the necessities of providing revenue and, on the other, by one's desire to be generous in respect of taxation exemptions.

As a Government measure may I urge that it is one that has been very carefully prepared and studied over a long period of time. Every suggestion put forward has been submitted to very careful scrutiny and consideration. I submit it to you respectfully, Mr. Chairman, and honourable senators, as a major advance, a major reform, in federal taxation with respect to estates of deceased persons. In a budgetary sense this measure will effect a noteworthy reduction in the taxation of estates. It is estimated that the total reduction that this measure will bring about in the revenues from the taxation of estates will be about $7 million in a full year as compared with the present yield under the Dominion Succession Duty Act. The benefit of that reduction is enjoyed principally by estates up to about $200,000. We have substantially increased the exemptions; the exemptions now are higher than they have ever been before. There are some who have made representations who would like higher exemptions. Well, I have to say in that respect, Mr. Chairman, who would not? Nothing, I can assure you, would make the Minister of Finance happier than to be able to propose exemptions, but here is another

case where one has to try to arrive at a balance between the necessities of meeting the budgetary requirements and the desire to distribute the burdens equitably over the entire taxpaying public.

The estate principle has been adopted in this measure, the idea of levying a tax upon the mass of the estate, rather than according to the succession principle where we are dealing with the number of successions from testator or intestate to successor, whatever number there may be in any particular estate. In this respect we are following the practice and enjoying the experience of the United Kingdom which has now adopted the estate tax fully. The result, we think, is not only a substantial simplification of the tax structure in respect of estates, but a greater measure of equity in that regard. We have gone farther than has ever been attempted before in federal legislation in recognizing the ownership principle in the case of property jointly held. I think we have gone farther in this bill in eliminating discriminations than has ever been attempted before. We have introduced new and very equitable, indeed, quite far-reaching measures in connection with insurance.

These are but a few of the features of this bill, Mr. Chairman. With respect, we commend it to the committee as a good bill, and as I indicated earlier, Mr. Chairman, if there is anything in which you require my presence I will hold myself available on call as your hearings proceed, and the officials from the departments concerned will be here at your service at all times. To take advantage of this opportunity to pay tribute to those officials, Mr. Chairman, I know something of the effort, the study, that has been devoted to this measure on the part of these officials, and I cannot pay too high a tribute to the effort and the public spirit of these gentlemen. Thank you very much.

Senator John A. McDONALD: Would it be a fair question to ask that if this legislation is passed as it is at present stated, would there be a possibility, if economic conditions improve, that the taxpayer could still get further relief in another session?

Hon. Mr. FLEMING: Mr. Chairman, may I say of this or any other tax measure, or any other matter that comes under the jurisdiction of the Department of Finance, that it will continue to be under examination at all times. Certainly we intend, having taken some responsibility in connection with this measure, to watch its operations very closely, and whereever opportunity offers itself of making improvements in the measure as time goes on we shall, I assure you, continue to look for them.

Senator McDONALD: I was wondering if economic conditions improved before the next session, whether the taxpayers could hope for still further relief.

Hon. Mr. FLEMING: The taxpayers affected by this bill, C-37, are not the only ones to bear in mind. But, no one will be happier than the Minister of Finance when the time comes that our revenues have so improved that he will have the privilege of proposing further tax reductions.

Senator HOWARD: Mr. Chairman, honourable ministers, officials and gentlemen,—first of all I should like to congratulate the Minister of Finance and his officials for the bill which they have drafted, and which is now before us, with a view to getting away from the old succession duties and coming more in line with England and the United States by way of an estates tax. On the other hand, after studying the bill, reading the discussion in the committee of the other house, and making a comparison between Bill 248 of last session and Bill C-37, I can see many instances where the legislation could be considerably improved. I do not mean necessarily by way of reduction of taxation, but rather the improvement of conditions which, I think, are not compatible with the advancement of Canada as a country at the present time.

I have of late had considerable experience in this field, and I should like to congratulate the officials of the Succession Duties Department for the splendid work they have done, and the co-operation they have shown. But after all, in this field the officials have to abide strictly by the act, and the minister himself has a very few discretionary powers.

To put it briefly, I was wondering if the minister would consider applying the proposed exemptions to the present Succession Duties Act beginning, we will say, on October 1st; so, for any one who dies between now and the next session of Parliament, their estates would not be hurt. Further, I would propose the appointment of a sub-committee composed of paid tax experts to represent the people who, after all, are the customers of the Government as much as they are customers of mercantile, retail or wholesale businesses. In that way the bill could be re-drafted and prepared for passage at the next session. I believe that would be more workable.

I do not propose to move at this time that such action be taken, but I throw it out as a suggestion; if the committee later on agrees to the proposal, I am prepared to move it.

The CHAIRMAN: Are there any other senators who wish to make observations on the general remarks of the Minister?

Senator MACDONALD: I would like to ask one question, Mr. Chairman. It is taken for granted, apparently, that this principle of taxing estates is preferable to the old principle of taxing the succession. I wondered if the Minister could explain to whom the advantage accrues. Is the advantage to the taxpayer or to the administration? The Minister has stated that this system has been adopted in Great Britain and in the United States, but he has not said why. Why don't we stay with the former system? What is the benefit of this system over the system that has been in effect for so many years?

Hon. Mr. FLEMING: Mr. Chairman, I will be delighted to answer that question of Senator Macdonald. It is a contribution to clarification, to simplification, to equity, as well as to reduction of taxation to adapt the principle of the estates tax. In the succession principle, whether all testators or in estates realize it or not, every individual succession upon death bears its own tax and if the testator wishes to make provision for relief of the successor from the burden of taxation he must so provide.

I am sure that Senator Macdonald as all who are present of the legal profession have drawn many wills with that expressed provision in mind because they wanted to introduce with respect to that particular will what is in effect the estate principle rather than have the succession principle apply to it.

Now, simplification is I think a desirable goal. It is so much simpler under a measure of this kind to look at the estate in the mass and to know the tax that will be levied by the federal jurisdiction upon it. I think that is an advantage to the taxpayer, to the person administering the estate as well to those who are charged with the responsibility. There should be some simplification from the point of view of administration and enforcement and to that extent the taxpayer will derive benefit. I would expect there will be opportunity for speeding up the assessments through the process of simplification as a result of the introduction of the estate tax principle.

And then, on the ground of equity, Mr. Chairman, I think there is much to be said for the estate tax principle. Here we are putting more emphasis upon the aggregate of the estate. And here is something that I think goes beyond simply the matter of simplification and clarification. Here is a measure it seems to me that has equity to commend it as well. Now, to

tie that in with what we are proposing here in regard to exemptions and the process of applying the tax on the mass of the estate rather than on what might be termed a multitude of succession.

We have proceeded on the assumption that we are going to subtract from that mass $40,000 to begin with. We have preserved here the principle that exists under the Succession Duty Act that no estate under $50,000 shall bear any tax whatever. And in addition in certain cases that we think have circumstances to commend that we have proposed that there be additional exemptions or subtractions from the mass.

Now these are all reasons that have commended themselves to us in relation to the principle of this measure. They have been found by long experience in the United Kingdom and in the United States now to be sound, to be a better method of levying taxes on the estate of a deceased person. As you know, for a century the United Kingdom has levied a variety of taxes to apply in the case of death and now, after that long experience with various forms of tax applicable on death, they have selected this method as a method dictated by experience as the most sound and fair.

Mr. Chairman, might I be permitted to make one comment on Senator Howard's suggestion?

The CHAIRMAN: Yes.

Hon. Mr. FLEMING: With great respect, that suggestion of Senator Howard, I am afraid, is not a practicable one. One has to have regard to the situation in both houses and to the limits of the budget process in the House of Commons. It would not be possible now at this stage to introduce measures to amend the Succession Duty Act. There would be great difficulty in working out the kind of exemptions that the senator has proposed, and I come back to what I said at the beginning, I commend the measure as one that has already received that very detailed and searching study which he has proposed, and I am sure by the time this honourable committee has reviewed it, Mr. Chairman, it will be clear that all the points that can be raised on this measure have been raised. We have been looking for something new and we have not found anything new as yet in the progress of the bill up to this time that had not been put forward before the bill was ever drafted or brought to Parliament, and I am quite sure that with the kind of analysis the bill will receive here, the kind of study, with all the officials here to discuss matters, and representations such as you intend to hear, that there will be, I trust, no need of the kind of further study that the senator proposes. Indeed, that is the kind of study that the bill has received and received intensively over a period of months.

Senator POULIOT: Mr. Chairman, may I ask a question of the Honourable Minister of Finance?

It is the second time that I see him at this committee, and it is a sign of goodwill, of what Mr. Mackenzie King called godwill and a spirit of co-operation, etc.

My question is this: He spoke to us about the British Estates Tax. Does he not think that the Birtish laws concerning the taxation of estates should be taken with a grain of salt because at the present time everybody is complaining that the estates have been ruined by the laws in force in the United Kingdom? I give this as a subject of meditation.

Hon. Mr. FLEMING: Mr. Chairman, may I thank Senator Pouliot for his welcome. Believe me it will always be a pleasure to come to this committee as long as the committee will receive me.

The dissatisfaction to which Senator Pouliot has referred in the United Kingdom Estate tax, as I understand it, is not on the principle of the estates tax but rather with respect to the rates of tax applied on the estates principle.

The exactions of the tax gatherer in the United Kingdom under the estates tax principle run up to something like 80 per cent, and the top rate under this bill, which is the same as under the Succession Duty Act, is 54 per cent on the highest estate.

Senator BOUFFARD: Plus the provincial succession duty tax, of course?

Hon. Mr. FLEMING: No, there is credit given for the provincial tax in the case of the two provinces that still collect their own succession duty.

Senator BOUFFARD: Only for a part of it, Mr. Minister.

Hon. Mr. FLEMING: I think it will be found that there is an allowance for the tax levied in the two provinces. The figure I have given of 54 per cent represents the maximum under both the present Succession Duty Act and of this bill. There is no increase in the total percentage brought about by this bill, none whatever and as I stated Mr. Chairman the United Kingdom legislation relates to the estates tax principle rather than the rate.

Senator CROLL: Mr. Chairman, may I ask the Minister a question?

I am sure that somebody in the department must have made some study of this element: In studying these estates were the estates broken down in order to ascertain where the $7 million is likely to be saved? For instance, estates up to $100,000, between $100,000 and $200,000 will be affected differently. Will someone have that figure? I do not see it in the minutes.

Hon. Mr. FLEMING: Yes. Mr. Smith will be the official to put that question to, Mr. Chairman.

Senator CROLL: You mean you have not the information?

Hon. Mr. FLEMING: Yes. I gave the figure earlier.

Senator CROLL: No, you gave a figure of $7 million.

Hon. Mr. FLEMING: I gave the figure earlier, that the reductions are on estates up to $2,000,000. That is the breaking-point now between the reductions and the place where, from there on, the reductions are not of consequence.

Senator MACDONALD: I think Senator Croll was referring to the number of taxpayers who will be affected in this bill as compared with the old bill.

Senator CROLL: I had in mind both the amount, and the number.

Hon. Mr. FLEMING: We will be able to supply that.

Senator WHITE: The minister a few minutes ago said that under the new act there will be simplification of administration. I presume he refers particularly to administration in the department. Would the minister please explain that? Apart from the present way, where you make the assessment in various degrees against the estate, and under the new bill you will have a rate against the whole estate, how is there going to be any simplification of that?

Hon. Mr. FLEMING: That in itself will be a substantial simplification, because in many estates there may be a large number of successions. I suppose all of us in this committee who have practised law have had experience with some estates where there have been a number of successions. It involves examination in every case to determine the degree of relationship, and other considerations. That of itself would be a substantial simplification. But there are other simplifications which, I am sure, will become apparent as the review of the bill clause by clause proceeds. But I think it is quite apparent that treating the estate en masse is of itself a substantial contribution to simplification. One could point to other clauses of the bill—I do not know that you want me to get into clauses—but there are a number of clauses which represent substantial simplification. One could point to the rules with regard to determination of situs of property as one of the cases where by this bill a considerable contribution has been made to simplification.

Senator MACDONALD: That could be done under the former Succession Bill.

Hon. Mr. FLEMING: Yes. On the other principle, it has not been done. Senator White's question was not on that.

Senator LEONARD: I am quite in accord with the principle of the estate tax as against the succession duty tax. I think the minister is perfectly correct in his position there. But there is another new principle in the bill that disturbed me, and that is the change in the well-recognized principle of taxing real estate where it is located; and here we are introducing the principle of taxation of foreign real estate owned by Canadians. I read the reasons given for that, to prevent Canadians from investing their money in some jurisdiction outside of Canada and reducing their Canadian tax thereby; and if we stopped there I could see the reason for the introduction of that new principle; but on balance I think there is far more money coming from the United Kingdom, and that has come from the United Kingdom in the past, and other countries, for investment in real estate in Canada. I have in mind, for example, the Guinness development at Vancouver, and the development of the Grosvenor estates; but as we run across the country we all know of cases of substantial investments by people outside of Canada in real estate in Canada; and I would think that that movement is likely to continue unless we open the door for the United Kingdom and other countries to adopt that new principle we are putting in this bill, and tax their nationals in money invested in real estate in Canada. If you would not mind, I would like to have your comments on that.

Hon. Mr. FLEMING: Mr. Chairman, it is true that in the past there has been a different rule with respect to the ownership of real estate abroad as far as taxation is concerned, but it seemed to us, with respect to this bill, that this differentiation with respect to real estate was in effect a discrimination, and that the sounder rule was to remove that special categorization of real estate and to assimilate it with other forms of property with respect to this tax.

Senator LEONARD: Even though other countries could adopt the same rule?

Hon. Mr. FLEMING: As far as other countries are concerned—the senator will bear me out in this—there are some tax conventions here that will have to be renegotiated. The one with United States, for instance, is one that will have to be renegotiated. That question was put at an earlier stage in the proceedings, "What are you going to do with respect to existing conventions?" And the answer was given, and I repeat it here, that there will have to be a renegotiation of several of these existing conventions.

Senator LEONARD: Will not the net result be that on balance there will be more investment capital prevented from coming into Canada than there will be Canadian capital prevented from going abroad?

Hon. Mr. FLEMING: With respect, Mr. Chairman, we think not.

Senator J. J. CONNOLLY: With respect, may I follow that? You are proposing to give credit for the tax paid there in the Canadian tax paid.

Hon. Mr. FLEMING: Yes. The rule there is as it was in the past, that you take the lesser of either the tax paid abroad or the proportionate amount of the total tax that is the same as the ratio of the property abroad to the total property.

Senator J. J. CONNOLLY: In view of the fact that there would be no credit given for the tax paid abroad, if the old status were restored, I presume that there would also not be very much loss to the treasury.

The CHAIRMAN: The inclusion of the foreign property would have the effect of increasing the capital value of the estate, and therefore putting you in a higher bracket.

Senator J. J. CONNOLLY: The tax credit, of course, on the other hand, might be paid abroad on the same real estate and reduce the tax take by the department here. My point is simply this, that if you are not going to do this, if you are to reverse the position now established in the bill and re-establish the position that exists in the act now, do you think there would be much of a fiscal loss to Canada?

Hon. Mr. FLEMING: I think I would want to give a little more consideration to your question, Senator Connolly, before being too specific on that point as to where the net result is going to fall.

Senator CONNOLLY (*Ottawa West*): I know it is complicated, for the total value of the estate can be increased too.

Hon. Mr. FLEMING: There is a hypothetical element in the question which makes me wish to be a little cautious in giving you an immediate answer. However, that point can be further considered, and the officials will be available to give examples as to the way this will work out in respect to any given circumstances that can be postulated.

The CHAIRMAN: Mr. Minister, the effect may well be this. The bulk of the estate may be in Canada and you will have property outside of Canada. Under the bill the value of the property outside of Canada is added to the value of the property in Canada so you have a larger sum total, and to some amount of it a higher rate of tax will apply. The rate of tax that will apply on the smaller portion of the estate outside of Canada will be smaller, and you are getting more tax by this method in Canada, and the credit you get, which is a tax deduction from tax, will be less. So you stand to make some profit.

Hon. Mr. FLEMING: I say there will be some addition to the Canadian Treasury from this change in the form of taxation.

Senator HOWARD: That's right.

Senator CONNOLLY: On the property of a Canadian?

Hon. Mr. FLEMING: Yes. The unique treatment of real estate in this respect will be removed and you will have a common treatment of the various classes of property. One of the things we have encountered in connection with various of the more difficult questions that have arisen—I had better not mention any examples because that will set things off, Mr. Chairman—

The CHAIRMAN: That's right. Let's be general.

Hon. Mr. FLEMING:—has been this question of trying to maintain an equal treatment between different classes of property. Now, there is one type of property which was pressed on us very strongly in certain quarters. It was said, "Why don't you allow an exemption here?" Well, the fact is if we had done that the result would have been a discrimination in favour of that particular type of property. If you accept the fact you have to have a certain amount of revenue to provide Government services in this country, then what are you going to do? Are you going to create exemptions which have a discriminatory feature to them or are you going to try to assimilate all classes of property to similar, equal treatment, and then seek where you can to introduce reductions and exemptions that are available to all? That is what we are up against and that is the answer, I think, to some of the questions that I can just realize, Mr. Chairman, are coming up.

The CHAIRMAN: Mr. Minister, there was one question I was wondering if you would care to answer. It is a policy question. What were the impelling motives that led you to make this 15 per cent tax applicable to non-domiciled persons in relation to Canadian property?

Hon. Mr. FLEMING: This is a new principle in the bill and we think there is definite advantage in this new form of tax in the case of the non-domiciled

person. In the first place, you have all the "ease" and simplicity that is available to the taxpayer. The non-domiciled person, coming into Canada and making his investment here, knows in advance, precisely what the tax is going to be. We think that is going to be a contribution to encouraging the development of investment. We think, Mr. Chairman, the certainty of that is going to contribute to confidence and investment. We found that some of the apprehensions that were entertained about this were based upon an assumption which just could not be made to hold water. The idea is that if Canadians who have amassed substantial properties in Canada want to evade Canadian succession duty, under the present bill it would not be very difficult for them to do so. The fact is, Mr. Chairman, there are now ways this can be accomplished and the Government cannot prevent it. In the net result it appealed to us that we would be surer of our 15 per cent revenue in these cases than we would be under the present act where opportunity for evasion does exist and cannot be prevented. Much as we would like to prevent it, people who have amassed property can if they wish go abroad and take the property abroad in order to prevent Canadian succession duties being applied thereto. In other words, they can put that property beyond the reach of the Canadian tax authorities. When I made a similar statement before the Banking and Commerce Committee in the other house somebody piped up and said, "How?" One of the officials started to explain how and—

Senator CONNOLLY *(Ottawa West):* You deleted the record?

Hon. Mr. FLEMING: I craved leave of the Chairman to stop him at that point. Fifteen per cent is an accepted rate of taxation with respect to certain similar forms of income tax. It has a certain amount of acceptance behind it in that respect, and we think there is real merit in that provision.

The CHAIRMAN: Will the 15 per cent produce a lesser amount of tax revenue than the present rate?

Hon. Mr. FLEMING: No. I am told not, Mr. Chairman. It will produce about the same as we are getting now. It is just about the same figure.

Senator BRUNT: Have you not made it very easy for a wealthy woman who has acquired all her money in Canada to escape by paying the tax of 15 per cent? All she has to do is marry somebody with a foreign domicile.

A SENATOR: It works both ways.

Hon. Mr. FLEMING: That point was put to me in the Banking and Commerce Committee in the other house and all I had to say about it was that I didn't think that that situation would very often arise. I think matrimony would be quite a price to pay for exemption under these circumstances.

Senator LAMBERT: May I express a word or two in appreciation of the presence of the Minister of Finance here today, and to make a comment about his references to the thoroughness of his departmental officials being responsible for the Government being able to produce this bill? Those of us who have heard these officials in committee in the past are aware of the thoroughness and ability they have displayed in connection with any work they have undertaken. Their lucid explanations and enlightenment on legislation which might be analogous to this has been full testimony to what the Minister has said about them.

The point I would like to make here is that in my opinion gradualness is the approach which should be adopted in connection with legislation of any kind. It is the essence of our parliamentary system of government. Therefore, with very great respect for all the work that has been done in connection with this bill and for the inquiries and the analyses of officials, does not this particular bill require a full measure of public elucidation for the benefit of the largest possible number of our people who are affected by it? It is

that point that I should like to emphasize to the Minister here, that even if consideration of this bill were prolonged, might it be advisable say in the public interest not to press it forward in this particular session, but that it be given a little more time for examination for the benefit of those who are directly affected. We had that experience in one of our committees before, in connection with the present Income Tax Act, when the change was made over from the Wartime Income Tax Act, and I think that anyone who followed the discussion and the results of that hearing would agree that it had succeeded in convincing the public of this country as a whole, that the wise thing was being done in amending the Wartime Income Tax Act into its present form.

Now, we approved this bill in principle when it was referred to this committee, but I do think, in view of the discussions I listened to already in our Senate the other day, that the need for gradualness in the forming of our final opinion and judgment on this matter would be very desirable.

Hon. Mr. FLEMING: Mr. Chairman, may I respectfully suggest to Senator Lambert that the principle of gradualness has been very punctiliously observed in connection with this bill. In cases such as he referred to in the past sometimes the bill has been introduced in the Senate to begin with and has stood over for a session for further public study before being proceeded with. Sometimes the reverse has been the case. This is one of the cases in reverse. The bill, as I have said, so far as study is concerned in the department, had been under study there as to its principle, for some three or four years, and the bill was introduced at the last session; then six months after the resolution preceding it was introduced there, the bill was again put forward in the Budget Speech of the House of Commons, and there has been, I think it fair to say, that measure of public study and public review which the senator and I together would regard as altogether reasonable and indeed desirable. Extensive briefs were submitted—many of them; they were very carefully reviewed, and many of the briefs are in accord with the new bill that is before this committee now. The bill was reviewed in the other place and in the committee there, and I am quite sure that with whatever representations this committee may choose to hear, the bill in all its features will be fully reviewed in this committee. I should like to leave no doubt on this point, Mr. Chairman, that it is the Government's desire that this bill should be enacted at the present session. We brought it forward for this purpose. It is a tax reduction measure, and we hope that the benefits of the measure will be available to the public as soon as may be.

Perhaps I will be forgiven for saying one more word on that point, as to the time within which the bill may be brought into effect. This is touched upon on the final clause of the bill. The question is how soon such a bill can be brought into effect. This bill will not repeal the Succession Duty Act. That act will continue to be in effect with respect to the estates of all persons who die prior to the date of proclamation of the new bill, and the old act will continue on all old estates. I made a statement in the other place the other day that it would be the intention of the Government to allow a reasonable period of time during which those who want to change wills in the light of the Estate Tax principle—will have ample opportunity to do so. It is not just a case of a measure to be proclaimed by the Clerk, after Royal Assent. What I said was that it would be a matter of some months before the bill would be brought into effect; and I can assure the committee that there is no though that this is the kind of bill that can be rushed into effect by proclaiming it a few weeks after Royal Assent. There will be ample time given so that the public may be fully warned on the date of coming into effect of the new Act.

The CHAIRMAN: Gentlemen it is now three o'clock and we shall adjourn, to resume after the House rises.

—Upon resuming at 3.30 p.m.

The CHAIRMAN: The meeting is resumed. We have before us a number of organizations and representatives to support their briefs. We are now distributing a brief which was filed by the Canadian Chamber of Commerce. I understand Mr. Crabtree is going to make the presentation.

Mr. H. Roy Crabtree, Chairman of Executive Council, Canadian Chamber of Commerce: Thank you, Mr. Chairman and honourable senators, the Canadian Chamber of Commerce is a voluntary organization composed of some 750 member boards and chambers from all provinces in Canada and from towns and cities large and small throughout the country. The chamber is very grateful of the opportunity to be heard before this committee. We have already made our representations to the minister following an extensive study of Bill 248, and have studied the replacing bill C-37.

Mr. Chairman, I am not going to give the actual presentation. We have in our party Messrs. **W. J. Hulbig, C. D. Paxton and J. K. Allison, all of whom are members of the Subcommittee on Estates Taxation of the Chambers Public Finance and Taxation Committee.** With your permission I would like to call on Mr. Hulbig, who will be the chief witness for the chamber.

Mr. W. J. Hulbig: Mr. Chairman and honourable senators, I believe most of you have a copy of our brief. It is not very long, and if it is the wish of your committee I shall read it. Then my colleagues would be very glad to expand on any of the points if you desire.

Some SENATORS: Agreed.

Mr. HULBIG: The executive council of the Canadian Chamber of Commerce, in response to the invitation extended by the Minister of Finance, made an extensive study of Bill 248, presented its recommendations to the minister and now has studied the replacing Bill C-37 as amended by the House of Commons.

If I might digress from the brief, I should like to make a few comments from the original brief to state the principles upon which the submission was based. We had the privilege of hearing the minister earlier, and he did mention that, with his deficit, he did not see fit to diminish taxation, but it had been our impression in the Chamber that death taxes provide a very small part of the nation's revenue, and it had also been our impression that changes could be made in the proposed legislation to give effect to the principles without any appreciable effect on the fiscus. Those principles considered were: justice and fairness as between the taxpayer and exchequer; no discrimination as between taxpayers; simplicity of administration both for taxpayer and Government; that the law be prepared in terms of general principles leaving the ultimate interpretation to the courts, and that the legislation do not so inhibit and impede the owners of businesses that the economy will lose more than it profits.

I do not think any one of you would quarrel with that statement of principles; in any event, those were the principles which prompted the preparation of our brief.

The Executive Council has noted with satisfaction that many of its recommendations have been given effect. Some of the substantive recommendations which the executive council presented have, however, not been implemented in the amended bill. The Executive Council regards these omissions of sufficient importance to the general economy to justify bringing their views to the attention of you and your Committee. While there are other points which the Executive Council still feels to be important, this submission singles out the matters of major significance. They are: first, the effect of the new estates tax on pension benefits, death benefits, primarily going to heirs, widows and children, of employees and others, and similar income rights. These are dealt with in section 3(1) (j) and (k) of the bill. It is submitted the needs of the

revenue in these fields are adequatley covered by income taxation; that death taxes on pensions and death benefits are socially undesirable; that employers and individuals should be encouraged rather than discouraged to provide for widows and dependents; and that—regardless of theories of taxation—hardship results from the double impact of death taxes and income taxes on such benefits.

Subject to and subsidiary to the general recommendation that such benefits should not be taxed, the Executive Council, if its primary recommendation remains unrecognized, submits that the proposed legislation fails to take into account certain pertinent facts. Such benefits are received over a term. It is undesirable that the tax on the capitalized value should be payable immediately or over a short term when even the amount of the tax, itself, may only be recovered by the recipient over a period or may never be recovered. In particular, it is invidious to assess and immediately collect tax based on a capitalized value, by the application of mortality tables, when the successor may not even live long enough to receive benefits equal to the assessed tax. It is excessively harsh that no account is taken of the impact of income tax when computing estate tax on such benefits and vice versa.

The Council recommends that to the extent that such rights are included for tax, the legislation provide: (a) that any non-commutable annuity, income or periodic payment effected in any manner other than by will and payable to any member of the immediate family of the deceased be exempt to the extent of $1,200 per annum with respect to any one person and $2,400 in the aggregate (vide s. 4 (1) (i) Ontario Succession Duty Act); and (b) that the tax otherwise applicable to the income right, etc., be divided by the fixed term or, where appropriate, by the life expectance and be collected annually as a withholding tax over the term of payment or the lifetime. Thus, where the income right is payable for the lifetime of the recipient, the withholding tax will be collected so long as, and only as long as, the recipient lives. As mortality tables will have been employed, the Crown overall will lose no tax. Accordingly the taxpayer will not be called upon, as at present, to pay tax upon a benefit which he may not receive. If such rights are to be subjected to both estate tax and income tax, then it is the contention of the Executive Council that the law should provide (a) relief from the double impact of estate tax and income tax, for tax on tax is wrong in principle; (b) relief where the income right fails to materialize as for example on the early death or remarriage of the recipient, and (c) a method of payment which will not in any case be confiscatory in its application.

Perhaps, Mr. Chairman, you will permit me to follow the example of the Minister and read a further extract from the Canadian Tax Journal which follows the extract which he read a little earlier.

As you are aware of course the Canadian Tax Journal is the official journal of the Canadian Tax Foundation. I am reading from Volume 6, July-August 1958 at page 238. It goes on to say:

> It also seems to us that something might finally have been done to alleviate the heavy burden of tax on pensions, annuities and other periodic payments that are subject to both death duties and income tax almost simultaneously. This appeal has been made so persistently that it is difficult to understand why some government hasn't made a concession simply to remove a chronic source of grievance.

And in that connection we might say that the Chamber of Commerce has been making annual representations on this score since 1950. No doubt the argument has been lost on doctrinal ground.

I should like to reiterate the comment made in the Canadian Tax Journal that this bill should remove the heavy burden on pensions and annuities and other periodical payments.

Our second main point deals with VALUATION.

The Council recommends that ss. 26, 27 and 28 be deleted, leaving without qualification the standard of fair market value. Here is an outstanding case where the law should express a broad principle, subject to interpretation in the light of particular facts, with the administration subject to the supervision of the courts in the traditional manner.

To say that value shall be "fair market value" (s. 58(s) (ii) and then to say "in determining the value of any property no allowance or deduction shall be made for or on account of income tax" (s. 26) appears to set up a contradiction in terms. In many instances, an important ingredient of fair market value is income tax liability, e.g., value of shares of a corporation. A willing purchaser will not pay a willing seller for a tax liability. If the Council's other recommendations are adopted (e.g., that pensions and death benefits be not subject to estate tax) some of the objectionable aspects of this section will disappear. If they are not, the deletion or mitigation of s. 26 becomes the more necessary, and the Council reiterates its strongly held conviction that the same property should not be exposed to the double impact of estate taxes and income taxes without any deduction on account of either.

As to s. 27(1) no quarrel exists with using "closing price" as to the principal test in the valuation of listed securities; but it should not be the only test.

The Council does not favour the disregard of facts to fit deemed administrative needs and recommends that "fair market value" be the sole criterion.

3. THAT THE LEGISLATION PROVIDE THE OPTION OF AN ALTERNATE VALUATION DATE

The Executive Council can see no valid reason for the present inflexible system of tying value unalterably to date of death. Undeniably at date of death, or even shortly after, it is impossible to realize assets for the payment of taxes, or for any estate purpose. The capital of an estate should not be confiscated when economic conditions bring about diminution in values after death before realization is possible. For example, a method permitting valuation at date of death or one year later seems eminently fair. This is called the alternate valuation system. Under this system the executors have the option of valuing the estate tax for death duty purposes either at the date of death or at the end of a stipulated period. In the latter event, assets sold in the meantime are valued at their sale prices. The Council knows of no practical reason why such a method should not be adopted in Canada, as it is in the United States.

Senator BOUFFARD: Is it not so in England also?

Mr. HULBIG: I cannot answer that.

Mr. C. D. PAXTON: It is in England in connection with real estate only.

The CHAIRMAN: And not in connection with other assets?

Mr. PAXTON: No, for real estate only.

Mr. HULBIG: 4. A REASONABLE DEDUCTION FOR LEGAL FEES AND EXECUTORS' COMPENSATION

An estate must be administered and reasonable expenses of administration including executor's fees, solicitors and notary's charges should rank equally with general debts and funeral expenses. On the grounds that a beneficiary should not be taxed on what he does not receive it is recommended that provision be made to include such expenses provided they are reasonable and are, in fact, paid.

5. CERTIFICATE OF DISCHARGE

The institution of executor is important to the community. So that persons will not be reluctant to assume the duties of executor, tax legislation should make it possible for an executor, having completed his duties in so far as his responsibilities to the Revenue are concerned, to be freed from further personal risk.

Failing fraud, wilful misrepresentation or wilful failure to disclose, an executor should have the right to obtain a final discharge. The ability to apply for and obtain a discharge which is a feature of the Succession Duty Act should be continued. Application for a certificate of discharge provides an opportunity for the Revenue to make a final examination and come forward with its claim against the executor if it has one. If responsible people are deterred from accepting the post of executor by fiscal legislation, and it is submitted that the legislation in its present form will have that result, the interests of neither the Crown nor the nation are served. Therefore, the Council recommends that these provisions be recast to limit the personal liability of the executor and to give him the right to obtain a certificate of discharge.

The Executive Council is of the view that the foregoing matters are of major significance and commends them to your full consideration.

May I add this? I am not familiar with your procedure from here on, but if, in the detailed consideration of the sections, we can be of any use, we would be more than happy to speak, or otherwise, as you see fit.

The CHAIRMAN: At the present time we have a very definite method that we follow. Have any senators any questions to ask Mr. Hulbig on this brief?

Senator ASELTINE: Referring to section 26 of the bill, it states:

"For the purposes of this part, in determining the value of any property no allowance or deduction shall be made for or on account of income tax".

A man dies and owes $10,000 or $20,000 income tax arrears. That section does not prevent that fellow from having to pay.

The CHAIRMAN: No; that is a debt of the estate.

Senator ASELTINE: This refers to income tax.

The CHAIRMAN: As an element of value.

Senator ASELTINE: On property that is being inherited.

The CHAIRMAN: On property that is being inherited, in arriving at the payment.

Mr. HULBIG: The other, as I mentioned, would be a debt against the estate.

Senator HAIG: Illustrate what you mean by that. I don't understand that at all. I understand that on the 30th April I have to pay my income tax for the year 1958. Supposing I die in March, 1959.

Mr. HULBIG: The gentlemen behind me can answer this better than I, but whatever tax is owing by you up to the date of your death is a debt of your estate. When you are out of the picture your estate will be an entity and the property in the estate itself will produce income after you are out of the picture.

Senator HAIG: The present law of the dominion is that you get the income tax out of the estate up to the date of the last payment, plus another payment, whatever you agree upon, not less than to the date that you die.

The CHAIRMAN: This has nothing to do with that question at all. Section 26 deals only with the question of valuation.

Senator HAIG: That comes into valuation.

The CHAIRMAN: It says that for the purposes of valuation no allowance shall be made for or on account of income tax. I agree that that section is worded so broadly that in attempting to value shares you may have to ignore

the existence of income tax (1) that is accruing due in relation to the estate, (2) maybe relating to the thing you are valuing. For instance, shares of a company in a company where there is a substantial take which may be taxable. But maybe the wording is broader.

Senator CROLL: This is the first time I have seen a Canadian Chamber of Commerce submission. It makes sense to me. It occurs to me that it might be useful to the committee if at this very moment, now the gentleman has finished, you might call on Mr. Eaton, or whoever is in that department, to meet these suggestions, rather than wait for some later time when they may become more foggy to us.

The CHAIRMAN: I am not wedded to any procedure, but the only thought I had for proceeding in this fashion was that I did not want this thing to develop into an argument between the representatives who are presenting the brief and the representatives of the department (1) on the interpretation of the section, and (2) whether it should do that or not. I thought we should hear what the representatives have to say. Then we will consider the sections of the bill, we will ask the representatives of the department what is the purpose and what is the intended scope of this section, then we decide whether we vote for it or not.

Senator HAIG: That is why I asked the question what this section really means in this man's mind, the way he has got it. Mr. Eaton may interpret it in another way; and we will be in a jam.

The CHAIRMAN: And we may interpret it another way ourselves.

Mr. HULBIG: I think the answer lies in the words "the value of any property". I think you have to look at the property and see if any income tax attaches to that property, rather than to any individual.

Senator HAIG: A man has a mortgage on a piece of land at the time of his death. Maybe it is a farm which he has sold and taken a mortgage back. Income tax is paid up to the 1st of November, and he does not die until May, and there is interest running on that. Is that interest up to that time taken as an asset?

Mr. HULBIG: For the value of that estate no account will be taken of any income tax that may accrue. The mortgage will be an asset of the estate.

Mr. PAXTON: I take it that we are concerned with the meaning of the word "value" there. Value refers (a) to the value of an estate as a whole for duty purposes, and the value of the estate as a whole is less any debts that may be owing, and that includes income tax up to the date of the decease. The second meaning of the word "value" is valuation of shares, and that, I think, is the value to which the section of the act refers; and there are two distinct valuations there.

Senator HAIG: At the present time they ask you to give a return when the income tax on that mortgage was paid, and, say, the interest was paid in November, and interest is accruing in the meantime, and they make you pay income tax on that.

Mr. PAXTON: It would include income tax to the death. It lessens the value of the estate, but it does not lessen the value of the mortgage as an asset.

Senator BRUNT: Is it not a fair statement that this act makes no change in the valuation of a mortgage such as has been outlined by Senator Haig? It is exactly the same under the Succession Duty Act and the Estates Tax Act. There is absolutely no change with respect to valuation of a mortgage.

Senator HAIG: It doesn't change the valuation of the mortgage at all but it puts an income tax on the estate.

The CHAIRMAN: Could I take a minute to illustrate what I think is a case which gives you the application of section 26? Let us say you have in the estate a second mortgage and it carries an interest rate of 7 per cent. The mortgage has two or three years to run and there is a bonus. In other words less than 100 per cent of the mortgage money was advanced at the time the mortgage was required. Then the question becomes very important as to whether the bonus is in the nature of income which attracts income tax or wether it is a capital gain. That must be a factor in the valuation of that mortgage at the date of death because if there is an element of income tax by reason of a bonus, then the mortgage is worth less.

Senator THORVALDSON: I think honourable senators would really like an explanation as to the effect of that section. Wouldn't it be best to get that from the officials of the department either now or later on? This is an important matter and I think we might have it cleared up perhaps now.

The CHAIRMAN: I don't want to establish a precedent. I don't want to have a cross-fire argument betweeen those making representations here and the departmental officers. However, if you want a clarification as to how that section has been applied in the past—and since it is still the law—perhaps Mr. Linton will tell us that.

Mr. LINTON: What has been done and is intended to be continued is that in respect to all income tax owing at the date of death or before the date of death, and on the accumulated interest accruing at the date of death will be deductible as a debt under the duties succession. This is intended to bar the reduction in value of an asset by income tax yet to be paid by the heirs or a company or somebody else in the future.

The CHAIRMAN: Or the element that might be in the mortgage bonus.

Senator BRUNT: Give us a specific example with respect to shares of a company.

Mr. LINTON: You have a company with an undistributed surplus that may or may not in the future become liable to income tax if they take the surplus out; if income tax becomes payable, this section would be a bar to the use of that in reducing the value of the shares of the company on an asset basis in advance of the tax being paid.

Senator CONNOLLY (*Ottawa West*): Doesn't it go further? In the case of the company, if at the time of death that company has a liability for income tax, must that liability not be disregarded in evaluating the shares or for purposes of this act?

Mr. LINTON: We would think not. We have never operated on that basis and that is not the intention. If there is a created liability existing at the time of valuation, then that is the factor in arriving at the fair market value.

Senator CONNOLLY (*Ottawa West*): Let me get this part clearly. Let us say for the sake of argument that the shares in this company have to be liquidated either to administer the estate or pay the duty. Now, if there is a tax liability other than a tax liability arising because of the accumulated surplus, that tax liability is not covered by section 26. Therefore, you will allow that as a deduction in determining the value of those shares?

Mr. LINTON: Provided that the liability had arisen at the date of death, which is the valuation date. If the date of death was before the date of realization and the tax had become payable on the company's income for the succeeding year, it would not be allowed but anything outstanding at the date of death would be.

Senator LEONARD: What you really have in mind is the potential tax liability with respect to the accumulated surplus income?

Mr. LINTON: That's right, senator.

Senator BOUFFARD: What about the tax due in the course of the year? Let us say that a man dies in the month of May and the company has to pay its company taxes every three months.

The CHAIRMAN: Well, let us take this assumption. There are shares of "B" company in an estate and when you come to value those shares you find that the "B" company has a large accumulation of arrears of income tax. Those are the two factors. Then when you are evaluating the shares of that company in the estate are you permitted to reflect a reduction in the value by reason of the fact that the limited company owes income tax.

Mr. LINTON: We understood so, yes.

Senator CONNOLLY (*Ottawa West*): So that the only tax liability that you are getting at through section 26 is the tax liability that arises out of the application of a section of the Income Tax Act, is that right?

The CHAIRMAN: Plus the potential income tax liability of the estate as such.

Senator CONNOLLY (*Ottawa West*): After the date of death.

Mr. LINTON: Yes.

Senator CONNOLLY (*Ottawa West*): But the plain fact is that that liability for tax on accumulated surplus does lower the value of those shares to a certain extent.

Mr. LINTON: It may and it may not inasmuch as many companies, perhaps most companies, traded in are traded on an earning power basis, in which case this would have a very minor, if any, effect. If it were being sold on the basis of a value of assets in some cases that would no doubt be a factor.

Senator BRUNT: That would be just one factor to be taken into consideration.

The CHAIRMAN: In addition you have to remember the closing price on the stock exchange, and if you have not got a closing price on the stock exchange, the closing bid by a broker or a notation in a journal. These are some of the places you look to get value of shares. There may be cases where these conditions did not exist and then you are thrown back on the fair market value, and then in those specialized classes of cases for controlled companies you are thrown back on the fair market value only. What I would point out is that in arriving at the fair market value you cannot say that the public has reflected the condition of income tax liability, because they are not approached. The public has no chance to fix prices there, and in those circumstances you do take in the factor of income tax or you exclude it or which?

Mr. LINTON: You exclude it.

Senator THORVALDSON: This section 26 would not apply to any case where you get valuation as a result of the stock market?

Mr. LINTON: No.

Senator THORVALDSON: It would just apply in the case of companies whose stock is not listed?

Mr. LINTON: Or one where the control rested with the deceased or which fell under the condition of the section on quoted values that takes that company out of the use of quoted values. The quoted values wherever applicable are not affected by this.

Senator THORVALDSON: Isn't it somewhat confusing in that you have used the words "in any property" because actually the only kind of property you are referring to is shares of companies?

The CHAIRMAN: No.

Mr. LINTON: No, that is not right. There are cases of valuation of pensions and that sort of thing where future income tax is barred by this.

The CHAIRMAN: So there is an occasion where the exclusion of income tax is an element that should be considered in valuation?

Mr. LINTON: That's right, sir.

Mr. HULBIG: Could I interject? I do not want to get involved in the cross-fire you mentioned, Mr. Chairman, but there is another large field, and that is the valuation of pensions.

Senator THORVALDSON: Apparently real estate and tangible assets are largely not affected, but it is limited to shares and pensions and intangibles.

Senator MACDONALD: I want to get clear what the proposal is. As I understand the present Succession Duty Act it is provided that the pension will be reduced to its capitalized value according to mortality tables, and that amount is paid forthwith. Is that right?

The CHAIRMAN: No, that capitalization of the pension is brought into the estate as an asset of the estate.

Senator MACDONALD: And the taxes fixed?

The CHAIRMAN: If there is a taxable estate, yes.

Senator MACDONALD: Now, under this proposal, if I understand your brief, the pension will be capitalized according to the mortality tables, and if the pension is payable for a term, a certain term, say ten years, and then ends, the amount of the tax will be payable in ten annual instalments.

Mr. HULBIG: Yes sir. We have put this on several different levels. We do not believe this should be subject to both income tax and estate tax at all. We should like to avoid estate tax here.

Senator MACDONALD: That is with respect to a pension that is payable for ten years?

Mr. HULBIG: Yes sir.

Senator MACDONALD: Now we come to the pension that is payable for life, and again the capitalized value is ascertained by the application of mortality tables; and do I understand that the payment is of the amount of the tax for which the estate is liable on account of the capitalized value being added to the estate which will be paid throughout the lifetime?

The CHAIRMAN: Yes; you divide the life expectancy into the amount of the tax.

Senator MACDONALD: No, no, that is not it.

The CHAIRMAN: Certainly it is.

Senator MACDONALD: No, it says payment throughout the lifetime.

The CHAIRMAN: But if you have a tax on a pension of $20,000 and the pension is payable for life you have to have a definite figure for that life, so you take that figure from the life expectancy.

Senator MACDONALD: All right, you take that figure from the life expectancy, and this brief bears me out that having ascertained the amount of the tax by virtue of the capitalization of the pension, then it is to be paid in annual instalments. I suppose if the life expectancy is 15 years it would be paid in at least 15 annual instalments and continued throughout the lifetime?

Mr. HULBIG: That is right, sir.

Senator MACDONALD: Throughout the lifetime of the pension?

Mr. HULBIG: That is right, sir. We thought that was only fair. This is to avoid injustice where the value is assessed and where the pensioner died within a year, in which case why should his estate be subject to a liability based on a

life expectancy of 15 years? In other words, we are setting the Government up, in effect, as an insurance company instead of the individual being his own insurer.

Senator MACDONALD: That is all right, I go along with that; and it is obvious —well, I will say it is unfortunate, if a person only lived one year, and they paid tax on the basis they were going to live for fifteen years. But if the mortality tables say fifteen years, why should they continue to pay at the annual rate, if they have to live for another ten years?

Mr. HULBIG: Well, we would be very happy to amend our brief, sir.

Senator MACDONALD: I don't want you to amend your brief.

Mr. HULBIG: In essence, we felt it was reasonable that if the benefit were extended on the percentage basis of each payment the people would be prepared to pay if they outlived their expectancy term—they would take that risk. We are not wedded to this. It was as much as we cared to recommend. We would be very happy to see the Government terminate it once the total original sum was received.

Senator MACDONALD: But that is not your brief. Your brief says it should continue throughout the lifetime of the person receiving the pension.

Mr. HULBIG: That is right. We wanted to make this proposal as reasonable as we could to the Crown, so that they would not lose any money on it.

Senator MACDONALD: May I ask if this is a new proposal?

Mr. HULBIG: No, sir, it is not. It is new in the sense that as far as I know it has not been proposed widely in Canada.

Senator MACDONALD: No, but I mean is it a new suggestion to the Government?

Mr. HULBIG: No, this was suggested before in the original brief. It was not presented in these words, but was presented verbally in the presentation in the chamber at the time we made our representation.

Mr. PAXTON: In Bill 248.

Senator MACDONALD: I do not recall reading that definite suggestion in the proceedings of the committee of the house.

Senator BOUFFARD: They were not allowed to make any representations to the Banking and Commerce Committee in the Commons.

Mr. PAXTON: It is made direct to the Minister, sir, not to the committee.

Senator MACDONALD: I want to know if there had been any public reaction to this suggestion. I do not know if a widow would be prepared to pay for twenty years if she could pay for fifteen years and be through with it.

The CHAIRMAN: Well, I can tell you this, senator, I would go this far that I am sure there is no widow if she were offered the alternative of "paying as you go" as against paying everything now, would not be better off paying as she goes.

Senator MACDONALD: I would go that far with you, but I don't go beyond the 15 years.

The CHAIRMAN: Well, I wouldn't either, as a matter of fact.

Senator HAIG: I want to give the case of a man who works for the Canadian National Railways, who took out an annuity for $5,000 a year. He was 45 years of age. His widow was much older than he was. They made that $5,000 part of his estate. How they figured it out was that she was older than he was, and she lived so many years, and therefore the value was so much. Now, would they take any duty off it at all under your proposition? Did they take out any duty at that time at all?

Mr. HULBIG: The older she was, the shorter would be her life expectancy.

Senator HAIG: They would take the life expectancy of the woman?

Mr. HULBIG: Yes.

Senator HAIG: Is that treated as an asset?

Mr. HULBIG: Yes.

Senator HAIG: And you object to that?

Mr. HULBIG: Well, in that particular case the results might not be so unfortunate.

Senator HAIG: What is your proposition?

Mr. HULBIG: My proposition is this. Say I am 65 years old, my wife is 50; I get a pension, and when I die my wife gets half of it. Let me dream, and say my pension is $10,000 a year, and my wife's is $5,000, starting at age 50 her life expectancy would be probably 30 years. If I left no other estate her inheritance then would be valued at approximately $100,000.

But suppose I left some other estate, for instance, a house that was difficult to sell at that time. Let us say my estate was $200,000. My wife would not get any part of my other $100,000; she would get her own $100,000 by reason the pension of $5,000 a year for 30 years. The estate tax on the estate would be somewhere around $44,000, her half would be $22,000.

Now, she is going to get $5,000 a year, and will have to pay income tax on that amount. Where does she get the money to pay the estate tax on her pension? Our proposal is to spread the estate tax over the period that we say she can expect to receive that money.

Senator HAIG: That is your proposition?

Mr. HULBIG: Yes.

Senator MACDONALD: And to continue until her death?

Mr. HULBIG: Yes.

Mr. J. K. ALLISON: If the beneficiary lives beyond the life expectancy period, the result is that the recipient receives more than was actually calculated on an assumed life expectancy, because the longer she lives the more payments are coming in. While there may be more payments coming in, if it continues to her death, there is that much capital coming into her hands. So, in effect, it is not a direct loss, but a continuing tax deduction based on the assumed mortality of life.

The CHAIRMAN: On a pay-as-you-go policy, with respect to pension payments. If it makes sense in income tax, maybe it will make sense here.

Mr. HULBIG: I may say, Mr. Allison used to work for the tax department.

The CHAIRMAN: Are there any other questions to be asked of Mr. Hulbig?

Mr. HULBIG: Thank you, sir.

The CHAIRMAN: We have a brief filed on behalf of the Trust Companies Association of Canada. Their presentation will be made by Mr. A. R. Courtice.

Mr. A. R. Courtice, Past President, Executive Counsel, Trust Companies Association of Canada: Mr. Chairman and honourable senators, I may say that this brief was prepared rather hurriedly, and we would reserve to ourselves the right to speak to some other things as the occasion may arise. I hope we will be allowed to take that privilege. We also appreciate the opportunity that was given to us to appear before this committee.

The Trust Companies Association of Canada is a national organization, composed of eight regional sections, located in all of the ten provinces. Its 33 member companies represent practically all the corporations that are authorized by statute to administer trusts and estates. They also represent many thousands of clients in all provinces of Canada, who have a direct interest in death taxation.

The value of estates, trusts and agencies assets under administration by the Canadian Trust Companies at the end of 1957 total $5,581,000,000. May I say at the outset that there is no selfish motive in our appearance here. We can do our job of administering estates and trusts no matter what succession duties or estate taxes may be in force, but we submit we are in a better position than anyone else to make a practical assessment of inequities and hardships that beneficiaries may suffer under improvident provisions. We are here to represent those clients, their interests, and also the interests of the public generally. Our motive has been to try to assist the Government to produce an act that will be fair and reasonable both to beneficiaries and to the exchequer, and which will assist in the development and prosperity of Canada.

We welcome the change to the principle of an estates tax, with its simplicity of tax calculation—no question; and also, the elimination of many inequities and hardships that were found in the valuation and payment of life and remainder interests under the present Succession Duty Act. Some of these old inequities, however, still remain, and some new ones have been added.

Personally—I say this with the greatest of respect—I think the Department of Finance and the Department of National Revenue had a little too much to say about the preparation of the new act. I have the greatest respect for these departments: I have known and have dealt with their officials for a long time; no one will speak more highly of them than I will. But we must remember that their interest is in collecting revenue, and in ease of administration, rather than in considering the interests of the beneficiary. That is only natural, because that is their job. Therefore, I say they may have had a little too much to say in the preparation of some of these provisions.

Senator MACDONALD: You are speaking for your organization?

Mr. COURTICE: Yes sir.

Senator MACDONALD: I just wanted to be sure that you were not speaking for the committee.

Senator HAIG: They propose to reduce taxes in the new act.

Senator HOWARD: That is questionable.

Mr. COURTICE: They are reducing taxes, yes, but that does not justify inequities and discriminations, even though the public is paying less.

Senator HAIG: Would you rather have the present Act or what this Bill contains?

Mr. COURTICE: No. I would rather have the proposed Act but with some amendments to it.

Senator HAIG: Yes, but leaving the amendments aside, which of the two measures would you rather have.

Mr. COURTICE: I would rather have the new one, unquestionably. There is no comparison. The Trust Companies Association have pioneered in the estate tax for a long time so it is nothing new. We have advocated it for years and Dr. Eaton will bear me out that we made many representations over the years and he was very sympathetic to us too but he did not have the sole decision, unfortunately, or we would have had an estate tax sooner.

The Minister of Finance did say that he approached this revision very conscientiously and seriously and he did give us a very good hearing on our brief. We presented to him a fairly comprehensive brief of some twenty-three pages and we were given a good reception and a good hearing, and some twelve points out of the thirty-six which were in our submission are recognized in Bill C37—this is a batting average of thirty-three per cent and I presume that might be considered pretty good—but we hardly thought that the results we achieved were quite commensurate with the reception we had received.

We have listened with interest to the submission of the chamber of commerce and we would like to associate ourselves with their presentation. There are many important points covered. You may pardon me if I briefly stress and probably with some repetition some of the points that have been made.

Undoubtedly the most inequitable feature of the bill is section 26 which states, "In determining the value of any property no allowance or deduction shall be made for or on account of income tax." This is an old bugbear that the government refuses to face up to. Granted the difficulty of projecting future income tax into the calculation of capitalized income such as pension payments, for annuities, but this is no justification for a tax on a tax, and reducing the beneficiary's inheritance by assessing succession duty on what is collected by the Income Tax Department.

Unless the government is willing to recognize some practical formula for a reasonable solution to this problem it should eliminate succession duty on these payments and be satisfied with the income tax. That is not so far astray. It is true it is part of a man's assets but it is in a different category. A pension is something he has provided for, in conjunction with his employer, and usually by making contributions, that he is to receive a certain pension during his lifetime. Now, instead of taking that full pension he decides to take less in order to provide that his wife may receive that pension during the remainder of her lifetime if she survives him.

What is the situation? He pays income tax on income he receives but on his death immediately that pension is hit with the impact of income tax and succession duty. That does not seem reasonable. As a successor the widow may not, as has been pointed out, get enough in those first few years to pay tax on it and she must pay the tax on her whole life expectancy even though she survives her husband only for one or two years. We have dwelt on that but I do not think it is out of the way to emphasize it because it is the most inequitable provision in the present act and it was also in the old act.

It may be that there will have to be an arbitrary formula devised. You cannot approach this scientifically and say what it should be exactly, but why should the poor widow be the one to suffer and take the gamble. The government says that on a life expectancy basis some die later and some earlier but the average works out to the expectancy tables. That is alright for the government. They average out in many cases but the poor widow is not able to average it out. She has to pay the tax on her whole life expectancy so the government is making the widow take the gamble. I do not think that is fair.

In this way the government has over the years taken a lot of money from widows by taxing benefits they never received and surely that statement should stand on its own without further comment.

We were disappointed that an optional valuation date was not included. The value at the date of death may sound reasonable in theory but an executor has no opportunity to realize those values at the date of death and you know what can happen on a declining market. There are tragic cases on record. In most cases it is three to six months before probate is granted and the executor is in a position to realize on the assets, and so it would only seem reasonable that there should be some flexibility in the time for determining the value of the estate.

The department, for reasons of administration, did not want to get into a more complicated system and it is a bit more complicated when you have optional dates but ease of administration I submit should not be the only consideration.

We are grateful to the Chamber of Commerce for its appreciation of the executor's position in being entitled to a certificate of discharge when he has completed payment of duty, subject of course to misrepresentation or fraud.

In Bill C-37 however, an executor cannot safely distribute until after four years and even then he never gets a complete discharge. That is not reasonable and the Chamber of Commerce as businessmen realize that that is not in the interest of good estate administration.

Senator MACDONALD: When does he get a discharge?

Mr. COURTICE: He never gets a discharge under this bill.

Senator MACDONALD: But I am speaking about the Succession Duty Act. When does he get a discharge under that?

Mr. COURTICE: When the duty is paid.

Senator MACDONALD: So in six months he can get a discharge?

Mr. COURTICE: Subject to misrepresentation or fraud.

Senator HAIG: If we assume that the estate is composed of securities, and that within a short time after the death there is a rise in the market and a huge profit is made, as has been done in many cases in the last five or ten years. Who gets the profit there?

Mr. COURTICE: It is an optional election, whether you take the date of death or six months from the date of death to have your value assessed.

The CHAIRMAN: There is something more there. It is, if there is a sale in the period then you take the sale price. So the government comes in on any advance.

Mr. COURTICE: That is right, any sale that takes place between the two periods will be taken into the valuation of the estate on that basis.

Senator MACDONALD: When do you make your declaration?

Mr. COURTICE: You can only do that at the end of the period. You reserve the right until the last date and then you have to declare the period you want taken.

Senator MACDONALD: Then there would be some delay in arriving at the assessment?

The CHAIRMAN: The tax must be paid in six months. If you had a six months period after death as an optional period for valuation the whole determination would be made in the six months.

Senator MACDONALD: But they would have to assess it after the six month period had elapsed.

The CHAIRMAN: The government gets the money as soon as the return is made, within six months.

Senator MACDONALD: But it is going to take the department some time to arrive at the assessment after the option is taken.

Senator BRUNT: But in the meantime you pay interest on it.

Senator MACDONALD: But nevertheless there will be a delay in arriving at the final assessment, will there not?

The CHAIRMAN: The department is supposed to deliver the assessment forthwith or as soon as possible.

Senator MACDONALD: I know but it must be obvious that if the election is made at the end of six months the department cannot make its assessment until some little time after that. It might even take another six months.

Senator BOUFFARD: The tax has to be paid at the end of six months and if they do not pay it in full then they pay interest on the balance.

Senator MACDONALD: Yes, but under the optional system the department cannot assess until sometime after the end of six months.

Senator BRUNT: That is right and it won't take long because they would only have to put in the value. Everything else would be settled.

Senator MACDONALD: Then I suppose we would have to extend the time for a year.

Senator CROLL: The only thing, under this section the Government cannot win. That I can see.

Senator BRUNT: Oh, yes, they can; if the securities are sold in the six months' period at more than they were worth at the date of death, the Government wins.

Mr. COURTICE: The Government gets the increased tax on the value if they are sold.

The CHAIRMAN: They are going to have to sell to pay duty.

Senator CROLL: You do not have to sell until the six months' period has expired.

Senator MACDONALD: I want to get this thing cleared up. A person with real estate has six months to declare. Declare what? What the value is to be?

Mr. COURTICE: The fair market value.

Senator MACDONALD: Well, there is no option there.

Mr. COURTICE: They can declare the fair market value as at the date of death or six months from date of death.

Senator MACDONALD: At the end of six months after death they have to fix the fair market value. The valuators cannot fix it before, because they don't know what the man is going to do. So there is going to be a considerable delay there.

The CHAIRMAN: Is that a horrible thought?

Senator MACDONALD: No, I did not say anything about a horrible thought. But I think we should understand what the change in the act would entail. It may be all right to extend it for another six months, but we want to know what we are doing. That is all I am bringing up.

Mr. COURTICE: Would it not be preferable to pay duty on an asset that has greatly declined in value at the time you realize it?

Senator MACDONALD: I am not arguing whether it is preferable or not. I am just bringing up the fact that there will be some delay. That was my first statement; and all this has come out of it.

Senator CROLL: I agree that if the stock was worth $70,000 at the time he died, and it fell to $30,000 afterwards, you have everything going for you. But if the real estate at the time of death is worth $10,000, and six months later, let us say in the case of lots outside of Toronto, it has risen to $20,000, no sale is made, the six months' period is expired, it is put in at $10,000, and two days after the property is sold for $20,000, he is riding free. It may not be unfair in individual cases.

Mr. COURTICE: If an estate is wiped out, as in the last depression, a million dollar estate was practically liquidated for nothing, you have a tragedy.

Senator CROLL: I agree, but you can't legislate against all hardships.

Mr. COURTICE: That is a reasonable delay, which allows some flexibility, because the executor cannot realize at the dates you fix the valuation. Surely the value should not be fixed before you have a chance to sell.

Senator CROLL: What have executors been doing up to now?

Mr. COURTICE: They have been taking the market as it is.

Senator CROLL: Everybody has been coming here today saying what nice guys we have in the department, how easy it is to co-operate with them, and "we have no trouble".

Mr. COURTICE: It has been working very well in the United States. It has been in effect for some time. You have the option of either the date of death or one year after date of death. It has had a practical test. It is not theory.

Senator CROLL: What is bothering me is, you are telling the story so appealingly; I would like to hear the other side of it. I may not hear it for two days.

The CHAIRMAN: You will hear it tomorrow.

Senator CROLL: Because there is another side to it.

The CHAIRMAN: I thought you were telling us the other side.

Senator CROLL: Not completely.

Senator BOUFFARD: A good part of it, anyway.

Mr. COURTICE: We also note that, in computing taxable value, when you deduct for funeral expenses, Surrogate Court and probate fees, you are not allowed to make deductions for executors' and solicitors' fees, which are controlled by the courts. You would think that succession duties should not be levied on any proper administrative expenses.

Senator CROLL: I am in your corner now.

Mr. COURTICE: It took a little while, sir.

Section 9 shows a definite discrimination against Ontario and Quebec. This appears in our brief. There are only three points, really, set out in that brief; and this appeared so unreasonable, when we were reviewing the act, that, in commenting on it in our brief to the Government we said it was obviously an oversight which of course would be corrected. We were wrong; apparently they really meant it.

The CHAIRMAN: No doubt about it.

Mr. COURTICE: The section allows the same credit to Ontario and Quebec as in the present act that is 50 per cent of the federal tax in respect of provincial duties paid on the same assets, but it denies this credit for duty paid on assets deemed to be situated in another province, but taxable by Ontario on a transmission; whereas if the situation is reversed, and that other province taxes assets similarly situated in Ontario, it is allowed the credit. Obviously there is something wrong there.

Senator CROLL: That is up to Ontario and Quebec to correct, not us.

Mr. COURTICE: I would go along with you up to a point. But when the dominion says, "When British Columbia taxes an asset in Ontario we will allow that credit, but we won't similarly allow a credit for Ontario, if it has to pay a tax in British Columbia"—

Senator BOUFFARD: That is right.

Mr. COURTICE: It should work both ways. Something is obviously wrong. Let us take that one step further. I think the issue is still further beclouded if an Ontario decedent has personal property outside Canada on which an Ontario tax is payable, credit is allowed. In other words, you allow a credit to a United States jurisdiction, but you will not allow the same credit in another province outside the two prescribed provinces of Ontario and Quebec.

Senator MACDONALD: What is the reason for that?

The CHAIRMAN: I don't know.

Senator MACDONALD: I am asking the witness.

Mr. COURTICE: I am not the one to answer. I can only point to the injustice. I don't know why you would want to do an injustice.

Senator MACDONALD: This has been considered before, has it not?

Mr. COURTICE: No, this is a new provision, brand new in the present bill. It was not in the present act.

Senator MACDONALD: You do not know, why the distinction?

Mr. COURTICE: No. You may find out tomorrow.

Senator CROLL: It was not in Bill 248.

Mr. COURTICE: Yes it was.

Senator CROLL: And then you went up and made representations to the minister and the others. What did they say to you when you made these representations?

Mr. COURTICE: We got a very sympathetic hearing, but they did not commit themselves.

Senator CROLL: But what were their arguments in favour of it?

Mr. COURTICE: They didn't mention them.

Senator LEONARD: I think the suggestion is that because the dominion Government made a deal with British Columbia and the other provinces, that the dominion Government is already making an allowance for the tax that is being levied on those British Columbia assets of Ontario residents. However, what I think they have overlooked is that when the dominion act came into effect both British Columbia and Ontario were taxing those assets. There was double taxation and while the dominion made a deal with British Columbia as to its tax on such assets, it has not made any deal on Ontario's tax on the same assets so that there is now actually double taxation and the deal that the federal Government made with British Columbia should not affect Ontario's right to tax that asset, nor the allowance the dominion makes for such tax.

The CHAIRMAN: The present law is that a taxpayer who is in Ontario gets a 50 per cent credit in relation to dominion taxes to the extent of property on which provincial taxes have been paid. Now, under the bill the basis of allowance in Ontario and Quebec is situs, so to the extent you have property that is being taxed because the transmission tax applies in Ontario, but the situs of the property is not in Ontario, the credit is going to be less than 50 per cent. So it is something less than what you have got under the present law.

Senator MACDONALD: But it is something.

The CHAIRMAN: Of course it is; if it is 40 per cent it remains 40 per cent. All I am saying is that you cannot represent you are giving some provincial credit if you are not.

Senator MACDONALD: I am glad that somebody has explained the reason why it is being done, not that I approve of it. There must have been some reason behind it.

Senator CROLL: The reason behind it is that the tax sharing agreement between the dominion and the provinces is as simple as that, and Ontario and Quebec can correct it.

Senator BOUFFARD: They shouldn't have to do it by giving up their succession duty tax, which Ontario and Quebec are not ready to do.

The CHAIRMAN: No, you should not visit on the deceased persons and their dependants the decision of Ontario and Quebec not to join. Why swing the stick on the small fellow?

Senator CROLL: The small fellow hasn't too many of these bonds in safety deposit boxes. Don't worry about him.

Mr. COURTICE: Did you see our example on page 2 to show how finely you can draw the line? This is the example:

> "...if an Ontario domiciled decedent has bearer bonds of say, the province of British Columbia, in a safety deposit box in Ontario, those

assets are deemed, on the definition of situs, to be in Ontario, and therefore, the full allowance on Dominion duty is allowed. If, however, the same bonds of British Columbia were situated in the same safety deposit box in Ontario, but in registered form, the situs would thus be considered to be in British Columbia, and there would not be any corresponding allowance on Dominion duties of 50 per cent of the amount paid to Ontario by reason of those assets being in existence. Whereas, if a British Columbia decedent dies domiciled in that province, with assets deemed to have an Ontario situs, the Ontario duty is taken into consideration in calculating the allowance on Dominion duty."

That seems to be a pretty technical discrimination.

Senator THORVALDSON: You can overcome that by arranging the situs of your assets. You can arrange not to be discriminated against by arranging your situs.

The CHAIRMAN: But I have heard it said that the law should not discriminate, rather than the individual should so organize himself to avoid the discrimination of the law.

Senator THORVALDSON: What I meant to say here is that an individual can organize himself.

The CHAIRMAN: But they all don't know about it.

Mr. COURTICE: The senator comes from a province other than Ontario or Quebec. Now, with respect to the taxation of real estate outside of Canada, this has been dealt with and I want to pass over it very briefly. That is a new departure and yet one cannot quarrel with a new departure if there is reason for it. Mr. Fleming has said why it has grown up over the years that personal property can be taxed but it is hands off with respect to real estate. You might say that they are obsolete factors which would deem it could only be properly dealt with in the jurisdiction in which it was located. But the world has shrunk since then. There has been a great deal of travel, and easy transportation and other factors have changed the old situation.

Senator MACDONALD: You don't object, then, to adding the value of foreign real estate to the capital of the estate?

Senator HOWARD: Certainly; you just double your tax nearly.

Senator MACDONALD: I am not arguing the case for or against. Every time I ask a question somebody thinks I am holding a brief of some kind. I wish the Chairman would point out that I have an entirely open mind on this.

The CHAIRMAN: Gentlemen of the committee, Senator Macdonald asks me to tell you that he has a completely open mind.

Mr. COURTICE: Senator Leonard pointed out that—

Senator CONNOLLY (*Ottawa West*): Mr. Courtice, would you like to answer the question asked by Senator Macdonald?

Mr. COURTICE: What was the question again?

Senator MACDONALD: I asked whether the organization which you represent is not opposed to having the value of foreign real estate taken into consideration when arriving at the total value of the estate?

Mr. COURTICE: I think they would answer it this way, senator. In principle and in theory they would think that real estate should be taxed but because of difficulties as to conventions and other factors it might be rather premature to do that now, particularly if other governments reciprocate and commence to tax real estate in Canada. Then it will be a question on balance whether you are going to gain more by the new provision or by leaving it as it is. It would be difficult to tell now which side would favour the revenue position.

Senator ASELTINE: The Minister dealt with that.

Senator MACDONALD: No, but I was asking the witness his view.

Senator ASELTINE: He doesn't give you any view.

Senator CROLL: Yes, he does.

Mr. COURTICE: I would say if you can estimate which is going to be more beneficial to Canada, we will be on that side.

Senator CROLL: Don't you think the minister is the best judge of what will bring revenue to Canada? Don't you think he is in a better position than any of the rest of us?

Mr. COURTICE: I would certainly respect his point of view but there are a lot of factors involved in the introduction of foreign capital in the development of Canada.

Senator CROLL: Yes, but he would be concerned with that.

Mr. COURTICE: Oh, yes, he would be.

Senator LAMBERT: Are you willing to accept Senator Croll's view that the Minister is in a better position than anyone else to judge?

Senator MACDONALD: That is what I would like to know.

Senator CROLL: I should think the Minister, with his staff and his ability to obtain information, is in a better position than any of the rest of us to give a view where it lies.

Senator MACDONALD: Does that apply to all other clauses?

Senator CROLL: No, just on that particular point as to whether we will have more or less capital as a result of that; whether this is beneficial or not.

Mr. COURTICE: We were also disappointed that the Government did not take advantage of this opportunity to give recognition to the marital deduction. The deduction proposed for a widow and young children is generous in an estate of moderate size but it gives no recognition to the fact that the creation of an estate is a partnership between husband and wife, as does the marital deduction in the United States Federal Estate Tax Act where one-half of an estate may pass to the spouse tax free. You may note here that a husband does not have to be senile or falling apart at the seams in order to rank on an equal basis with a widow in this respect.

Senator ASELTINE: What about a second marriage?

The CHAIRMAN: The problem does not arise.

Senator ASELTINE: Sure it does.

The CHAIRMAN: We will go into that later.

Senator BRUNT: Does a second marriage make you old and senile?

Mr. COURTICE: This concession was made in the United States to equalize the advantages that women enjoyed in some of those states where there was community of property. Canada has a direct parallel with this in the province of Quebec. Is it reasonable that because a husband has died a tax must be paid to the Government to enable the widow to enjoy what she has done so much to create and to preserve? That is why we think it is to be regretted that Bill C-37 did not take the opportunity in line with modern thinking to recognize the direct relationship of the wife's contribution to the family fortune. In the United States the wife's half-interest can be put in trust for her provided she is given a general power of appointment over it. So any question that it might be spent foolishly does not occur, it can still be in trust for her provided she has a general power of appointment over it. The only people with whom it would not be popular would appear to be bachelors and spinsters, and it would

cost the exchequer very little. I think this is an important point because in many cases only the duty would be postponed until the death of the widow when her half would be passed on to the children.

Senator MACDONALD: The tax would not be as great.

Senator BRUNT: The rate would not be as high.

Senator MACDONALD: The rate would not be as high because it would only be on half the estate.

Mr. COURTICE: That is right, it would not be as high. We are not trying to argue that you will come out equal in revenue, but we are trying to say that we think that the merits of the case far outweigh any loss in revenue that might occur.

Now, the Government did go a long way in connection with the home, and they accepted the principle where there was joint ownership, but we should like to have seen that principle extended to a larger part of the whole estate, and we think it would be reasonable to do so.

Senator BOUFFARD: Would you put a ceiling on that?

Mr. COURTICE: The half.

Senator BOUFFARD: The complete half?

Mr. COURTICE: Half of the estate. The same as community of property in the province of Quebec.

Senator HAIG: There is no tax on that half?

Mr. COURTICE: No tax in passing to her, no.

Senator HAIG: If she died there would be no tax on that amount?

Mr. COURTICE: Oh, yes, there would be upon her death.

There is one last reference I would like to make on the question of domicile, and it is only in Part II, where one domiciled outside of Canada is treated, as the Minister pointed out, on a flat basis of 15 per cent. Again, this is for ease of administration and this has some value. But the problem there is that they allow no deductions or allowances for a wife and children. There were in the 1951 census over two million people in Canada who had been born in foreign countries, and the problem is growing. We have many United States citizens here with American subsidiaries and they are acquiring various estates, some very substantial. A person domiciled in the United States may pay $15,000 tax on $100,000 in Canada, whereas a Canadian with a $100,000 estate, where there is a wife and four children, would have no tax whatever paid on it. Now, you have to conjecture again to what extent this ease of administration is going to discourage the investment in Canada of these people, and if they are going to leave their money in Canada under those circumstances, or whether they are going to send it home.

Mr. Chairman, I thank you very much for your very good hearing. Mr. Godwin, of the Crown Trust Company, is here, associated with me in this presentation, and if there is anything we can do further to assist your investigation we shall be only too glad to do so.

The CHAIRMAN: Do you wish to make any representation, Mr. Godwin?

Mr. GODWIN: No, thank you. Mr. Courtice has pretty well expressed our point of view.

The CHAIRMAN: We have several representatives of women's organizations here, and also the Canadian Life Officers Association. Are the women's organizations ready at this time to say something? Mrs. Gilleand, would you care to speak first for the Canadian Federation of University Women?

Mrs. W. W. Gilleand, Vice-President, Canadian Federation of University Women.

Mr. Chairman, Honourable Senators: Our brief was presented to honourable senators and members of the house, I think, on the morning of the day on which the committee of the other house sat. Our chairman of the Canadian Committee on Status of Women on Saturday last left our eight day long triennial conference in Montreal for holiday, and I had no chance to get another 40 or 50 copies of the brief available for you this afternoon. However, you have them, and I hope you will look over them after I have said what I propose to say.

In the first place, in the most recent submission which went to the members of both houses, and to the Minister of Finance, the Prime Minister, and the Minister of National Revenue, etc., we outlined in roughly a three-page brief the point that we have seen pursuing for a long time, namely, that there should be a $50,000 exemption. The president, Mrs. Finlayson, is here today, representing the National Council of Women, I believe, and we have talked this over, and to save repetition she is going to deal with that point. So I will begin at a later point in our submission. But first, I am sure you will recall, and everybody else I think is too conscious of this, that when Bill 248 come out we had lots of time to look it over and see how it differed from the Dominion Succession Duty Act, and we began our study of this in 1952 or so, and therefor have been at it for six years, which is perhaps as long as you have. We did not have a great deal of time after Bill C-37 was introduced, so it has been a scramble.

I would like to comment on two or three points in Bill C-37 that I can say please the women within the Federation of University Women, and as well several other organizations which have endorsed our representations.

Although the section in the bill does not specifically say that it is to benefit the wife, nor can the wording as I see it conveniently say it, we would like to see it. I refer to the term "joint tenancy", or the term which relates to it, which means that only half of the value of the house is considered as belonging to the husband for succession duty purposes; therefore, presumably in most cases the other half of the house would be considered as belonging to the wife, even though it does not specify it is because of a husband and wife relationship. It does specify joint tenancy as such; therefore, as this would benefit the wife, we are in favour of it.

Point number two concerns the question of the husband's gifts to his wife for the use of buying an insurance policy. Such an insurance policy would be considered part of the husband's estate, and does not put a limit on the use to which that gift is put. We like that provision, even though again it does not specify that it is because of the husband and wife partnership.

Those are two things we are particularly pleased about. There is one other matter that we are only partially happy about, and I will come to it later.

I was much interested in the discussion that took place here about the capitalization of pensions, because this is one phase of the matter that has concerned our organizations for a long while. Our concern arises from the fact that often a widow does not have enough money to pay the succession duties. The pension provides so much income for her, and she had four years in which to pay the succession duties; but very often the pension does not provide the total amount that is required to be paid under the Succession Duties Act.

So, in support of the submissions that were made in that respect, may I say that that was one of our first points in our 1953 brief to the Government. This is something we have had an opportunity to know about, because over the five-year period that we have been interested in this subject, we have had scores—maybe hundreds—of cases drawn to our attention where that particular

provision caused great hardship. And as for paying tax on money that we don't receive, we are against it, absolutely and completely! If we do not receive the pension we do not want to pay taxes on it. Let there be no doubt about our thinking on that point.

I was very pleased indeed to hear the representations made by the previous speaker. We know that the trust companies have for a long time been making representations to the same effect as we have, as regards half of the estate being considered as belonging to the wife, for succession duty purposes, or estate tax purposes. In our last letter that went to the Government—

Senator MACDONALD: Has that been distributed?

Mrs. GILLEAND: The senators have it and the Members of the House of Commons have it. We say the Government has long recognized the effect of the wife's work inside and outside the home on her husband's earning potential. Indeed provisions of the Veterans' Land Act have led to the saying that "a man may farm as much land as his wife can work". If the Estate Tax Act fails to extend partnership recognition to married women they will be forced to conclude, as they now suspect, that Government is prepared to recognize their status in the partnership of marriage only when it means for Government an increase in revenue or in security for it. When such recognition involves a loss of revenue or even a temporary loss of revenue married women are to be not partners but chattels.

All Canadian women are proud of our Government's leadership in recognition of our status in the community. The Prime Minister's announced policy is inconsistent with discrimination in any form. Yet, the Estate Tax Act, as it now stands, continues the discrimination of the Succession Duty Act against married women in the home—against the most defenceless type of worker.

Referring only briefly to the remarks that were made by the last speaker relating to Quebec exemptions, I would like to make an extra point in that connection. You know as well as I do that only those widows in Quebec who were married under community of property currently have, and who under Bill C-37 will continue to have, an exemption of $100,000. Those who are married with separation as to property, do not have it. The Prime Minister, the Government, and everyone knows that we are not asking at this point, nor in the foreseeable future, for community of property for Canadian women. We are asking for nothing as respects ownership, but rather in the aggregate tax on the husband's estate, that recognition be given to the fact that half of it was earned by the wife. We know perfectly well that there are bad husbands and bad wives—personally I don't know any of either.

Senator ASELTINE: Would you include the second wife in that category, if she had nothing to do with earning the property?

Mrs. GILLEAND: I don't know whether I would or not. I would like the chairman to inform me on this point. In considering it as an estate tax, we would just go along with it; so, the second wife does not come into the picture. Is that so?

The CHAIRMAN: She is the only wife there.

Mrs. GILLEAND: I am speaking of myself, as the first wife. Really, I don't care what happens to the second wife. By way of principle, I don't know how this would operate, and perhaps I should just say I don't know. But I have no discrimination in my mind as to the second wife as against the first wife. We are asking that proper recognition be given to the work the wife does in the running of the home, the looking after of accounts, paying of bills, bringing up children and many other things, and that half the estate be considered hers at the moment her husband dies.

Senator BOUFFARD: Is it a condition that the husband make a will to his wife?

Mrs. GILLEAND: Yes; otherwise it would be community of property.

Senator BOUFFARD: No.

Senator BRUNT: If he leaves it to his sister, for instance, that does not apply.

Senator BOUFFARD: That would apply only in the case where he leaves the assets to his wife.

Mrs. GILLEAND: Yes, that would have to be a condition.

Senator MACDONALD: What if he doesn't leave a will?

The CHAIRMAN: Then the estate is divided according to the law.

Senator BOUFFARD: In any event it would not apply unless she got the full amount, and that would be exempt from taxation?

Mrs. GILLEAND: The other thing I would like to point out to you is right now there is the exemption of $50,000.00, below which no estate will be taxed; and in the bill there are certain exemptions: $60,000.00 if there is a spouse, whether she gets the estate or not, and $10,000.00 for each child up to four children.

Senator ASELTINE: Is that not a good thing?

Mrs. GILLEAND: So that you could have presently an exemption which covers $100,000.00, couldn't you?

Senator CROLL: Yes.

Mrs. GILLEAND: But the thing we want to point out is why is this? We are asking for recognition of what the wife does, and yet our children have a $10,000.00 a piece exemption but they do not contribute to the assets of the estate, and I must point out that the wife does. Of course it is nice to have that $10,000.00 a piece for the children, all four children, and if the wife's exemption came out to the same amount it would be a token recognition of the contribution which the wife makes to the estate.

Senator ASELTINE: I would like to ask the witness if she has read the present succession duty act?

Mrs. GILLEAND: Yes I have.

Senator ASELTINE: Have you read the bill before us?

Mrs. GILLEAND: Yes, I have read Bill 248 and C-37.

Senator ASELTINE: Don't you think this bill is a big improvement over the others.

Mrs. GILLEAND: Yes I do, Senator Aseltine.

Senator ASELTINE: And are you in favour of it as far as it goes?

Mrs. GILLEAND: That is right, but it just does not go far enough, and really, specifically, it does not do anything to recognize the wife's contribution except in an indirect way. Now I am not crying about that, I am only pointing it out, and I want to point out one other thing,—this exemption of $40,000.00 if the husband survives and $60,000.00 if the wife survives does not please us at all. We believe this was set up this way to please us and yet it does not because this is not equality and all the women's organizations are dead set on equality. What is more we think it is perfectly awful that a widower should have a tag put on that, that that $40,000.00 should be tagged with infirmity plus dependent children because that means practically nobody is ever going to benefit by it. I know the government has tried to do something in this specific way to please us women and I want you to know we are not pleased with the way it is done. We want equality, we do not want preferential treatment.

Senator BRUNT: We are all for you.

The CHAIRMAN: Have you completed your presentation Mrs. Gilleand?

Mrs. GILLEAND: Yes, Mr. Chairman, and I wish to thank the committee very much.

The CHAIRMAN: Mrs. Flaherty, were you going to add anything to what Mrs. Gilleand said.

Mrs. J. F. Flaherty, Executive of the Canadian Federation of University Women, called.

The CHAIRMAN: You may proceed, Mrs. Flaherty.

Mrs. FLAHERTY: Mr. Chairman and honourable senators, I have not much to add to the submissions that have already been made by my colleague, Mrs. Gilleand, the trust companies, as well as the Chamber of Commerce.

We were very pleased to have the trust companies advocate the recognition of the marriage partnership and we would like to point out that in certain laws under which we operate in Canada the marriage partnership is recognized for what can be got out of it for the protection of the government; it is recognized in the Veterans Land Act, the War Veterans Allowance Act, the Small Loans Act and the National Housing Act. In some cases the wife is required to sign if her hubsand wants a loan and she is equally liable for the debt which he contracts when he wants a property. Under the Small Loans Act the wife signs an application for a loan. Under the National Housing Act amendment brought in in 1955, the wife there too is liable when her husband takes out a loan—she has to bear an equal burden.

Senator MACDONALD: Does she not become the owner of half the property? They must be joint tenants?

The CHAIRMAN: Not necessarily.

Senator CROLL: No, of course not, what she signs is a covenant under the National Housing Act.

The CHAIRMAN: She signs a covenant only.

Senator MACDONALD: She signs a covenant but is it not a joint ownership?

Senator CROLL: No, it is merely a covenant.

Mrs. FLAHERTY: In any case these acts recognize that the wife is equally responsible with her husband. Her signature is required too, yet, when the husband dies the government regards the whole estate as belonging to the husband.

Our contention is that the wife has assisted her husband in earning that money. They, together, built up that estate. It is not a question of what you have done and what I have done. It is a case of what we have done. Suppose for instance that a husband and wife buy a car together. When it comes to assessing the husband's estate the car is regarded as belonging to the husband. Today, especially when there are so many married women working the wife on the way home from the office probably drops in and spends her pay cheque on the groceries that enables the husband to put his money into bonds.

Senator HAIG: But they don't do it.

Mrs. FLAHERTY: He puts it into savings, shall we say. That is money that the husband does not spend but what the wife has spent her money on does not show when it comes to settling up the estate. The things that are there are the things that have been contributed by the husband and the wife is required to prove that she has bought certain things with money that she earned herself in order to have the value of those items regarded as not being part of her husband's estate.

Senator MACDONALD: Is your main argument not to cover the case not where a woman has been working but where the husband and wife lived together many years and she looked after the home and brought up the children.

Mrs. FLAHERTY: There are two kinds of contributions that the wife can make, money contributions in the one case and in other cases the intangible ones, setting up a home so that her husband can have peace and quiet to enable him to go out the next day and do a good job.

Senator MACDONALD: Generally speaking that is the basis of your argument?

Mrs. FLAHERTY: Yes, but we are also thinking of the increased number of married women in the labour force today, and we would not like to have them feel that they have to put their money in a separate bank account so that it is separate from her husband's money, we would like to have it, so that it is our contribution. We also pointed out in an earlier brief that even for an estate of $75,000.00 we have been asking for a direct exemption of $50,000.00. But, if, as suggested by the Montreal Trust Company in 1951, the true exemptions had been $75,000, it would have made a difference of less than one per cent of the total revenues of the Government of Canada; and we feel that a tax which is of such small importance in the whole revenue for the nation could surely be made less unfair for Canadian widows.

Senator MACDONALD: Let me get this straight. You ask for a true exemption of $50,000.

Mrs. FLAHERTY: Yes.

The CHAIRMAN: You have that now.

Senator MACDONALD: I would like to get it from the witness. ...My question is: you want a true exemption of $50,000?

Mrs. FLAHERTY: Yes.

Senator MACDONALD: Have you got it in this bill?

Mrs. FLAHERTY: No. What we have under this bill is that no estate under $50,000 is taxable—that is what we had in the other bill—but once the estate goes over $50,000, part of it is taxable.

Senator MACDONALD: Where it is the case of a widow.

Senator HAIG: Not very much of it.

The CHAIRMAN: It depends on the size of the estate.

Senator MACDONALD: If I understand this bill correctly, if a man dies his widow gets a true exemption of $60,000.

Mrs. FLAHERTY: Yes. In the case of a widower he gets an exemption of $40,000. So we feel it is a tax on thrift. If you are careful and save your money, and your estate is over $50,000, you are to be taxed: if you spend your money and leave an estate of $49,000 there is no tax on it.

Senator MACDONALD: That is, the widower. If a widower leaves an estate of not over $49,000 there is an exemption of $49,000—is that correct—under this bill?

Mrs. FLAHERTY: Well, there is an exemption up to $50,000.

Senator MACDONALD: But if the man is married, then there is an exemption of $60,000?

Mrs. FLAHERTY: Yes.

Senatory MACDONALD: I am just trying to get your point of view. Would you prefer to have a true exemption of $50,000 and not have $40,000 in one instance and $60,000 in the other?

Mrs. FLAHERTY: Well, we would like to feel that the Government was allowing the $60,000 because they are recognizing the marriage partnership. But in the same case we feel that a husband should not be penalized, should not have to be infirm and have a dependent child in order to get the same benefits.

Senator ASELTINE: But in the case the wife would die first, she would have to have a lot of property to have over $50,000.

Mrs. FLAHERTY: Yes, we feel that statistics show that, although it is not specified, that this bill applies much more often to women than to men, because the women live longer, and therefore there are far more widows who are affected by the estate tax than there are men. That is why, when people talk about succession duties and estate taxes, they usually feel it is the widow who is going to have to suffer under an estate tax.

Senator THORVALDSON: You do not suffer as much under this bill as under the act.

Mrs. FLAHERTY: Not so much. But inflation is growing. An estate of $60,000 is really not worth much more than $40,000, was, when the amount of $50,000 was set as an exemption in 1941.

I do not know whether this is within my rights, but I had a question I wanted to ask from one of the officials who are here from the department.

The CHAIRMAN: You tell us what the question is, and we will see.

Mrs. FLAHERTY: It was in connection with pensions. I do not want to go into the question of pensions, but I was wondering why, when such strong submissions had been made to exempt pensions from tax, is the reason for the tax on pensions that, knowing there will be a pension, a man might spend more of his income and therefore leave a small estate, so that it would result in less taxes for the Government?

The CHAIRMAN: I don't think that was the reason. I think they were taxable and they left them taxable.

Mrs. FLAHERTY: I see. The pension capitalization, we feel too, as the Chamber of Commerce said, may work a hardship when it is capitalized, and a woman may be paying tax on money which she does not receive. Thank you very much.

The CHAIRMAN: We have Mrs. Finlayson here, First Vice-President of the National Council of Women.

Mrs. G. D. FINLAYSON: Mr. Chairman and honourable senators, I want to tell you that we are very pleased to be asked to come to this committee and present our views. I was asked really as the Chairman of the Canadian Committee on the Status of Women, but I am also Vice-President of the National Council of Women, and I have instructions from Mrs. Rex Eaton, who is the President, to say that the National Council of Women fully supports the presentation made by the Canadian Federation of University Women, which is one of our members; and representations on this subject have been made for at least 10 years by the National Council of Women.

We are very pleased, Mr. Chairman, to hear the presentations made by the Chamber of Commerce, and the trust company. They presented arguments on some of the very points which have been of great concern to us, and I do not need to repeat those, for that reason.

I might speak for just a few minutes on the request which has been made for what we call a true exemption of $50,000, and by that we mean that the $50,000 exemption should apply to every estate before they commence to calculate the duty or the tax. We know that under the Succession Duty Act, and under this proposed bill, a net estate of $50,000 or under will pay no tax, but we do mean, by "true exemption" a $50,000 exemption on any estate.

This new bill, we know, gives exemption of $40,000 on any estate, and we are very pleased with that. So now we have Bill 248, which was an improvement over the Succession Duty Act, and we have C-47, which is an improvement over 248, and we are very glad of this, even if we have got all we asked for; and one of the things we asked for was a $50,000 exemption on every estate.

We cannot get figures—we recognize the Government has to have revenue—on exactly what reduction of revenue it would mean if the exemption was made $50,000 on every estate instead of $40,000. I suppose that the Department of National Revenue has calculated how much it would lose if the exemption was $50,000 instead of $40,000. But those figures are not available to outsiders. We would go so far as to be willing to accept a little higher rate of taxation on the part of an estate that is over $50,000 in order to make up that loss of revenue, because we don't think it would be very much.

I might refer again to the figures that Mrs. Flaherty spoke of when the President of the Montreal Trust Company, in an annual meeting of shareholders, said he would advocate an exemption of $75,000 on every estate. I think he was using figures of about the year 1951 or 1952 and he said that if that exemption had applied at that time there would have been a reduction of 36 per cent in the number of taxable assets but there would have been a reduction of revenue of tax collected of only 6 per cent. So it would not have been a very serious matter at that time, and we might point out that if there was a reduction in over one-third of the number of estates valued and taxed, possibly there could have been a reduction in the staff employed to do this work. There would have been a small saving there.

In further support of our request for $50,000, I would just mention that we all know the value of money has decreased in the last 10 years, that the cost of living has gone up, and if a $50,000 estate was made not subject to taxation in 1948, a comparable figure now, based on the increase in the cost of living since then, would be at least 25 per cent more, and that would be over $60,000 we might be asking for instead of continuing to ask for $50,000. That, Mr. Chairman, is chiefly our basis for argument on the subject.

As I said before, we are very pleased that joint tenancy was recognized and the section in Bill 248 that was going to make life insurance taxable in a man's estate if he had given the money to some member of his family, presumably his wife, to buy a policy on his life, has been deleted and this can now be done. I really think it was not a serious matter, for the number of cases where a husband will give a wife money to take out a policy on his life would be few. However, it is a recognition of the fact that there can be gifts between husbands and wives, and so on.

We strongly support the contention of the previous speakers, and the trust company, that there should be recognition of the marital relationship, the partnership between husband and wife, as is done in other juridictions. I think we could say there would not be much loss in revenue because the second half of the estate would be under communal property and not taxed, and it would not be many years before it would pay succession duties and even at a higher rate. We would go along with that.

There is just one other point, if you will permit me to refer to it.

The CHAIRMAN: Certainly.

Mrs. FINLAYSON: The Chamber of Commerce presented a strong case on double taxation of pensions and superannuations. That has been a great concern to all our women's organizations. As you can readily understand, widows very frequently find themselves in receipt of part of their husband's pension that he was either receiving or was entitled to. When that is capitalized and added to the estate, it has, as a previous speaker said, imposed very onerous duties and created a hardship. I have heard the argument presented by the Minister of

Finance and some officials of the department as to why they think that must be taxed, and yet basically we women go back to the fact that we are paying double taxation on it. Surely it is not beyond the ingenuity of the officials of this department, whose ability I certainly recognize, as everybody else does here, to think up a way of avoiding that double taxation. At the moment I am not prepared to advance how it can be done but if the honourable members of this committee and those of the committee of the other house, and the officials, keep in mind that basically it is double taxation, surely they will be able to think up some way of avoiding that. Perhaps this committee might suggest something.

If I may be permitted to tell you of a case we know of: some years ago the Professional Institute of the Civil Service got a concession from the Government that in the case of a superannuation payment becoming payable to the widow of a civil servant, she should be allowed, instead of paying the succession duty on that capitalized pension in four monthly instalments, as the Succession Duty Act provides, she be allowed to pay it over the rest of her life in monthly instalments. That is just exactly the sort of thing that the brief of the Chamber of Commerce advocated. We will say whatever the total tax on that pension was it would be computed on her life expectancy at so much a month, and be deducted from it. That is one of the things they advocate. We do know of a case where a widow of a civil servant applied for this and it was finally granted that for the rest of her life there would be a deduction of so much a month from the pension in order to pay the duty. It was all settled and it was believed the estate was settled but the Department of National Revenue gave notice that they would regard the amount of that tax as income for that widow in that year and that she would have to pay income tax in that year on the total amount of the value of the tax that she was going to pay month by month instead of in four years. Well, you know what that would do to her income tax.

Senator BAIRD: In other words, the Revenue Department repudiated it?

Mrs. FINLAYSON: I don't know exactly what you would call it.

The CHAIRMAN: No. They were treating that as income.

Mrs. FINLAYSON: I suppose it is something that could only be settled by going to the courts, but the ordinary widow cannot afford to take something of that kind before the courts. It was some thousands of dollars and it was going to be added to her income for that one year, and she would have to pay income tax on it. In my simple mind I would think it was more like a transfer of capital back and forth but they said that it was revenue for that one year and that she must pay income tax on it. Of course, she would be far worse off than she was before. I advance this information for the committee and also I would discourage the Chamber of Commerce because that is what would happen to their proposal.

The CHAIRMAN: Well, it might be.

Senator MACDONALD: You are putting us on our guard.

Mrs. FINLAYSON: May I end by saying that I think in the past we have in this country had a concept of family unity, and in taxing policies we would like to see the Government, perhaps I should say the Parliament of Canada, keep that in mind, that this is one piece of legislation where you should keep in mind that the family as a whole, and particularly the husband and wife, have worked together to produce what estate there is, and this should be kept in mind in taxing it.

About a year ago somebody made an address in which they said the most recent shortage in Canada was a shortage of womanpower. They were talking particularly of trained women, such as nurses, social workers, secretaries, stenographers, and so on; and they said really the only pool left that was not being tapped was that of married women who had been trained and who might

go back to employment. Now, we may not think it desirable that married women should go back to employment, but the fact remains that they are going back, and probably will have to go back more so in the future. I think that is another argument for recognizing the family contribution in the building up of an estate, that we would not like to feel that we would have to say to married women, "When you go back to take a job, be sure to keep track of every cent you earn, and don't get the money mixed up with your husband's money, because sometimes you may have to prove you earned it." I should like to bring that before you, too.

Mr. CHAIRMAN: I do not know if there are any questions or not?

Senator BAIRD: What has the witness to say about a couple who married very late in life. Would the wife be making any contribution?

Mrs. FINLAYSON: No, I have to admit she probably would not, but I think when you establish a general principle there is bound to be the exception, and I think that we would not try to penalize a few cases compared with the great number of people who would benefit and are entitled.

The CHAIRMAN: Any other questions? Thank you, very much. The hour is getting late, and we have one group to hear from, the Canadian Life Insurance Officers Association. Would it be at all inconvenient to you, Mr. Tuck, if we heard from you in the morning instead of now?

Mr. TUCK: Not at all, Mr. Chairman.

The CHAIRMAN: Then the committee will adjourn now until tomorrow morning at 10.30.

Whereupon the committee adjourned.

1958 Session

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill (C-37), intituled: "An Act respecting the Taxation of Estates."

The Honourable SALTER A. HAYDEN, Chairman

TUESDAY, AUGUST 19, 1958.

No. 2

WITNESSES:

Mr. J. A. Tuck, Q.C., General Counsel, Canadian Life Insurance Officers Association; Mr. J. W. Graham, Q.C., General Counsel, Imperial Life Company; Mr. W. I. Linton, Administrator, Succession Duties, Department of National Revenue; Mr. A. L. De Wolf, Solicitor, Department of National Revenue; Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance; Mr. D. S. Thorson, Solicitor, Department of Justice.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1958

62217-5—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Monette
Baird	Gouin	Paterson
Beaubien	Haig	Pouliot
Bouffard	Hardy	Power
Brunt	Hayden	Pratt
Burchill	Horner	Quinn
Campbell	Howard	Reid
Connolly (*Ottawa West*)	Howden	Robertson
Crerar	Hugessen	Roebuck
Croll	Isnor	Taylor (*Norfolk*)
Davies	Kinley	Turgeon
Dessureault	Lambert	Vaillancourt
Emerson	Leonard	Vien
Euler	*Macdonald (*Brantford*)	White
Farquhar	McDonald	Wilson
Farris	McKeen	Wood
Gershaw	McLean	Woodrow—49

(Quorum 9)

**ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, August 14, 1958.

"The Senate resumed the debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Emerson, for the second reading of the Bill C-37, intituled: An Act respecting the Taxation of Estates.

After further debate, and—

The question being put on the motion for the second reading of the Bill, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

62217-5—1½

MINUTES OF PROCEEDINGS

TUESDAY, August 19, 1958.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Baird, Bouffard, Brunt, Connolly (*Ottawa West*), Croll, Euler, Haig, Howard, Lambert Leonard, Macdonald, McDonald, McLean, Monette, Power, Taylor (*Norfolk*), Turgeon, Vaillancourt and White—21.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel, the Senate, and the Official Reporters of the Senate.

Consideration of Bill C-37, an Act respecting the Taxation of Estates, was resumed.

The following witnesses were heard and questioned:

Mr. J. A. Tuck, Q.C., General Counsel, Canadian Life Insurance Officers Association.

Mr. J. W. Graham, Q.C., General Counsel, Imperial Life Company, also of the Canadian Life Insurance Officers Association.

Mr. W. I. Linton, Administrator, Succession Duties, Department of National Revenue.

Mr. A. L. De Wolf, Solicitor, Department of National Revenue.

Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance.

At 12.30 p.m. the Committee adjourned.

At 8.00 p.m. the Committee resumed.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Baird, Bouffard, Brunt, Connolly (*Ottawa West*), Croll, Gouin, Haig, Howard, Lambert, Leonard, Macdonald, McLean, Monette, Power, Taylor (*Norfolk*), Turgeon, Vaillancourt and White—20.

Mr. W. I. Linton, was further head and questioned.

Mr. D. S. Thorson, solicitor, Department of Justice, was heard and questioned.

At 10.00 p.m. the Committee adjourned until tomorrow, Wednesday, August 20th, 1958, at 10.30 a.m.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, August 19, 1958

The Standing Committee on Banking and Commerce, to which was referred Bill C-37, an act respecting the taxation of estates, met this day at 10.30 a.m.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: I call the meeting to order. We have representatives here of the Canadian Life Insurance Officers Association. Mr. Tuck, who is the general counsel; and Mr. Graham, who is general counsel for Imperial Life, will you come forward, please?

Mr. J. A. TUCK, Q.C.: Mr. Chairman, and honourable senators, I am general counsel of the Canadian Life Insurance Officers Association, an association of 80-odd life insurance companies that transact virtually all of the life insurance business in Canada. With me is Mr. Graham, the general counsel of the Imperial Life, chairman of our committee that has been dealing with this matter, and Mr. R. D. Taylor, vice-president and general counsel of the Sun Life, who is a member of the committee; and Mr. W. T. Morgan, of our office.

We appreciate very much the chairman's invitation to express our views. We have given considerable study to the aspects of the legislation that affect life insurance policyholders and annuitants. We made representations to the minister and to the officials before and after the introduction of Bill 248, and we were given every opportunity to state our views, and many of our suggestions were adopted.

We think that Bill C-37 is a great improvement over the present law, and that it will be so regarded by the millions of Canadians who hold life insurance policies and annuities. However, there are two problems that still concern us, and even though they have already received a great deal of consideration by the minister and his officials, our view is that solutions are possible and desirable. These problems are, firstly, the valuation of benefits payable in the form of a life income; and, secondly, the combined effect of income tax and estate tax on the same property.

The valuation of income benefits was referred to yesterday in the discussion of widows' pensions; in fact it was mentioned in all of the representations made to you. Therefore, I shall try not to be repetitious in presenting our views.

Perhaps I might pinpoint the problem in this way. An employer grants identical life pensions to the widows of two employees. The employees have no right whatever to dispose of or control these pensions, and the pensions are not commutable; the widows are the same age, and the pensions are identical in size and make-up. At the date of death one widow is in excellent health and would probably live beyond the normal expectation of life for a person of her age. The other widow is in poor health and has no expectation of living out the normal span of life. Yet, the bill says, the two pensions are to have the same value. This is in our view unfair, because the real values are far apart. No willing buyer would pay the same price for the two pensions.

This trouble is created by the use of the insurance or averaging principle as the sole test in valuing these pensions. Now we appreciate the difficulties of arriving at the true value of each pension, because it is not practicable to take into account the health of the widow or her prospects of remarriage in the case of a pension that cuts off at remarriage. We do believe, however, that there should be a way of achieving substantial equity in the application of the insurance or the averaging principle.

The best solution that has so far ocurred to us is to vary the rule in the bill that the value of an asset must be determined for all time at the date of death and tax settled thereon immediately. We think this rule should be varied where the full amount of a benefit is not available at death. Instead, a sort of Ruml plan for ascertaining the tax, mentioned by the chairman yesterday, might be introduced for income benefits, on the ground that no determinable value comes into being until a payment is actually received.

What we suggest is that the rate of duty applicable to the pension be determined at the time of death by valuing the pension on the basis in the bill, but that, instead of applying the rate to the theoretical value so determined, it be applied to each payment as received. This would mean that the individual widow would not be taxed on values that never actually came into existence. The revenue, on the other hand, will not suffer overall, because the tax payable on the extra values received by long-lived widows will compensate for the short-fall in tax on widows who die early.

This is, in our view, a proper application of the insurance or averaging principle.

Our second point relating to the combined effect of both income tax and estate tax on such things as death benefits from pension plans was also referred to in the representations made to you yesterday. Sometimes it is referred to as "double taxation", the inference being that only one of the taxes should apply. This, of course, ignores the fact that in the case of pension plans income tax is properly leviable because the tax has been deferred on contributions made to the plan by and for the deceased.

The real trouble is simply that the combined burden is very heavy. We think it should be lightened and yesterday there was mention made of the last issue of the *Canadian Tax Journal,* in which it is said "It is not desirable that we perpetuate tax situations where the simultaneous impact of two or more levies can produce a frequently intolerable burden. Over and over again the tax laws have lightened the blow when it seemed too heavy."

One of the taxes might be permitted to be deducted from the benefit before applying the other, or some way might be found of arriving at a saw-off of one of the taxes, such as has been done in the Income Tax Act death benefits from individual retirement savings plans, where under the new section 79B income tax on the death benefit for such a plan is fixed at an arbitrary amount of 15 per cent.

Mr. Chairman and honourable senators, we thank you again for this opportunity to express our views.

Senator CROLL: With respect to the second example you gave, have you got figures in your head that you could give us? Can you make it live as you did the first one?

The CHAIRMAN: That is the combined effect of income tax and estate tax.

Mr. TUCK: Well sir, not precisely but it does not take a very large death benefit to put a widow in the income tax bracket of, let us say, 35 per cent. Assuming the estate has some other property so the top bracket of estate tax might run to 35, 40 per cent, although that is perhaps a little high.

Senator ASELTINE: That would be on a large estate, though.

Mr. TUCK: Say it ran 30 per cent. Now, the impact of 35 and 30 is going to take up most of the death benefit.

Senator EULER: Does that make the law worse than at the present time?

The CHAIRMAN: There is no change.

Senator EULER: Is one any better than the other?

Mr. TUCK: No, there is no change, Senator Euler.

Senator CROLL: Have you thought of something that is workable and that is fair to the person who has to pay the tax and yet doesn't deprive the Government of too great a source of revenue immediately?

Mr. TUCK: We have thought of three solutions. One solution might be to say in the Estate Tax Act that the income tax on such payments into the future is assumed to be a certain amount. We could not know for sure what the income tax would be, but could make some arbitrary assumption; and then apply the estate tax on the benefit net of that tax. A second and more direct way would be to say in the Income Tax Act that the income tax should fall on the death benefit after deducting therefrom the estate tax that had been levied on it. A third way would be to again use some arbitrary rule similar to that used by Parliament last year in the retirement savings plan legislation and let the income tax on a death benefit fall at a nominal arbitrary rate of say 15 per cent so that the estate tax plus that 15 per cent would not together be too burdensome.

Senator CROLL: Yes, but that could be a considerable loss of revenue in the larger estates, could it not?

Mr. TUCK: Well, the really large estates are not involved in this problem, Senator Croll; the men with the very large estates have not been in pension plans.

Senator LEONARD: The trouble seems to be, does it not, that the income tax has not been paid on the money that goes into the pension at the time of death, and therefore it has in a way been deferred, but actually it is still a debt that has been paid not in lifetime but afterwards, but the fact that it is a deferred debt is not taken into consideration in valuing for estate purposes the value of the annuity?

Mr. TUCK: Yes, Senator Leonard.

Senator LEONARD: That makes the double tax?

Mr. TUCK: Well, it is not double tax, but it makes the impact heavy.

Senator LEONARD: If the tax had actually been paid in lifetime it would not have been there for a capital tax to be levied on?

Mr. TUCK: You are right.

Senator LEONARD: But as it is still to be paid then the estate tax comes in and taxes a liability, a deferred liability?

Mr. TUCK: A deferred liability.

Senator LEONARD: And if you were to set say a fixed rate of 15 per cent as the income tax to be paid on that annuity the same as under the self-retirement fund, then you could calculate the amount of the deferred tax liability to this annuity and the balance would be the capital to be taxed as an estate tax?

Mr. TUCK: That is the way it works for a retirement savings plan.

Senator HAIG: Why should a man escape tax by putting his money into a pension, to avoid a double tax?

Senator LEONARD: No, I am not trying to avoid a double tax.

Senator HAIG: You are making the man escape.

Senator LEONARD: Not at all.

Senator John J. CONNOLLY: I think perhaps Senator Haig is right and there is a measure of escape from tax now, because under a retirement savings plan, as I understand it, when a man pays in the amount that he is entitled to pay in he escapes tax perhaps from the relatively high rate that he would have to pay, but later when he takes his money out and survives presumably his income has fallen a good deal and so the tax is a good deal less on money that he earned in the high period. It seems to me that there is something in what Mr. Tuck suggests here that might interest the committee, because it breaks down the capital side and income side and tries to do something a little more equitable for the annuitant.

Senator MACDONALD: But is there not something in what Senator Haig says, that if you put your money during your lifetime in a pension that estate is going to get preferred treatment to the man who does not put his money in a pension?

The CHAIRMAN: What you overlook, senator, is that there is a limitation on the amount of contribution that I can make to a pension plan and avoid payment of income tax currently.

Senator CROLL: Yes, but you go a step further. Sure, what you are doing is quite legal and laid down.

The CHAIRMAN: But there is a limitation. I can only contribute up to $1500.

Senator CROLL: But let us assume for the moment that ten per cent of the taxpayers of this country take advantage of that. They are people apart, if we fall in line with the suggestion made by Mr. Tuck—they are getting a benefit the other 90 per cent are not getting because they have not got the annuity. That is the thing that is troubling me at the moment.

Senator MACDONALD: I made the point in the first instance, I suggested it, and I raised it for clarification, because it does not appear clear to me that the man who puts his money into the pension is not getting a preference over the man who does not.

Senator HAIG: Correct.

The CHAIRMAN: Now, Senator Croll, the only point that I was trying to make is this. There was a suggestion that this would be an escape and people would rush to put their money into pensions. All I was pointing out was that you could only get an exemption for income tax purposes up to an amount of $1,500 a year, which the Income Tax Act permits. If you make contributions above that it is out of your income on which you pay taxes.

Senator CROLL: I am only getting back to the amount we are permitted under the deferred plan to put aside now. I understand that it was not the howling success we thought it would be. Originally when that measure was passed we had been suggesting to the Government for a great number of years that there was a class of people, professional people, doctors, lawyers and engineers, whose earnings moved up and then they found that their earnings were down and they were not able to save enough out of their current income because of the high taxation and so something had to be done. It seemed a reasonable sort of thing. Well, you could not limit it so you put it across the board and gave everybody an opportunity, but I repeat again, as I was told, that it was not taken advantage of to the extent that we thought it would be taken advantage of. But there is a small group in that now, they are deferring that tax, and then they find themselves at a future time with that tax and the estate tax, both of them. Now, if we do something on that account we are giving them an advantage that does not come to the great majority of other people.

That is the thing that is troubling me, and how can you run an income tax department if you differentiate?

The CHAIRMAN: Of course in dealing with pensions we are only dealing to the extent of people who have pensions and they are a class and they are a very substantial class.

Senator LEONARD: Mr. Chairman, if I may speak for a moment on Senator Macdonald's question. I do not think that this creates any preferance for an investment in an annuity over any other investment. Any other investment plus the annuity will still be subject to the estate tax. The difficulty is that the annuity is subject also to an income tax, and I think if I were to try to clarify the position, the reason it is subject to the income tax is because the contributor was not paying income tax on that income in his lifetime. So the income tax is deferred and is taken out of the annuity later. But although it is deferred, it is still a liability. If the man owes income tax in the last year of his life and did not pay it, and it was paid after his death by his estate, it is allowed as a debt, a liability, against his estate, and no capital tax is levied on that liability. Through this medium of the annuity we allow these income tax payments to be deferred in lifetime, but they are still to be paid after death. It is quite all right to pay the capital tax on capital value but the tax on the capital value should allow the liability to be paid for the income tax that has been deferred.

Senator MACDONALD: That is taking a different attitude. If I understand you correctly, you now suggest the rate on the succession should be reduced on account of the part of the succession being a debt which is payable to the Government?

Senator LEONARD: Not the rate, but the calculation of the value of the annuity should be lessened by the value of the tax still to be paid.

Senator MACDONALD: That is a different proposal, as I understand it.

Senator LEONARD: That is Mr. Tuck's proposal.

Senator MACDONALD: I understood Mr. Tuck's proposal was that the income tax rate should be lessened on the early payments.

The CHAIRMAN: That was one proposal. He suggested three methods; the third method was to strike a flate rate, as they do on the retirement plan, of 15 per cent.

If there are no other questions, Mr. Graham would like to add a few words.

Mr. J. W. Graham, Q.C., General Counsel, Imperial Life: Mr. Chairman and honourable senators, if I may give an example, I think it might clarify it somewhat. Under the provisions of section 79B, which is the individual retirement savings plan, a man saves his money, he gets tax relief, and at the moment of his death there is a death benefit of $10,000. The act says that income tax in the amount of 15 per cent must be paid thereon. In other words, there is $1,500 worth of income tax. The bill, however, says that estate tax is to be levied on the whole $10,000, even though in fact he receives only $8,500.

On the other side, the man who has not taken advantage of section 79B, and has saved his money after tax, presumably will end up with a death benefit of $8,500. He pays estate tax only on $8,500. So, rather than there being a benefit to the man who has had a tax saving during his lifetime, in that particular example—and it is not uncommon—he does in fact pay a larger estate tax than the man who does not take adavantage of the income tax provisions.

Senator ASELTINE: Based on the $1,500.

Mr. GRAHAM: Yes.

Senator HAIG: But he has had interest on that money he saved and did not pay out in income tax. If he does not pay out that money for income tax until 10 years after, he is drawing interest on it all the time.

Mr. GRAHAM: That may be true, senator, but if this is done through an insurance contract, that is taken into account in the determination of the premium.

Senator HAIG: Yes, but he gets the benefit of it.

Senator BRUNT: It is included in the $10,000.

Senator HAIG: Say, I am supposed to put in $10,000 every year, but instead of putting in that amount I pay the income tax on it, and it is $8,500. I keep putting in $8,500, and at the end I am clear. On the other hand, if I keep the whole $10,000, I get interest on the $1,500 myself. That is money in my pocket or in my investments, and I benefit by it.

Mr. GRAHAM: That may be so, sir. I presume, though, in the determination of the artificial rate of 15 per cent income tax on the death benefit, it was felt that was a rough equation of the two. My point only was to show that in the one case there is no off-set for the debt which is payable, and that is the 15 per cent for income tax. You are paying estate tax at a higher rate on money that you never receive, and have no right to receive.

Senator MACDONALD: I want to be clear on this point. If I provide for a pension on which I do not pay income tax, at my death the amount of that pension is charged with 15 per cent for income tax.

The CHAIRMAN: Only the self-employed.

Mr. GRAHAM: Only under the retirement saving plan.

Mr. TUCK: I take it, Senator Macdonald, you are referring to the purchase of a pension, an individual annuity say, that does not fall under either class of pension or savings plan; it is neither an approved pension plan nor an approved retirement savings plan. You do not get a tax deduction on your contribution. Now when a death benefit from that falls in, there is a tax on the death benefit; but you referred to income tax?

Senator MACDONALD: Yes.

Mr. TUCK: Now on the income tax side, you do not pay on the whole pension that you receive; you just pay on the interest portion of each payment.

The CHAIRMAN: That is, in the case of an annuity.

Senator MACDONALD: Yes.

The CHAIRMAN: On which you had no income tax deduction. But pension plans are in a different category.

Senator J. J. CONNOLLY: The remarks made by Mr. Graham with respect to the retirement savings plan would apply equally to approved pension plans as well.

Mr. GRAHAM: The difference, Senator Connolly, of course, is that there is not in the legislation a predetermined artificial rate of income tax on those benefits.

Senator J. J. CONNOLLY: On the pension.

Mr. GRAHAM: On the pension plan, only on the self-savers; and that is one of our three alternative suggestions, that there might well be, say, 15 per cent as an artificial figure in determining the value there.

Senator J. J. CONNOLLY: That is by this administration.

Mr. GRAHAM: Precisely. One could turn it around the other way and say that, in the case of those, for estate tax purposes, they would be valued at 85 per cent of their gross value at the time of death.

Senator J. J. CONNOLLY: Could I ask one more question? Do you think that it is an oversimplification to say that the removal of section 26 from the present act would accomplish what you suggest?

Mr. TUCK: Yes, it is somewhat of an oversimplification. If the death benefit is a lump sum, and sometimes it is, the removal of section 26 would do the job. But where the death benefit is spread over a number of years, then in addition to removing or adjusting section 26, there would have to be some method of making an estimate of income tax liability.

The CHAIRMAN: Any other questions?

Senator CROLL: How long has section 34 (3) been on the statute books? Look at section 26; that is the old act. Has it been on years and years?

Mr. LINTON: Since 1952.

Senator CROLL: That was put on in 1952?

Mr. LINTON: Yes, sir.

Senator CROLL: Previous to that what did it say?

Mr. LINTON: Just didn't say.

Senator CROLL: Didn't say anything? What did you do?

Mr. LINTON: Well, by and large, we did what the section put in.

Senator CROLL: I see.

Mr. TUCK: Thank you very much, Mr. Chairman.

Senator J. J. CONNOLLY: I wonder if I could ask one further question?

The CHAIRMAN: Yes, go ahead.

Senator J. J. CONNOLLY: Yesterday a lady was here talking about a situation that apparently existed in the previous bill, whereby life insurance purchased on the life of a husband out of money supplied by the husband to the wife within the provisions of the Income Tax Act were added to the estate. Now that has been removed, according to them. Do you agree?

Mr. TUCK: Yes, it has, Senator Connolly. The new bill puts life insurance in the same position as any other form of property. The ownership test applies. The wife of course must have all the incidents of ownership.

Senator ASELTINE: It is an improvement.

Mr. TUCK: Yes.

Senator J. J. CONNOLLY: Does the same apply in the case of companies which insure their officials, executives?

Mr. TUCK: Yes, it does. There is a saving clause, Senator Connolly, for a controlled corporation, which follows the principle, apparently, that the person can be insured to the extent that he helps the company produce income; and the officials and Mr. Fleming developed a very ingenious rule to that end. It seems to us that it is probably a very practical solution of a very difficult problem. Senator Aseltine, I am glad you mentioned that point, because we have had quite a bit of talk on these two points that are still concerning us, but as I said earlier, we do feel that this bill is a great improvement over the existing legislation.

The CHAIRMAN: This concludes the representations; and in the ordinary way we would get down to a section-by-section consideration of the bill, and the departmental officers are here for whatever explanation we might want of a section as we go along. I have this suggestion to make: when we come to a section where there is a discussion, and it is indicated that an amendment may be proposed, it does not seem practicable to say in each case, "We will send for the minister to come over and get his view on that particular section". What I was going to suggest instead is that when we

come to a subsection or a section where it is likely that an amendment will be proposed, we should stand those sections in a group, ascertain as best we can what is the nature of the proposed amendments, and then stand them, and invite the minister over for one go at these sections, so that we get his point of view at one time in relation to these items. In view of the discussions that have been going on I think I could, as a matter of fact, indicate the sections where something might develop—I do not say successfully—but where it might develop, and some members of the committee would have suggestions, so that we can get an appreciation of what a section is intented to do, from the departmental representatives. If there is likely to be an amendment proposed, we stand it, and then the minister comes over and tells us his views with respect to them; then we decide whether we are going to go ahead in the face of that and make the amendments. I suggest that as a procedure.

Senator ASELTINE: Agreed.

Senator POWER: I am interested in only one part of this act, but not as respects a particular section—generally, throughout the bill. I would like to know how pensions of dependants of soldiers who die as a result of their war disability are treated. That is a general subject and I see reference to it in about three sections of the bill and I can't understand it. I wonder if somebody would give a general explanation of that now?

The CHAIRMAN: I can tell you generally now and then when we come to the sections it could be dealt with in detail.

Senator POWER: I would like somebody from the department to tell me what they have in mind. I think they are trying to benefit the dependants but I don't know that they are succeeding.

The CHAIRMAN: I would not send you a bill for the advice I would give you Senator Power.

Senator CROLL: I am prepared to take some advice from the Chairman now, for he has read the bill and understands it. Would the Chairman indicate in just a rough fashion where there are likely to be amendments? He could do it by sections.

Senator ASELTINE: I don't think we should go into that now.

Senator MACDONALD: I doubt if he could do that.

Senator CROLL: He has indicated he could.

Senator MACDONALD: The Chairman could indicate sections where amendments might be made, but I might feel there are other sections that should be clarified. I might not for the moment have any amendment in mind but certain sections might not be clear to me.

The CHAIRMAN: Would you like somebody from the department to clarify it?

Senator MACDONALD: Yes.

Senator CROLL: On any section where we are likely to offer an amendment I take it we will have an exhaustive study first here with the departmental officials?

The CHAIRMAN: Yes, so there will be a full understanding of what the sections do. Senator Power, I think you should have an answer now to your question.

I think Mr. Linton could give it to you.

Mr. LINTON: The intention of the act is to exempt such pensions, and that is achieved by section 7(1)(f). In any case where there is death from battle wounds, and so on, the personal exemptions are increased by 50 per cent under section 7(3).

Senator POWER: I don't get that one. I understand that under section 7 there is a deduction from the aggregate net value for persons, successors, who receive a pension under the Pension Act.

Mr. LINTON: That's right.

Senator POWER: That is not normally the dependant of someone who dies as a result of war wounds. I understand that section 7(2) is a general one dealing with all pensions. Does that refer to pensions under the Pension Act?

Mr. LINTON: Yes. The intent of subsection (2) is to make these deductions specific to the persons who get them so that in an application of the estate tax principle, that person will not acquire a liability in respect to the pension because he is a residuary legatee or something of that kind. Subsection (2) is simply a mechanical means of carrying out the effect of subsection (1)(f) and the other subsections.

Senator POWER: I don't understand. It is lack of knowledge on my part but first of all you say that for the purpose of ascertaining the aggregate net value that is going to be taxed, you don't take into consideration the value of the pension.

The CHAIRMAN: Yes, you do.

Mr. LINTON: That is the result. In coming to the aggregate net value, the pension would be in; but in coming to the aggregate taxable value, which is the thing the tax is applied on, it is taken out again.

The CHAIRMAN: You put it in and take it out.

Senator POWER: Why do they put it in at all?

The CHAIRMAN: It is put and take.

Senator POWER: It came in in 1942, and I say this to my shame because I was a member of the Government at that time. I am sorry it happened because I think it is an atrocious thing that somebody who dies in the service of his country should have his estate handled in this way.

Mr. LINTON: In the old act it came into the tax structure and so helped govern the rate, though it itself was not taxed. That does not happen here. That has been eliminated here.

Senator POWER: You probably know of cases, as I do, where there was sufficient capital in the estate added to the taxable value of the pension to bring it over the $50,000 limit, and that was taxed.

Mr. LINTON: That is right, sir. But that no longer happens here. Although it goes in and comes out, it does both before any rates are established. So it has no effect on rates or tax.

Senator CONNOLLY (*Ottawa West*): Why should it go in?

Mr. LINTON: It is simply that in the drafting it makes the section on pensions all inclusive without having a lot of exceptions. Then ther is a specific deduction of this type of pension. It makes a clearer pattern and it doesn't result in any of these indirect taxations the old act had that Senator Power has referred to.

Senator BRUNT: In other words, all the pensions go in at first and this section lifts certain ones out?

Senator LEONARD: This is an improvement so far as the tax on soldiers' pensions is concerned.

Mr. LINTON: Yes.

Senator POWER: What is meant by section 7(3)?

Mr. LINTON: It increases the personal exemption, such as the widow's exemption, and all those other similar things.

Senator POWER: In the case of a person killed during the war?

Mr. LINTON: Or who dies as a result thereof. It reads: "That the death of such person was attributable to wounds inflected, accident occuring or disease contracted while Canada was at war..."

Senator POWER: Why do you ask the Canadian Pension Commission to give you a certificate? Is that intended to eliminate pensions granted to widows on the presumption that if there is over 50 per cent disability the widow is entitled to a pension? Where a man dies not as a result of wounds inflicted during the war—for example, he might die as a result of a motor car accident —I understand there is a presumption and if there is over 50 per cent disability the widow gets 50 per cent of the pension. That is what happens, if I am not mistaken.

Mr. LINTON: You might be right. I cannot say offhand if they would come into the Pension Act provisions here, but the introduction of this last part with respect to a reference to the Pension Commission is at least in part to insure that these allied air forces and naval forces people can have some means to determine whether their status is such to bring them into the same category as if they were Canadians.

Senator POWER: If this were interpreted strictly by the department, as the department always does, you would eliminate a large number of the war amputees of the first war and possibly of the last war who, under a section of the Pension Act now existing, have their pension increase as they grow older. That is sort of to equalize them with relation to those who suffered from an ordinary disability and not a gunshot wound. In other words, those who received gunshot wounds in the face of the enemy are given some provision whereby as their age increases their pension increases, and 50 per cent of that goes to their widow whether they die as a result of the war wound or not. They might have a leg taken off as a result of war wounds but they might die of cancer or something else. Under this bill I am afraid these people would lose the benefits they get from the Pension Act, and I want to protest against any other department interfering with the Pension Act. The Pension Act is passed by Parliament and I don't think the other departments have any right to play with it in any way, shape or from.

Mr. LINTON: Would you not think that under section 7(1)(f), if it is payable under the Pension Act at all, it itself is deductible?

The CHAIRMAN: Yes.

Mr. LINTON: Whether it would result in an additional exemption in other matters under subsection (3) I am not sure, but I don't think it could become taxable if it is payable under the Pension Act.

The CHAIRMAN: You would get 100 per cent in any event, and this section gives you 150 per cent.

Senator POWER: What does thant mean?

Mr. LINTON: It increases the exemptions of widows and children in the cases that fall under it.

Senator LEONARD: Section 7(1)(f) just applies to the pension. By Section 7(3) if a man dies and leaves $100,000 of other assets apart from his war assets, and he dies as a result of wounds received in action, then his widow's exemption is raised from $60,000 to $90,000, and the children's exemption is raised from $10,000 to $15,000.

Mr. LINTON: That is right, sir.

Senator POWER: With regard to this extra benefit of 50 per cent, am I to understand that those who are in receipt of the amputations pension will not benefit unless the Canadian Pensions Commission—

Mr. LINTON: They would not benefit under (3), but they would under (f) with regard to the pensions themselves.

Senator POWER: They would not benefit under (3)?

Mr. LINTON: I would say not, no.

Senator POWER: And that means, then, that the Canadian Pensions Commission may award a pension to a widow, and does, there is no discretion under certain statutory provisions, but that that person will not get the benefit of this 150 per cent, whereas others would?

Mr. LINTON: I would say so, yes.

Senator POWER: I would say so, yes. To my mind, even though it does give a benefit I do not think another department should have the right to do that, or should do it.

Senator MACDONALD: Does she get the benefit up to 100 per cent?

Mr. LINTON: Yes.

Senator POWER: But here is another department which has not studied all the questions relative to Canadian pensions given to ex-soldiers and their dependents, bringing in a provision which gives a benefit to certain categories at the expense of those others. I am not complaining about the 150, but what I am complaining about is another department interfering. Here is the judgment of Parliament down through the years. They have had pension commissions after pension commissions. Probably the soldiers and their dependents will be glad to get that percentum, but I do not think it is a proper thing to do for this kind of legislation.

The CHAIRMAN: It is beneficial.

Senator POWER: It is beneficial to some. Certainly you will get pressure from the others.

The CHAIRMAN: Yes.

Senator MACDONALD: Does this not augment the provisions of the Pensions Act?

Senator POWER: Yes, in some instances, but not in all the instances wherein pensions are awarded to dependents; at least, I do not think it does.

Senator MACDONALD: The amount of the pension is not affected by this act in any way.

Senator POWER: No.

Senator MACDONALD: And the full pension is deducted, but in addition to that under the provisions of this act provision is made for giving an additional exemption to certain widows of men who die as a result of war injuries.

Senator POWER: That is right.

Senator MACDONALD: This act gives the additional benefit.

The CHAIRMAN: It increases the exemption, yes, so it is properly under this act.

Senator POWER: It is under this act, but my understanding down through the years all the time I was connected with pensions was that benefits to soldiers and their dependents would be dealt with by another department, and not by this department.

The CHAIRMAN: In that case, then, following out your suggestion, matters relating to estate tax of deceased soldiers would come under the Pension Act, and you just could not justify that.

Senator POWER: No, not necessarily, because all benefits for deceased soldiers right from the start have been excluded from any other acts; that is taken for granted.

The CHAIRMAN: Have we got the information you wished, senator?

Senator POWER: I am not sure that the information is just as exact as I want it to be, and I would like to check on that from some other sources.

The CHAIRMAN: Well, we will be dealing with that section in order when we reach it.

On Section 2—Persons domiciled in Canada.

The CHAIRMAN: Now shall we start with section 2 of the bill? Is there any comment or discussion on section 2?

Senator BRUNT: I raised the question of domicile and residence, and I certainly would like to hear from the official as to why "domicile" is used in this particular section in preference to "residence". In the Income Tax Act "residence" is used, and probably for a very good reason "domicile" is used here, but my present feeling is that it should be amended. However, I am not set in that opinion by any means.

Mr. LINTON: In view of the fact that this point came up in the representations and in the Senate itself we had a study made by Mr. DeWolf, of our department, on that, and he is prepared to make a statement, if that is in order.

Mr. A. L. DeWolf:

The primary purpose, I should say, for "domicile" as opposed to "residence" is that a person may have a number of residences, but only one domicile. Now, in taxing, it is a distinct advantage that only one jurisdiction will tax all of the personal property and the real estate. Now, if we have a question of residence as the basis a person may have a residence in a number of jurisdictions; he may have a residence in Canada, a residence in the United States, and one in Great Britain, which would mean that three jurisdictions would be taxing all of the assets. In most of the other jurisdictions, particularly the ones we have treaties with—we have treaties with Great Britain, the United States, France, Ireland and South Africa—of those five only one basis taxation on residence. All of the others are concerned with domicile and tax on domicile, and the research that I have made leads me to believe that our taxing laws fit in with the other jurisdictions far better on a domicile basis rather than on a residence basis; so for the reason, first of all, that a person can have but one domicile. Domicile seems to be the better principle and secondly, for the reason that the other jurisdictions tax accept the basis of domicile as the principle on which tax should be levied, it fits in better with the other jurisdictions.

Senator BOUFFARD: Is it not true also that the provinces tax on a domicile jurisdiction?

Mr. DEWOLF: They tax on the domicile, that is correct.

Senator BRUNT: Has the use of the word "residence" in the Income Tax Act provided a difficulty?

Mr. DEWOLF: I do not believe so, but I believe that there you are taxing a very different thing. In taxing estates you are taxing the wealth of a person that has been accumulated throughout his existence; he has it located, and he is principally located, in some particular place. Whereas for income tax he may for a short time go somewhere else to live and to earn his income, and I believe that it is fair to tax income earned within the year on a residence basis; but when you come to tax all the wealth that he has accumulated, then I suggest that you should look to his domicile.

Senator TAYLOR (*Norfolk*): As a matter of fact, is the domicile not a permanent residence?

Mr. DEWOLF: Well, permanent residence and domicile, I believe are the same. You might qualify the word "residence" to bring it to exactly what the

meaning of domicile is. The advantage, of course, in using "domicile" is that you have jurisprudence developed defining domicile, and you know what it means, whereas if you qualify the word "residence", you don't know what it means until it is interpreted by the courts.

Senator BRUNT: Under the present act the question of domicile will be determined by the taxing authorities; isn't that correct?

Mr. DEWOLF: That is correct.

Senator BRUNT: Now, is it not a fact that in England on the taxation of any estate, the question of domicile is decided by the court before any taxation is imposed?

Mr. DEWOLF: Well, it would not be referred every time to the court. The taxation authorities would decide.

Senator BRUNT: But it would be decided at the time of taking out letters of administration. The probate court in England decides the question of domicile before the taxing authorities can impose any tax.

Mr. DEWOLF: I have not the information on that, Senator, but I believe that they would first of all determine whether he was resident in the jurisdiction and then the domicile question would be in their minds in request of the probate.

Senator J. J. CONNOLLY (*Ottawa West*): That is difficult too, is it not?

Mr. DEWOLF: That is correct.

Senator BRUNT: Would you give consideration to the defining of domicile in the act?

Mr. DEWOLF: I shudder to do that. Domicile is where a person has his permanent home.

Senator CROLL: Domicile is defined.

The CHAIRMAN: No.

Senator MACDONALD: I would suggest that Senator Brunt prepare an amendment.

Senator BRUNT: I am not insisting, I just asked if you would consider defining domicile.

Mr. DEWOLF: I think a short concise statement on what domicile includes would be pretty difficult to draw up.

The CHAIRMAN: It would be a pretty long short statement?

Mr. DEWOLF: Yes, it certainly would.

Senator J. J. CONNOLLY (*Ottawa West*): Mr. Chairman, I think when discussing the case of an American citizen who came to Canada, lived here for many years, accumulated his wealth here but was till a United States citizen, and perhaps his children went to the United States to be educated, the suggestion was made that perhaps in those circumstances his domicile was in the United States and that therefore on his Canadian wealth there would not be anything like the tax paid to the Canadian authorities that might otherwise be paid.

Mr. DEWOLF: That is very apt to happen both ways, a person goes to the United States and leaves his money in Canada. Perhaps he goes there because he feels that climate is better for the winter months, but anyway he goes and lives a part or most of his time in the United States. If he has accumulated wealth in Canada and if he is still domiciled in Canada we will tax him. On the other hand, there may be persons who come to Canada, accumulate their wealth in Canada, yet never establish a domicile in Canada. We lose out there.

Senator J. J. CONNOLLY (*Ottawa West*): Is there no tax agreement that covers that point?

Mr. DEWOLF: No.

Senator MACDONALD: It happens when a Canadian citizen goes to the United States for health purposes, who has accumulated his wealth in the United States and dies, and the United States authorithies says this man is domiciled in the United States and you say he is domiciled in Canada. Who decides that question?

Mr. DEWOLF: As suggested previously the courts may decide the question, and we have provision in our tax treaty that we will tax on the basis of him being domiciled in Canada and they will tax on the basis of him being domiciled in the United States, and then under the provisions of the treaty there would be tax credits so that there would not be double tax paid.

The CHAIRMAN: There is a treaty, is there, for the avoidance of double taxation which would deal with that particular situation?

Mr. DEWOLF: Yes, there is, Mr. Chairman.

Senator MACDONALD: There is in that particular country, but we have not got treaties with countries other than the ones you named.

Mr. DEWOLF: No, that is right, we have treaties only with five.

Senator LEONARD: Mr. Chairman, I think under section 2 is the proper place for me to bring up again the question of taxation on real estate in foreign countries owned by Canadians, a provision which is now introduced in this bill. The Minister of Finance dealt with that question yesterday, but I would like to have further information from the officials of the department. Let me make my point clear: I am not objecting to the taxation of foreign real estate held by Canadians if it would stop there. I understand that the department under the estate tax can bring in all the assets of a Canadian for taxation and can treat real estate in the same way as moveable property. What concerns me is that if the United Kingdom for example adopts the same rule as we do, which hitherto they have not done, then what will be the effect on the movement of capital for investment in Canadian real estate. My own impression is that there has been a great deal more money invested in real estate in Canada by people from Britain than there has been by Canadians in the U.K., and I think that would apply generally to other countries too. I do not like to see artificial barriers raised to hamper that movement of capital, and if the result is to be that British capital would be stopped from coming into Canada for investment in real estate, and that would be, on balance, more than we would stop Canadian capital going outside the country, then I think it would not be to our advantage and would be just raising another barrier, in the same way as a trade barrier is raised, against the movement of capital into Canada.

How far has the Department of Finance studied, or how far has the Department of National Revenue studied the question of the effect of changing the law on taxation and real estate in so far as it applies to the movement of capital in and out of Canada?

The CHAIRMAN: Dr. Eaton is going to answer that question, Senator Leonard.

Dr. A. K. EATON (*Assistant Deputy Minister of Finance*): Perhaps beginning at the beginning I should say I have never heard any reasonable argument on principle for not including foreign real estate. I agree that this is unusual because most countries have not in practice included it, and I think the explanation is this: I have talked with Department of Internal Revenue officials of the United States about this and it semed to us that the reason for what I would

regard as an anomoly has arisen because it was the practice in the old days before there were any such things as tax credits. In these days there are tax credit conventions but that is a relatively modern device, which gives credit for taxes paid in another jurisdiction. It seemed to us in talking this over that formerly it was quite clear that the foreign country was going to tax that property situated within their borders, and if the country of domicile did the same then there would be double taxation and that would be too bad. I suggest that that is one explanation.

It seems to me it is definitely an anomoly and as I have said I have never heard any good reason in principle why we should not do that.

Senator Leonard, I take it that you are raising a question whether, on policy it is good we should do this for on balance we might lose on the movement of capital into Canada. I take it the reasoning behind that as to how that would occur would be this: United Kingdom rates are much higher than ours and if the United Kingdom did not tax the real estate situated in Canada, that person would get off with lower Canadian rates and therefore there is some incentive to invest here and move in capital. I think that is a fair reason. Now, how much actual incentive that would create I am not prepared to say but I would like to make this comment: you can always attract capital to a country by giving tax exemption. Generally we have been against this. A number of times it has been said that if you give a tax exemption you will get a great inward movement of capital and that is very true. You would have to weigh, in deciding this on policy, whether by giving tax exemption to our people in respect of assets abroad you offset that against the amount of movement in of capital that you would accomplish by doing that on the assumption that if you do it they will do the same.

Those are the issues.

The CHAIRMAN: I would think income tax would be a greater attraction than estate tax.

Dr. EATON: I would be inclined to agree. Let us assume I am wrong, I would still argue that it is entirely proper that in your general law you should include that provision. After having done that, if you are convinced vis-a-vis the United Kingdom that on balance it would be better not to do that, remove it by treaty. Then the exemption will apply only to that country, and not to the other countries you want to include. But I say, put the provision in your general law as a blanket to take care of the movement funds to countries where there are no succession duties. That is where the danger lies.

SENATOR LEONARD: You suggest that even though it is in here, it is still open to negotiation by way of treaty with the United Kingdom with respect to real estate tax?

Dr. EATON: Yes; and I would think the minister would be open to argument whether on balance it was a good thing vis-a-vis the United Kingdom.

Senator LEONARD: As long as that door is not closed, I think it is worth further consideration.

Dr. EATON: That door is not closed.

Senator CONNOLLY (*Ottawa West*): Succession duty laws or the death duty law in the United Kingdom and in the United States do not tax foreign-held real estate.

Dr. EATON: That is correct. I believe.

Senator LEONARD: Is it not also true that the jurisdiction over real estate has been with the territory where the real estate is located and not with the jurisdiction of domicile, and this applies to the transfer of real property, to

successions, and to estate taxation? The law generally relating to real estate has been that it was subject to the jurisdiction of situs.

I quite disagree with your suggestion that it is an anomaly, because the only reason we ever got into the matter of tax credits was because, moveable property being capable of being moved from one jurisdiction to another, as a result we got into double and triple taxation, and we had to develop reciprocal agreements. It was just that simple: you tax real estate where you find it. There was only one rate to be made, and no credits to be applied in the process—a very simple matter.

Dr. EATON: I suggest it involves a question of fairness and equity as between persons domiciled in one country and another country; in one case you are applying a lesser rate on the total estate. If you allow the deduction, it is not brought in; it is not in the ordinary deduction.

The CHAIRMAN: The bringing of it in has the effect of increasing the rate.

Dr. EATON: Yes. Even though you take it out afterwards, it is a matter of bringing it into the estate to have the tax applied. The practice that has been developed in recent years is that the country of source has the prior right. That principle has been generally accepted.

Senator LEONARD: The country of domicile?

Dr. EATON: No, the country of source, both with respect to the prior right of income tax, and estate tax. The tax would remain with the country of domicile, or the country of residence in the case of income tax; it gives the credit. That is the pattern that has been followed over the past few years. That being so, it is no longer rational that we should leave out any part of the estate, merely because it is being taxed in another country. The whole mechanism is there to give credit, as the foreign country does.

Senator CONNOLLY (*Ottawa West*): But Dr. Eaton, real estate is on a different plain from personal property. Would you not say the traditional way of dealing with real estate, as Senator Leonard says, is to deal with it under the law of situs, where it is located. You are going to have to re-negotiate some of you tax treaties, particularly with the United States.

Dr. EATON: That is correct.

Senator CONNOLLY (*Ottawa West*): The minister said he thought this point might be answered later. Do you think this is an important source of additional revenue to the Exchequer? I agree, it is pretty hard to assess.

Dr. EATON: It is hard to guess, but I do suggest that there is a pretty wide open loop-hole in our law.

The CHAIRMAN: Is it a loop-hole that has always been there, or is it a matter of design?

Dr. EATON: It has been there, and I am a little surprised it has existed so long.

Senator CONNOLLY (*Ottawa West*): Were you thinking mainly of people who might go to jurisdictions and buy real estate where there appears to be no death duty involved?

Dr. EATON: That is correct. It is as simple as that.

Senator THORVALDSON: Has it been done?

Dr. EATON: I can't answer that.

Senator POWER: Jersey Island.

Senator BRUNT: And Nassau.

Dr. EATON: They are within commuting distance by plane.

The CHAIRMAN: Any other questions on this section?

Senator LEONARD: I suggest it stand.
Section 2 stands.

On section 3—property included.

The CHAIRMAN: Section 3 deals with what property is to be included in computing the aggregate net value. We are dealing with several subsections here, and I would hope we could pass some of them. Section 3(1) says:

> There shall be included in computing the aggregate net value of the property passing on the death of a person the value of all property, wherever situated, passing on the death of such person, including, without restricting the generality of the foregoing,
> (a) all property of which the deceased was, immediately prior to his death, competent to dispose;

Senator BOUFFARD: I have one question to ask. In the provinces which have community of property, as you know all the assets of both spouses come into one common partnership, and it is divided among the two of them on dissolution; but during the lifetime of the husband he has the only right to dispose of property, though it belongs to the partnership. Would that mean that the community of property would not be recognized because the man had the right to dispose of all the partnership property?

Mr. LINTON: Mr. Chairman, competency to dispose, as we understand it, means competency to dispose unfettered in any way. Since in the disposition of a community of property, the husband is considerably fettered, we would regard tax as only extending to the half that is his, and not to the half that is the wife's.

Senator BOUFFARD: Your interpretation is all right, but if you look at the article as it is drafted, it does not read that way.

Mr. LINTON: It depends, I think, on what you mean by "competency to dispose". We have done some work on that. The phrase comes from the English legislation, and it has been pretty well decided in England that "competency to dispose" as in this expression means "free competency" to be able to give it away, to appropriate it himself, to do anything with it he likes. The husband in community is pretty free, but he is not that free. He could not give it to anyone but his common children.

Senator BOUFFARD: He could give it to anyone he wants to.

Senator BRADLEY: Would that cover power of appointment?

Mr. LINTON: It would cover a general power of appointment.

Senator BRADLEY: The man can have general power of appointment, but not a particular?

Mr. LINTON: That is right.

Senator BOUFFARD: The only thing I would like to know is whether after death community of property would not be recognized by the department for estate tax purposes. That should be settled.

Mr. LINTON: We did not think there was any doubt about it. We thought this clearly recognized that in community, only the half that was the husband's would be taxed.

Senator BOUFFARD: And even including the property that was disposed of before?

Mr. LINTON: If it was disposed of by him by way of gift, it would come under the gift section.

Senator BOUFFARD: Yes.

Mr. LINTON: Unless it was taxed under any other section . . .

Senator MÉTHOT: Is this a new section?

Mr. LINTON: No.

Senator MÉTHOT: It was in before, it has been applied in the province of Quebec, and you never tax that half of the community.

Senator BOUFFARD: I would not go that far. In the last case heard by the Appeal Board the department has gone to appeal because the board decided that the community of property should be divided for the purpose of an estate tax. I understand the department is going to appeal on that question.

Mr. LINTON: I think in that case it refers to income tax, in determining whether the income was taxable.

Senator BOUFFARD: Exactly.

Mr. LINTON: It does not arise under this act; under the present act we have always presupposed that the wife's half was not reached by the legislation.

The CHAIRMAN: Section 3(1)(b)?

Some SENATORS: Carried.

The CHAIRMAN: Section 3(1)(c)?

Some SENATORS: Carried.

Subparagraphs (a), (b), (c), (d), and (e) agreed to.

On subparagraph (f):

The CHAIRMAN: Senator White, I believe you have something to say about this?

Senator WHITE: I would like to ask Mr. Linton, first, in connection with subparagraph (a) all property which the deceased is competent to dispose of. Would you say that the deceased is competent to dispose of joint property?

Mr. LINTON: I do not think the question would arise, when we have a subsection dealing specifically with joint property. The specific clause would have to be applied in relation to the joint property.

Senator WHITE: When this matter was before the other committee, the minister made, on pages 16 and 17 of the report, a very full statement, and reading that statement you would get the impression that the joint property was exempt.

Mr. LINTON: Yes. Well, that is not true, Mr. Chairman. I do not think the minister meant that; in fact I am sure he did not.

Senator WHITE: Well, here is the statement.

Mr. LINTON: Yes. I have read the statement.

Senator WHITE: Do you not agree it makes the statement it is exempt?

Mr. LINTON: It may be a little ambiguous.

Senator WHITE: Not a "little".

Mr. LINTON: What I think the minister was trying to say was that this represents a considerable difference in the method of taxing joint property from what existed in the old act. In the old Succession Duty Act joint property was taxed on the contributions of the parties, and if the husband died, and had contributed the whole, the whole was taxed. This endeavours to reach some concept of the rights of the deceased in the property, and say in those circumstances only half would be taxed; the other half would be exempt, and that is what the statement was getting at. Under the old act the whole would be taxed, including the part that, at death, could really be regarded as belonging to the wife. Whereas that is now exempt.

Senator WHITE: Would the point arise there that if the gift was made three years before the date of death there is still a question of gift tax, to the wife? It does not eliminate that?

Mr. LINTON: That is right; and there would still be the estate tax if it was made within three years.

Senator WHITE: Before three years—?

Mr. LINTON: Before three years the gift tax comes in under the provision of the Income Tax Act, but not estate tax.

The CHAIRMAN: Do you say that the three-year limitation has no application for the purpose of estates under subparagraph (f)?

Mr. LINTON: It has no application for the purpose of the part that passes on the death of the husband, but it has application to the part that is the wife's, inasmuch as that would not be taxed under (f) but presumably under (c).

The CHAIRMAN: So that the interest of the husband, which would be a 50 per cent interest of the joint tenancy created within three years of death, would be regarded as passing on death, and subject to tax.

Senator WHITE: It would be, 100 per cent.

The CHAIRMAN: And the interest of the wife under (c) of 3 (1) would be brought into the estate as being a gift within three years, so 100 per cent of the joint tenancy would be taxed.

Mr. LINTON: Yes, if created within three years.

Senator BRUNT: Mr. Linton, this particular section applies whether there is any relationship between the joint tenants or not? They can be perfect strangers?

Mr. LINTON: That is right.

Senator HOWARD: Supposing, which often happens, two fellows go in a store business in partnership, and when they do so they arrange that whoever survives takes over the business, say for $50,000. If the business around that time has increase so that it is worth $200,000, would you tax the excess over and above that?

Mr. LINTON: Under another section.

The CHAIRMAN: Under (g).

Senator MACDONALD: We mentioned the gift tax. If I may ask the witness just to refresh my memory, and indeed the memories of some others here: supposing a gift is made prior to the three years, of a half interest in the property, or it may be joint, I understand there is a gift tax under the Income Tax Act?

Mr. LINTON: There would be a gift tax anyway.

Senator MACDONALD: How far back would that go?

Mr. LINTON: The gift tax would be when the transaction took place, but there would be no question of death. They would have taxed it when it took place, if everything had been properly done.

Subparagraph (f) agreed to.

On subparagraph (g):

The CHAIRMAN: That is the case you were citing, Senator Howard.

Subparagraph agreed to.

The CHAIRMAN: Maybe we should have a brief explanation of subparagraph (h).

Mr. LINTON: That has to be read in conjunction with section 4, subsection 2, which provides the mechanics of putting it into effect, and it is to integrate this kind of transaction with the general principle; both that transactions for partial consideration shall be taxed in the degree to which they exceed the consideration, and the principle that gifts with reserve of benefits should be

taxed. This paragraph applies in a situation such as this, where someone transfers property, generally within the family, in consideration of an annuity to be paid back to him for the whole of his life. If that annuity, by the terms of section 4, subsection 2, is 6 per cent or less of the value of the property transferred, then it is deemed to be no consideration, and the transaction to be a gift with reservation of benefit.

The CHAIRMAN: Five per cent, isn't it?

Mr. LINTON: Didn't we increase it to 6 per cent?

Senator BRUNT: What section is this?

Mr. LINTON: Section 4(2).

Senator BOUFFARD: It is 5 per cent.

Mr. LINTON: Yes, it is 5 per cent now. I am sorry. It started out to be 6 per cent. It was amended along the way.

The CHAIRMAN: Don't let us give up something.

Mr. LINTON: So that the theory is that if 5 per cent or less is reserved, al that is being reserved is the income from the property. It is costing nothing but the income for the transferee to acquire it, and therefore it is in all respects the same thing as a gift with the income reserved, which would be taxable under section 3(1)(d). If the annuity to be paid to the transferor is more than 5 per cent, then the value of the excess is allowed as a consideration and only the difference is taxed.

The CHAIRMAN: Would you illustrate that?

Senator CROLL: Could you give us some figures to illustrate it?

Mr. LINTON: Suppose property is worth $100,000 and is transferred and the consideration is the annuity paid back to the transferor of $5,000. That would be treated as a gift and the whole $100,000 would be taxed on the theory that the $5,000 is simply a holding back of the income. But if $10,000 a year was to be paid, then the value of the difference of $5,000 for the lifetime of the transferor, capitalized in accordance with tables that the Minister will prescribe, that is the capitalized value that will be taken from the $100,000 and the difference will be taxed as a gift.

Senator ASELTINE: I would like to give you an example of what happens in western Canada at times. A father wil sell a piece of land to his son, and the son will agree to pay the father one-third of the crop as long as the father lives. The consideration might be $8,000 or $10,000, and the father would cancel that debt at the rate of $4,000 a year, which he could do without the gift tax, but even when the land was paid for in that way, by the cancellation of the debt, the agreement still provides he pays him in addition to that, one-third of the crop as long as the father lives. How does that work?

Mr. LINTON: If I have the picture correctly the father gets back not only a third of the crop but over a period of years he gets back the value of the land in a $4,000 cancellation.

Senator ASELTINE: As a gift.

Mr. LINTON: No tax as long as he outlived three years after he was finished with the forgivings.

Senator ASELTINE: I understand that but take a gift where there is a straight agreement to pay the father one-third or a share of the crop as long as he lives.

Mr. LINTON: And no forgivings in addition?

Senator ASELTINE: That's right.

Mr. LINTON: I think then we would have to consider whether one-third of the crop represented 5 per cent per annum of the value of the land, and if it was more than I think it would come under this and it would be reduced by the excess.

Senator BRUNT: Some years it would be under in the event of a crop failure, but in the event of a bountiful harvest it would be over.

Mr. LINTON: I think you would have to average that and look at what it would yield over a reasonable period of perhaps five to ten years.

Senator BRUNT: On the first example given by Senator Aseltine, I think you should consider a tax refund.

Subsection 3(1) (h) agreed to.

On Subsection 3(1) (i):

Senator ASELTINE: How can you arrive at that amount ahead of time? We have tried on many occasions to get the department to say one thing or another, whether the consideration was sufficient or not.

Mr. LINTON: Mr. Chairman, this would contemplate a situation where there was an agreement that said that when the man died the agreement comes into effect, and the consideration provided by the terms of the agreement either was a definite amount or it provided a means of determining it out as it would have to be determined at that time by reason of the needs of the party.

Senator ASELTINE: How can you find that out ahead of time when the deal is made?

Mr. LINTON: You wouldn't find it out at the date the deal was made, no, but at the date of death, when this act would become concerned with it, it would either be a specified amount or it would have to be determined by some kind of arbitration provided for in the agreement, and the parties would have to do that then anyway.

The CHAIRMAN: Well, Mr. Linton, supposing at the time the agreement was made the price agreed to be paid may have been a reasonable price for the property?

Mr. LINTON: Yes.

The CHAIRMAN: At the date of death the value may have increased. Now, then, the purpose of this section is to bring in the excess.

Mr. LINTON: That is right, sir. It passes at the date of death. That is the theory.

The CHAIRMAN: Because he is not finished paying or what?

Mr. LINTON: Well, it is not a completed agreement until the death.

The CHAIRMAN: How would the limitation period of 3 years be applied? What you are really saying is that he made a gift of the excess.

Mr. LINTON: He has made a kind of testamentary disposition of the excess.

The CHAIRMAN: He didn't know what it was, though. It was purely voluntary.

Mr. LINTON: At the time he made it he provided for the circumstances that if it enhanced in value it would pass for less than its value; so the addition itself is passed on his death.

The CHAIRMAN: No, but he agreed to sell the property for so much money. It was purely gratuitous that the property had increased in value up until the time he died.

Mr. LINTON: It would be the same as if he made a will leaving, say, some wheat that was worth so much, and gratuitously the value has enhanced by the date of death. The enhanced value, of course, governs. This operates much as a will does.

Senator CROLL: If the enhanced value is taxed, is the lower value permitted? If he took it at $100,000 and at the time of his death it was only worth $50,000, what is your position then?

Mr. LINTON: There you would be faced with the problem that if the purchaser has agreed to pay $100,000 and is bound to it, you have no alternative then. Otherwise not.

Senator BRUNT: It is a one-way street then?

The CHAIRMAN: Oh, yes.

Mr. LINTON: It is this way that if the purchaser has agreed unconditionally to pay $100,000 for what later becomes worth $10,000, the estate has got the $100,000.

The CHAIRMAN: If the purchaser is good for the $100,000, or the balance

Senator BRUNT: It does not necessarily mean they will never collect $100,000.

Mr. LINTON: If it is not collectable, it will have to be reduced to what value is collectable.

Senator BRUNT: How would you do that?

Mr. LINTON: The thing simply would not be worth that.

Senator LEONARD: Under the fair market value.

Mr. LINTON: Yes.

The CHAIRMAN: If the purchaser is good for the $100,000, or the balance of it, at the death of the transferor, and the value of the property at that time is only $25,000, then the property is put in at $100,000.

Mr. LINTON: Because that is what the estate can get for it.

Senator ASELTINE: You cannot sue on a covenant in an agreement for sale. All you can get is the land back.

Senator CROLL: Oh, no. My friend must be talking about Saskatchewan.

The CHAIRMAN: He is. There is no such law in Ontario.

Senator BRUNT: Not yet.

Senator WHITE: You gave the example of a property whose price was $100,000. The property may only have been worth $100,000 when he bought it, and may be worth $150,000 at death.

Mr. LINTON: Well, by the death he has gained the benefit of $150,000.

Senator WHITE: But he is gambling, and he may have something worth $75,000.

Mr. LINTON: Yes, but at the moment it is worth that $150,000. If it is not worth that, all the aspects would have to be considered as to what it was worth, if it was some speculative thing, that would have to be taken into account; but whatever it is worth at death is the value he acquires for the payment of the lesser amount.

The CHAIRMAN: The answer is that you should not make any agreements of sale.

Senator ASELTINE: This applies only to transfer after death?

Mr. LINTON: Made upon or after death.

The CHAIRMAN: The agreements have to be made before death, of course; a dead man cannot make an agreement.

Senator POWER: Does it apply to movable property, such as stocks, and so on?

The CHAIRMAN: I would assume any property.

Senator HAIG: There is very little of that done.

Senator POWER: What if the stock went up in the meantime?

The CHAIRMAN: The man who had the agreement would be subject to a state tax on the increased value as against what he paid for it.

Senator EULER: Isn't it a fact that the general principle runs through that what was paid for a property, stocks, bonds, or anything else, the tax would be levied on the present value?

The CHAIRMAN: No, value at death.

Senator EULER: At the date of death?

The CHAIRMAN: Yes.

Senator BAIRD: Supposing I have a property which I may have sold at a price and to be delivered after my death, and let us say the assessors come in and say that property is worth much more than I sold it for; where does that fit in?

Mr. LINTON: Had you received payment?

Senator BAIRD: Not at all, no.

Mr. LINTON: But upon your death the transaction would take place whereby the property goes to your purchaser?

Senator BAIRD: The price is stipulated.

Mr. LINTON: The price is stipulated; then the value would be the value at the date of death. The price stipulated would be taxable in the hands of your estate; the tax on the excess, in the hands of the purchaser.

Senator BAIRD: That is what I wanted.

Senator John J. CONNOLLY: In the case of the example given by Senator Baird, where prior to death the property was agreed to be sold for a certain price, and say the price was $10,000 payable after death. Well, the purchase price forms part of the estate. If the property is valued at say $50,000, what happens to the excess of $40,000? We understood you to say that the purchaser pays it.

Mr. LINTON: That is right.

The CHAIRMAN: As a successor.

Mr. LINTON: He is the one that benefits by the excess value; he has got something worth $50,000 by paying $10,000.

Senator CONNOLLY (*Ottawa West*): This is a bequest, in other words?

Mr. LINTON: That is right, in effect.

Senator CONNOLLY (*Ottawa West*): Then do I understand that the $40,000 is not added to the aggregate value?

Mr. LINTON: Oh, yes, it is. It is all added to the value, and the part which is applicable to the excess is the liability of the purchaser.

Senator BRUNT: Not of the executor?

Mr. LINTON: No.

The CHAIRMAN: The purchaser in a transaction of such an agreement of sale could avoid this provision in the bill by stipulating in the agreement for sale immediate possession.

Senator THORVALDSON: Is not the real purpose of the section not to leave the door wide open?

Mr. LINTON: Yes.

Senator BRUNT: You said there was no liability of executors?

Mr. LINTON: That perhaps should be qualified—in a very rare instance. If the purchaser is also a beneficiary of the estate proper the executor would be liable to the extent of his interest in the estate, but he would seldom be.

Senator MACDONALD: Supposing you are dealing with a small amount on a large estate, how do you compute the amount charged against this particular succession?

Mr. LINTON: Well, it is a matter of a little mathematical difficulty. It is only a matter of mathematics to find out what part of the tax, especially with this universal rate, is applicable to that item. In fact, you could find the average rate and apply it to that piece of property. It is of some little mathematical difficulty but not very much.

Senator MACDONALD: Then it would be a mathematical difficulty. I do not want to anticipate any question arising later, but was there not a letter written by you which appeared in the columns to the effect that people should change their wills, at least, review their wills? Is the department considering setting forth a clause which may go in a will so that a testator knows exactly how much he is going to charge against each beneficiary?

Mr. LINTON: No, we are not considering that.

Senator MACDONALD: You are leaving that to the lawyers?

Mr. LINTON: That is right, sir.

Senator WHITE: Take the case of a will where the testator said his son, so and so, could buy a certain property for $10,000. Now, on his death the property is worth $25,000. What happens there, and who pays the tax if any on that excess $15,000?

Mr. LINTON: I do not think that would come under this section.

Senator WHITE: Who would be liable for the duty on that?

Mr. LINTON: I should say the executors of the estate would be liable; that is part of the principle of estate tax.

Senator EULER: Suppose that is the whole value of the estate. How is he going to find the amount of tax on that excess?

Mr. LINTON: Well, the executor would find it out of the estate, if that was the only item, and either get the money from the legatee or else realize on the property, depending on his powers.

The CHAIRMAN: Shall 3(1)(j) carry?

Some Hon. SENATORS: Stand.

The CHAIRMAN: 3(1)(k) also stands.

Senator WHITE: Mr. Chairman, may I ask a question on (k)?

Mr. Linton, this is the section I presume that covers the matter that Senator Power brought up about pensions paid to veterans.

Mr. LINTON: That is the one, yes, before it was taken out by the other one.

Senator WHITE: When the Minister was here yesterday he pointed out to the committee that one of the purposes of the bill was to simplify administration. Under the present act veterans' pensions are not in.

Mr. LINTON: Some are in and some are not.

Senator WHITE: Why could you not, if they have got to go in, put them in in the section which takes out certain assets, that is, in section No. 4, "Property not included"? Why could you not put the soldiers' pensions in that section and then they would not ever have to go into the estate and then come out again.

Mr. LINTON: That could be done but it is just a different way of drafting.

Senator WHITE: But you say you want to simplify matters. Why put them in at all? The pension has to be capitalized in each case.

Dr. EATON: Perhaps, Mr. Chairman, I could speak on that. We are running a parallel in this law with the system in the Income Tax Act. Ordinarily

in that act income is gross income less expenses and you arrive at a net figure, and this corresponds to the net estate or aggregate net value. Then there are the deductions that you make in arriving at taxable income. The income tax law contains a series of what we call policy deductions as distinct from the ordinary expenses and so on in arriving at the net. It is the same with these deductions from an estate. They are policy deductions, and that is the way they are dealt with. You claim for deduction of charitable payments and medical expenses, but you have income before you arrive at that and then as a matter of policy you make these deductions. I think that is the system that is followed here. It is part of the estate.

Senator WHITE: But in making his income tax return the veteran does not show his pension. If he is receiving a pension of $100 a month that does not enter in his income tax return.

Senator POWER: It does not mention it.

Senator WHITE: No it is not mentioned, so why put it in here?

Senator POWER: I do not put mine in and I do not think there is any mention of it in the income tax form.

Senator WHITE: Mr. Eaton, do you see any particular reason why this provision affecting veterans could not be eliminated from the bill so they would never have to go in?

Mr. EATON: They could be but you would lose the sense of the thing.

Senator POWER: Did I understand you to say, Mr. Eaton, that there was some mention of these pensions in the Income Tax Act?

The CHAIRMAN: They are mentioned in the act as not being included in income.

Senator LEONARD: I think Senator White's suggestion is a good one.

Mr. LINTON: These pensions never come in now. It is not a question of calculating to bring them in. They would never come in.

Senator LEONARD: The bill says it does.

The CHAIRMAN: In the Income Tax Act under the heading "Amounts not included in Computing Income" I read the following:

> 10. (1). There shall not be included in computing the income of a taxpayer for a taxation year a pension payment that is received under or is subject to the Pension Act or the Civilian War Pensions and Allowances Act, or compensation received under regulations made under section 5 of the Aeronautics Act.

So it is excluded from the computation of income for income tax purposes and certainly, as Senator White says, if you wanted to exclude this as property you would just put an exclusion on this.

Senator POWER: Take it in section 4 and you have solved it.

The CHAIRMAN: No, just take it out of (k).

Senator WHITE: But there would be some pensions that would be computed as income.

The CHAIRMAN: There would be some exceptions.

Section 3(1)(k) stands.

Subparagraph (1), I understand, is to stand also. This subparagraph, deals with the voluntary payment by an employer after the death of an employee.

I will read section 3 (1)(m).

Senator BOUFFARD: This clause should certainly stand. Nobody can understand it.

Senator POWER: It should be referred to a subcommittee on interpretation.

Mr. LINTON: The intention, Senator, was to change from the present basic principle of taxing insurance provided by the deceased to taxing insurance owned and controlled by the deceased so the result of this is that if a policy on his life was owned by him or owned by a trust which he could vary the terms of or owned by a corporation he controlled and payable to his relatives or estate, all those things would be taxed.

Then under 3 (1)(m)(ii)—if the ownership was in all or in part in a corporation controlled by him it was felt that it was fair to tax that part of the insurance proceeds which were not represented by his value to the company and that his value to the company was properly insurable by the company without falling under an estate tax. The difficulty arose in determining which was which and so this system was devised whereby his value to the company was limited to five years earnings of the company, the thought being that on balance that was a reasonable view to take, that a company should be able to replace anyone within five years and five years earnings was a fair value of the deceased to the company.

The CHAIRMAN: Senator Croll, that means if the proceeds of insurance payable to the company were not more than the insurable value established by deducting losses from profits over five years, then you do not bring anything into the estate. If the proceeds of insurance were in excess of that amount, the excess would be brought in. Is that not correct?

Mr. LINTON: Yes.

Senator CONNOLLY (*Ottawa West*): Is the net determined after income tax or before? Does section 26 apply to this?

The CHAIRMAN: It is net profit.

Mr. LINTON: Let us think about that for a moment. It is before tax.

The CHAIRMAN: That helps here.

Senator HOWARD: May I put one question to get a ruling on a matter? Let us say company "A" has an employee benefit scheme under which it pays to its executives $6,000, to the next group $3,000, and to all other employees $2,000. Now, the beneficiary of the policy has no control whatsoever over it—that is the company's business. In case of death what would happen with respect to the proceeds of such a policy, which, of course, would state to whom it was payable, the company, wife, husband or anybody.

Mr. LINTON: They would be taxable.

Senator HOWARD: I can't see that, when you have no control.

Mr. LINTON: It is a benefit passing on the death to the person who receives it, as part of the employment consideration.

The CHAIRMAN: Not under this section.

Mr. LINTON: Not under this section, but it would be taxable.

Senator POWER: This is a controlled corporation we are talking about.

The CHAIRMAN: This section, to the extent that it deals with a controlled corporation, is broader than the provision in the present law which limits the controlled corporation to a personal corporation, and deals only with the situation where the proceeds of insurance are payable in some measure to the personal corporation or to the family of the controlling shareholder. So, you have broadened this out?

Mr. LINTON: That is right.

The CHAIRMAN: What is the reason for broadening it?

Mr. LINTON: The concept of a personal corporation did not seem to have much relevance to the problem involved. You could have a controlled corporation taking insurance on the deceased's life for the benefit of his family, and the

fact that it did not happen to be a personal corporation really does not affect the benefit that moves. It was felt that a personal corporation was not really the concept that was suitable to this.

The CHAIRMAN: Let us see if the concept of a controlled corporation is suitable to it. "Control" here is defined as a person, and other persons who are connection with him by blood relationship, marriage or adoption. That is the controlled corporation. And if those persons have 51 per cent of the voting stock it makes that a controlled company, no matter what business it is doing. There may be a 49 per cent interest in the hands of the general public. To suggest in those circumstances that the 51 per cent interest can dominate that company, is taking it pretty far.

Senator CROLL: It does, doesn't it?

The CHAIRMAN: Not necessarily.

Senator CROLL: Nobody is as lonesome as a minority shareholder. What right has he got?

Senator BRUNT: The point was they had to line up the shareholders.

Senator CROLL: That is another matter.

The CHAIRMAN: You are making a statutory definition of "control" which may not be factual at all.

Senator THORVALDSON: Then each person has to regulate his affairs to let them come within this section, that is all.

The CHAIRMAN: But statutory control and factual control are two entirely different things. That situation may exist, and the minority shareholders may think that it is a good thing to insure this man for the benefit of the company, but the man who is being insured is not himself the majority shareholder.

Senator BOUFFARD: Does it apply even when the family does not get anything out of it? Suppose the corporation insures its president, the proceeds of the insurance policy goes to the company, and the company does not make any distribution. What happens in those circumstances?

Mr. LINTON: It is taxed to the extent that it exceeds the five-year profit which is thought to be the maximum amount for which any company would have an interest in insuring an employee. If it insures him beyond that, the idea is to insure him to move a benefit on his death, like the ordinary insurance policy.

Senator BOUFFARD: Why should his estate be taxed over the amount of the 51 per cent that he controls? His succession may not receive any benefit from it.

The CHAIRMAN: If it goes to the company, the 49 per cent enjoy it as much as the 51 per cent.

Senator BOUFFARD: Yes, and the estate gets nothing out of it.

Mr. LINTON: It seems to me the successor there would be the company. That would not be an asset passing through the executor's hands, and so the the executor would not pay it out of the estate assets, but the company would be liable for it.

The CHAIRMAN: What we are getting at is this: you have the proceeds of a policy of insurance which may or may not be on the life of the man who holds the largest block of shares, but the man who has sufficient relatives to get control. But those proceeds are payable to the corporation, and do not go to the individual shareholders or to the majority shareholder. Therefore, the minority shareholders and majority shareholders enjoy the proceeds that go to the credit of the company.

Why, in those circumstances, if you are going to tax any element of it, do you tax more on your theory of control than the amount of control, which would be 51 per cent?

Senator LEONARD: Is not the answer that the company should not be insuring the man for more than five years profits? Why would it insure him for more than that?

Mr. LINTON: That is right. If they are doing so, the benefit has moved to the company itself.

Senator HOWARD: But in the United States they are not taxed in exactly that fashion.

Mr. LINTON: I think not.

The CHAIRMAN: I don't like this section; I think the artificial definition of a controlled company is bad, by establishing statutory control. But I think the safety valve is the formula for determining profits and relating that to the proceeds.

Senator BOUFFARD: Mr. Chairman, perhaps this is a good point to raise the question I referred to in my remarks on second reading of the bill, and to ask the officials why a policy which is made payable to the Minister of Finance for the purpose of paying estates tax should be added to the total amount, in so far as the tax is retained by the Minister of Finance.

Mr. LINTON: The idea, sir, is that it is the same kind of thing as insurance payable to his estate. It provides his estate with more money to meet the total debt and obligations the estate will have. It is no different from making a policy available to the estate proper.

Senator BRUNT: Mr. Chairman, would Mr. Linton tell us why an exemption is made in connection with companies of an investment or financial nature?

Mr. LINTON: The idea is that such a company, which is simply a dividend collector or a sort of personal holding company, has no real insurable interest against the loss of the deceased. It does not take any genius to do that operation.

The CHAIRMAN: I am not so sure.

Senator BRUNT: It takes a certain amount of genius to make investments.

Mr. LINTON: Yes; if the company is one that trades, that is a different matter, but if it is a company that only holds securities then it would not qualify. The idea is to prevent someone from being able to carry large amounts of insurance on his life simply by incorporating a company to hold his assets.

The CHAIRMAN: But some judgment has to be shown in the quality of the assets.

Senator MCLEAN: Mr. Chairman, the corporation would have to pay income tax on the premiums paid on the insurance policy; they would be paid with tax-paid money, and would not be charged up to the profit and loss account of the company.

The CHAIRMAN: Even if they were, the company would have the $1,500 limit, if it could make a deduction.

Senator THORVALDSON: Would Mr. Linton like to give an example as to the possible tax avoidance that could occur if the section were not in this form?

Mr. LINTON: It would offer great opportunity to carry insurance on a person's life through the instrumentality of a corporation set up only for that purpose; in that way he would have all the benefits he would have if he were to insure himself, and at the same time he would have the control of the policy, and would escape tax. In all respects he would be in the same position

as a person who insured his own life, and he would escape tax; whereas, if he did insure his life in the ordinary way, he would not escape tax.

The CHAIRMAN: But if he escaped tax on that ground, the proceeds which would go into the corporation would increase the value of the shares.

Mr. LINTON: Yes, but he can construct a corporation so that his children own the common shares, and the benefit of the insurance would move directly to them.

Senator BOUFFARD: In most cases this insurance money would serve to pay for the preferred stock, and that would go into the estate. The amount of insurance would not go to the estate at all, except it would go to the estate indirectly by paying for the preferred stock which he owns anyway, and which is taxed.

Mr. LINTON: The company could be so constructed that the insurance money would move to the family and not to him.

The CHAIRMAN: How could it move without leaving some of it for the preferred shareholders?

Mr. LINTON: The preferred shareholders could be covered by some other assets in the company.

The CHAIRMAN: It could not be moved to the common shareholders so that the common shareholders would get any realization until the preferred shares had been dealt with. However, the present law brings in personal corporations, and all Mr. Linton has been talking about in his "horrible example" is personal corporations. But the question we have raised has to do with a controlled company, which may not be a personal corporation, so when you give us an example based on a personal corporation it does not mean auything.

Mr. LINTON: This example could be just as well used for a company which is not technically a personal corporation. There are corporations which have one part completely in the manufacturing business, and the other part a holding company for the principal shareholder.

The CHAIRMAN: It may not have any money objective. As I say, that is a safety valve. Otherwise it is an awful example.

Senator J. J. CONNOLLY: I wonder whether Mr. Linton would like to comment on this? This formula of providing for a five-year safety valve is an arbitrary one, which has been described as very ingenious, and I think it is. But when you consider those five-year profits in the circumstances, should section 26 not be ruled out? In other words should you not take the net profits after taxes rather than before?

Mr. LINTON: Well, Mr. Chairman, there was considerable discussion about that. The reason I was doubtful before was I did not remember which conclusion was come to. But it comes back to me now that the reason for choosing five years before taxes was to be as generous as possible, because it was felt that, with an arbitrary provision of this kind, you have to lean towards generosity to make sure nobody is too heavily caught.

The CHAIRMAN: The only improvement you could make would be to make it gross profits instead of net profits!

An Hon. SENATOR: Could we eliminate that from the record!

The CHAIRMAN: "The 'moving finger' has writ".

Senator MACDONALD: Let us leave it.

Subparagraphs (n), and (o) agreed to.

On Subparagraph (p):

Senator BOUFFARD: Would there be time to propose that a gift, up to a centain extent, in the course of three years preceding the death to a member

of the family should be taken as exempt from taxation? If we have permission to give to charitable institutions and also to educational institutions without paying any tax, why should we not treat the family a little more generously and allow a gift to a certain extent to be taken as a gift without having to pay tax on it? I submit that, to a certain extent, a gift to a wife or to children—the direct descendents—the three years preceding the death should be exempt. Take the man who is giving, let us say, $4,000 or $5,000 a year to his wife and children; he pays a gift tax on it. That is, usually if he gives more than $4,000 a year he pays a gift tax. Now, the man who gives $5,000 to an educational institutional or a charitable organization in the same period is exempt from gift tax, and the receiver is exempt from any tax on the estate. Why should we not treat the family a little more generously? It seems to me that an amendment would be all to the good.

The CHAIRMAN: Do you want any comment from the departmental officials?

Senator BOUFFARD: I would like to know what the department thinks about it.

Mr. LINTON: It would seem offhand that it would be making an invidious choice between people who get gifts just prior to death and people who get bequests after death.

Senator BOUFFARD: That is, the *donatio mortis causa* is excluded; all gifts usually made by a father to his wife or children in the course of three years preceding his death. Yet he can make gifts to a charitable or educational institution.

Mr. LINTON: You have an exemption of what are called normal and reasonable gifts, if such gifts were clearly within the income of the donor and it were a matter of regular practice, to people like a wife and children, who were the normal objects of his bounty, those gifts would be exempt under that provision.

Senator BOUFFARD: Would they be exempt from estate tax also?

Mr. LINTON: Yes.

The CHAIRMAN: There is no exception for the last three years.

Senator BOUFFARD: So a gift to an educational institution of $2,000 or $3,000 a year would be exempt from gift tax and estate tax?

Mr. LINTON: That is right.

Senator BOUFFARD: But if you make gifts to your wife and children, they become taxable?

Mr. LINTON: For gift tax.

Senator BOUFFARD: And also on estates.

Mr. LINTON: Not on estates, if they fall within the normal and reasonable category. But for gift tax there is no such exemption as there is for estate tax.

Senator BOUFFARD: In the case of gifts made within three years, would they be exempt?

Mr. LINTON: From estate tax, yes. Perhaps I should say that that would not cover gifts as large as, say, 25 per cent of the value of the estate.

Senator BOUFFARD: No. I understand that.

Mr. LINTON: That would not be regarded as reasonable.

Senator CONNOLLY (*Ottawa West*): Under the present gift tax provisions in the Income Tax Act, let us take a concrete example. Say a man has an income of $50,000 and he pays a tax on that of $20,000. The difference is $30,000, and half of that is $15,000, and he can make a gift up to $15,000 without attracting the gift tax.

Mr. LINTON: That's right.

Senator CONNOLLY (*Ottawa West*): If he makes that gift within the three year period prior to death, all these gifts, no matter to whom they are made, fall back into his estate for determining the value?

Mr. LINTON: That's right.

Senator BOUFFARD: That is my point.

Mr. LINTON: That's right, they fall back but they are deductible as exempt if normal and reasonable. That is, if they are within his income, without being excessive in relation to his income, and if they are a regular thing and made to people who are the normal objects of his bounty.

Senator BOUFFARD: Would it not be clearer to state that any gift given within the three years preceding the death, if allowed to be given without a gift tax, should be considered as being reasonably exempt from the estate tax? That would make it clearer; otherwise it is far from being clear. Take this example. Senator Connolly has an income of $30,000—

Senator CONNOLLY (*Ottawa West*): Oh no. Take Senator Power if you want to do that.

Senator BOUFFARD: He can give $15,000 without having to pay any gift tax.

Mr. LINTON: Yes.

Senator BOUFFARD: Why don't we treat those donations in the three years in the same way as you might treat a donation of $1,000 to whomsoever you want to give it? As long as the donation is exempt from gift tax, it seems to me it should be considered as being a reasonable gift within the means of the man who has made it.

Mr. LINTON: That would be a matter of policy, whether we should do that.

Senator LEONARD: You are now talking about section 7(1) (e) when you talk about the exemption of such gifts, are you not?

Mr. LINTON: Yes.

Senator LEONARD: That is where this question of exemption comes in, and it is a matter of the interpretation of the meaning of the words "...to have taken effect during his lifetime, to have been part of his ordinary and normal expenditure and who have been reasonable having regard to the amount of his income and the circumstances under which the gift was made..."

Mr. LINTON: That's right.

The CHAIRMAN: Yes.

Senator BOUFFARD: It seems to me it would be clearer to exempt from the tax any gift which has been made exempt from the income tax as being exempt from the gift tax.

Mr. LINTON: That would be a matter of policy on which I am not qualified to speak.

Section 3(1)(o) agreed to.

The committee adjourned until 8 p.m.

Upon resuming at 8 p.m.

The CHAIRMAN: Gentlemen, it is 8 o'clock, and we have a quorum. When we adjourned this morning we had gone as far as paragraph (o) of section 3, on page 4 of the bill, and which runs over to page 5. We had approved it, and we are still dealing with what is comprised in the assets of the estate. The next is paragraph (p). Any questions on that?

Some SENATORS: Carried.

The CHAIRMAN: Paragraph (q) sounds very involved, and is described as being new in part. Possibly we should have an explanation, Mr. Linton?

Mr. LINTON: This is designed to reach settlements which frequently take place under the Alberta Dower Act during the lifetime of the parties. There is a larger right in dower under the Alberta Act than under most of the others, and before transferring certain kinds of real estate the husband is sometimes, shall we say, forced to pay his wife something in consideration of her release of dower, and such payments if made within three years are brought in as an advance settlement of dower instead of having it settled at death.

The CHAIRMAN: Well, in the Ontario Dower Act there is a provision that if a husband wishes to transfer property and his wife will not join in the transfer he can go to the court and get an order directing the transfer of property free of dower, but a portion of the consideration must be paid into court. Now, the effect of this is that if that legal step is taken within three years—

Senator HAIG: May I interrupt you for a moment, Mr. Chairman? The use of the word "dower" as you use it in Ontario is not the same as used in Manitoba, Saskatchewan and Alberta.

The CHAIRMAN: But for the moment I am concerned about how I understand it in Ontario. Now, in those circumstances whereby order of the court the rights are resolved between the husband and the wife and that right of her's is converted into cash, if that happens within three years of death you bring the money that is assigned to her by order of the court into the property of the deceased.

Senator BRUNT: May I ask a question? Where would the money be if the court did not order it to be paid?

The CHAIRMAN: Well, the purchaser would not take title to the property.

Senator BRUNT: But supposing the wife signs the deed and the husband collects the entire amount?

The CHAIRMAN: It will be in his bank account.

Senator BRUNT: Then they tax it.

The CHAIRMAN: All I am saying is that the right of the wife has some value, and the court seems to say so, because something has to be paid before the court, which will deprive her of that right. On the basis of what you are saying, Senator Brunt, a dower is a gift from the husband, it is not a right that the wife has at all.

Senator BRUNT: It is an inchoate right that does not crystallize until the death of the husband.

The CHAIRMAN: Well, I have been brought up in law that tells me whatever right you have is something you own, and if you convert it into money you give up something and get paid for it.

Senator BRUNT: Frankly, I think we should pass the section.

The CHAIRMAN: Any other questions? I wanted to have it clear that you understood the scope and effect of this section. Is the committee satisfied?

Some SENATORS: Carried.

The CHAIRMAN: We now come to subsection 2 of section 3. For the purpose of this section there are certain statements made, which appear under the paragraphs; for instance:

> "(a) a person shall be deemed to have been competent to dispose of any property if he had such an estate or interest therein or such general power as would, if he were sui juris, have enabled him to dispose of that property."

Senator BOUFFARD: That takes care of community of property in Quebec, does it not? If he has the right to dispose of his property during lifetime the wife has nothing to say.

Mr. LINTON: I do not think he has a right to dispose of it in an absolute way, that his right of disposition is not subject to some restrictions inasmuch as he could not give it away to a stranger.

Senator BOUFFARD: He can do that only in the case of donations for the establishment of children.

Mr. LINTON: But we think that is enough to say he is not competent to dispose of it in the way contemplated her.

The CHAIRMAN: This aspect of Quebec law is not too familiar to me, but if you are in agreement that the section does not apply, and Senator Bouffard is concerned that it might, why should we not use a few words more that would make it clear that the section means what you say it does, and remove the fear Senator Bouffard has?

Senator BOUFFARD: If you definitely want to examine the community of property and the problem concerning the possibility of disposal by the husband as affecting succession duty, do you not think it should be clarified?

Mr. LINTON: We did not think there was any doubt at all, senator, having regard to the decisions in England, as I understand them, on the competency to dispose, and the wide meaning it has to cover the situation.

The CHAIRMAN: We are in this position, Mr. Linton, that it is not the intent of this bill to make part of the estate this particular thing.

Mr. LINTON: That is right.

The CHAIRMAN: Senator Bouffard is concerned that it might.

Senator BOUFFARD: I should like to hear from Senator Monette on that, because I am afraid he might feel it would affect community of property. In that same field, Mr. Linton, take a commercial partnership, and suppose there are three partners in it, in Quebec, and one partner might if he wished to do so, dispose of any assets of the partnership.

The CHAIRMAN: You are referring to subsection 2 (a)?

Senator BOUFFARD: Yes.

Mr. LINTON: Do you mean would he be able to give them away?

Senator BOUFFARD: Yes.

Mr. LINTON: No, I would think not. You cannot convert assets to your own use and have an absolute power to dispose of them as you wish.

Senator BOUFFARD: Well, it does not say absolute power to dispose, it says "to dispose". Well, if he has power to dispose for consideration, he has it.

Mr. LINTON: But competency to dispose has been decided in England where this phrase is in use in this same context to mean an absolute and unrestricted competency to deal with it in any way.

The CHAIRMAN: Why don't you do it?

Mr. LINTON: I don't think it is necessary.

Senator CROLL: This is the same as the old section which has been on the statute books for a long time. It has been dealt with and there has never been any suggestion at any time that we do not recognize community of property, and there have been no difficulties. Are we not doing some interpreting and giving it a meaning that no one has attempted to give before?

The CHAIRMAN: Senator, I have found in my experience, and I am sure you may have also, that a statute will go along with an accepted interpretation for 15, 20, 25 or 30 years, and then suddenly somebody has enough ingenuity or courage to challenge it, and it is not found by the courts to mean that at all.

Senator THORVALDSON: The legislature comes into play and puts it back to the meaning intended originally.

The CHAIRMAN: That is plausible, but here we have a department saying this section does not mean what you think it might be. Well, if it does not, why not make sure of it?

Senator CROLL: Mr. Chairman, what the department says is that this section means what we have been interpreting it to mean for many years and does not mean anything else; it is the same old thing.

Senator BOUFFARD: It would not be very difficult to add the word "absolutely".

Senator MONETTE: Mr. Chairman, your remarks are exactly in line with my own. This section is complementary to section 3 (1). We have the basic decision and it says that there shall be included in computing the aggregate net value of the property . . .

> (a) all property of which the deceased was, immediately prior to his death, competent to dispose;

First, there is a differentiation from what was the original text but I do not think it is a difference in text, but we remain with this, that every property would be included in the aggregate net value of property passing at the death, every property which was prior to the death and which the deceased was competent to dispose of. The word dispose is a general word and I am correct in assuming that in the English language it refers to disposition by will and it refers also to contact inter vivos, and therefore the moment that you have a property of which the deceased was competent to dispose then you have a property that should form part of the estate. Well, in our regime of community property in the province of Quebec, the husband is competent to dispose of any property inter vivos by onerous contract. That is a very general rule. He could dispose of any property of the community provided he does it by an onerous contract. He could dispose by donation, in other words by gift, any property of the community provided it is in the interest of establishing or making an establishment for his children. The only exception is that as far as the disposition is concerned, and only as far as the disposition in the form of donation is concerned, he can make a donation only when such donation concerns the establishment of children. He could not dispose gratuitously to strangers, but he could dispose gratuitously for his children, and he could dispose onerously in all other cases, that is, if he is paid for it. The result is, the general rule is that the husband under community property regime in general has the faculty and the power to dispose. It is only by exception that he can do otherwise.

The CHAIRMAN: If you were to add these words at the end of the phrase, "to dispose of the property without any restriction or limitation", would that clarify the thing?

Senator BOUFFARD: That would clarify it as far as I am concerned.

Senator CROLL: I do not know what that means.

Senator MONETTE: Surely he can dispose of it without any restriction if he disposes of it by onerous deed. If he disposes of it by gift but within his family he can dispose without reserve, but he could not dispose gratuitously outside the family.

With that, I am wondering if the suggestion that the chairman is making now would meet the issue?

Senator CROLL: I think perhaps the draftsman of the bill is trying to say something.

The CHAIRMAN: Do you wish to say something Mr. Thorson?

Mr. THORSON: My reluctance to do anything to disturbs the present expression is that you will displace the jurisprudence built around the expression "competent to dispose". I have already referred the honourable senator

Monette to some of the English jurisprudence involved in this expression, particularly Re Parsons, 1943, Chancery Reports at page 112. I have not the exact quotation before me but the gist of the court's remarks in that case is that the expression "competent to dispose" is used where the person in question has the absolute power to do what he will with the property, and the report concludes with these words, "including, of course, the power to make the property his own." That is the relevant part of the judgment in this case.

Now, if he has the power to make the thing his own by converting it to his own absolute use it is within the meaning of the expression, as used in this bill, that he is competent to dispose of it, and it seems to me where we are talking in terms of community of property under the Civil Code of Quebec that in that circumstance the husband, during the lifetime of himself and his wife, is not competent to dispose of the wife's interest in the community.

Senator BOUFFARD: He has the right to sell anything he wants to.

Mr. THORSON: Yes sir, but I think I am correct in stating that he is not free under the Civil Code to convert the property to his own absolute use, to do with it what he will in any manner including giving it away or frittering it away.

Senator BOUFFARD: To fritter it away—you are wrong there. Mr. Chairman, before we conclude: the discussion on this point I will tell you what my fear is. Suppose a man is the head of community property and he has $10,000.00 in the bank. Well, as the head of the community he has the right if he wants to, to take that full $10,000 and go on a trip to Europe or any place else. Is that not converting to his own use?

Mr. THORSON: Could he convert a piece of real estate?

Senator BOUFFARD: No he could not give it away but he could take the $10,000 that he has in the bank and go to Europe and spend the whole amount for his own use. But suppose we consider a man at the head of a commercial firm, let us say a big one, which is not incorporated. Well, I have no doubt that that man as a partner has the right, if any public donation is solicited, to give $10,000 or $15,000 as long as it does not exceed 10 percent of the capital, and he does not have to consult his partner to do it.

Mr. THORSON: I recognize he could make a payment of that character but he could not give away the whole of his interest in the business itself.

Senator BOUFFARD: Under the regime of community property he has not the right to convert the effects of the community to his own use but he can take the full $10,000 at any time and go on a year trip to Europe and convert it to his own use in that way. Though he does not have the right to give it to a stranger, that is the only disposition he does not have the right to effect.

The CHAIRMAN: Mr. Thorson is saying, if there is any limitation on the competency to dispose, then it should not be caught under this provision. Is that right?

Mr. THORSON: Yes.

Senator MONETTE: First, there was only one authority given to me by Mr. Thorson. I wish to thank him for his co-operation in that regard; he did what he could. But that authority did not satisfy me. What is brought in is not exactly in the terms of the authority. It is a decision from England—I don't know if it is from the House of Lords—but as has been properly said by our chairman, unless it is a decision by the highest authority, one never knows when a higher court will give another decision.

The CHAIRMAN: Shall we stand this paragraph for the moment?

Senator BOUFFARD: I would like the officials to think about it. We only want to co-operate with them; we don't want them to impose in the law

something they do not wish to put in. But it seems to me if it requires to be clarified, that should be done.

Senator MONETTE: My remarks flow from your last comment. You say that it is claimed here that because of some exceptional circumstance a husband has no power to dispose in a particular form. That should be the rule. It means that the exception shall be the rule with respect to the definition of competency to dispose, and the general rule should not be the rule.

The CHAIRMAN: That is an unusual approach.

Senator MONETTE: Yes. It seems to me that when the husband is declared by law in almost all cases to be competent to dispose of community property, we should not govern ourselves as to the competency to dispose by a single exception.

Senator BOUFFARD: Let us stand the clause.

Mr. THORSON: I will be glad to look at it.

Section 3(2)(*a*) stands.

Senator HAIG: Before we leave that paragraph let me say that I think you have missed Senator Croll's argument. This has been on our books for a long time, and maybe if you put in what Senators Monette and Bouffard are suggesting, you will have to have a lawsuit to settle it. Indeed, we are faced with a lawsuit one way or the other.

The CHAIRMAN: The parties are going to talk it over.

Senator HAIG: I think Senator Croll has a real argument there. It has stood the test of time, and the officials have worked it out.

Senator LEONARD: The only people who could challenge the interpretation would be the Government itself, and the department officials say they don't see why it should be challenged.

The CHAIRMAN: But officials change.

Senator LEONARD: They are on record now.

The CHAIRMAN: When you get a new broom you get some new interpretations.

Senator CROLL: What you are saying now about this section can be said about every section of the bill.

The CHAIRMAN: No, not every section.

Senator CROLL: Well, almost.

Senator MONETTE: I think we are all in agreement on the substance of the difficulty. Is it not possible to so qualify the words "competency to dispose" in order to meet what we are all in accord with?

The CHAIRMAN: The section stands.

Next we come to paragraph (*b*).

Some SENATORS: Carried.

The CHAIRMAN: Paragraph (*c*). Is any particular explanation required there?

Senator BOUFFARD: What is meant by the words "tenant in tail"?

Mr. THORSON: This is a kind of holding of property where the original holder has provided that it will follow from the eldest son to the eldest son, generation after generation. There is very little of it in Canada.

Senator LEONARD: But still it can be broken.

Senator POWER: Is that what we in Quebec call substitution?

Mr. LINTON: No, substitution is limited to a number of degrees and can go only so long.

Senator BRADLEY: How long can it go, 21 years?

Mr. LINTON: No, I don't think so. In provinces that have "tenancies in tail" it is not restricted to two lives and 21 years.

Senator BRADLEY: That is the situation in the Old Country.

Mr. LINTON: I don't know.

Senator BRADLEY: It was 40 years ago.

The CHAIRMAN: Paragraph (d).

Some SENATORS: Carried.

—On Subsection 3—property disposed of as gift *inter vivos*.

Paragraph (a).

Senator ASELTINE: Carried.

Senator CROLL: I haven't the slightest idea what is the meaning of the whole section, but no one has challenged it.

Senator POWER: It is put there to catch somebody who is cheating somewhere.

Some SENATORS: Carried.

The CHAIRMAN: Paragraph (b).

Some SENATORS: Carried.

The CHAIRMAN: Paragraph (c).

Senator HAIG: It is a father trying to protect a son. Carried.

The CHAIRMAN: The only interest I have in that paragraph is the words "debt or right." What is meant by the words "or right"? Could you illustrate what is meant by that, Mr. Linton? For instance, if I have a cause of action against some relative, arising out of an automobile accident and I give up that right, or I let the statute run and the right of action is barred—are you thinking of that kind of right?

Mr. LINTON: I don't see that that could have any value.

The CHAIRMAN: The damages would still have to be proven?

Mr. LINTON: Yes.

The CHAIRMAN: Can you give an illustration of what is meant by "or right"? I dislike to put in words when I don't know what they cover.

Senator CROLL: Has anyone thought of putting that paragraph into about ten words that are easily understood? This phraseology frightens me.

Mr. LINTON: To explain it?

Senator CROLL: You explained it well enough, Mr. Linton, but why is it written in that fashion?

Senator HAIG: Why can't you cut out the words "or right"?

The CHAIRMAN: I don't know what "or right" means.

Senator CROLL: I hate to interfere with it, because I might change the meaning of it.

Senator CONNOLLY *(Ottawa West)*: Where did you get that section, Mr. Linton?

Mr. LINTON: We created it.

Senator POWER: The lad who created it must know what it means.

Mr. THORSON: It refers to other rights of action, not in the form of a debt.

The CHAIRMAN: For instance?

Mr. THORSON: I will attempt to give an example. One arising out of a breach of contract.

The CHAIRMAN: You would have to prove damages.

Mr. THORSON: There might be others where there was a right to recover property, for example; where it was not a question of establishing damages as a condition precedent.

Senator BOUFFARD: Who is going to be the judge that you have such right?

Mr. THORSON: That would be a question of fact, sir.

Senator HAIG: Damage by your car would be a right.

The CHAIRMAN: I don't think this would cover a case where the remedy was damages, because at the time you forego the right are they going to inquire into the substance and value of your right. You might not succeed in a trial.

Mr. THORSON: Would there not be a right where the remedy was specific performance?

The CHAIRMAN: Yes, if it were a right where you could enforce specific performance of a contract, it might be.

Senator MACDONALD: It might be a right to property.

The CHAIRMAN: Or where you could enforce specific performance of a contract.

On paragraph (c):

The CHAIRMAN: This is new. I see they are taking some words to say something. In plain ordinary English, Mr. Linton, that means what?

Mr. LINTON: That means that, in these contracts we were discussing earlier in the day, where the contract is made that at date of death will pass some property for a fixed value. If the deceased made such a contract to pass to someone else, and at the same time that person made a contract with him to pass that person's property to him at his death, the fact that they both made an agreement at the same time would not be taken as consideration in itself.

The CHAIRMAN: What if there was a seal and some consideration on that?

Mr. LINTON: Even that,—a seal itself would not be consideration.

The CHAIRMAN: In the general law a seal imports consideration in itself. What this subsection 4 says, if they have not got some real consideration, putting a seal on a document is not going to get you out of the implications of a state tax. I have not any views on it. As long as you are satisfied with it, I am satisfied.

On subsection 5—insurance.

Senator HAIG: Tell us what it means.

The CHAIRMAN: There are a lot of words there, but actually, I think the meaning is reasonably clear. This is for the purpose of determining whether or not, where the proceeds of an insurance policy are payable to the controlled corporation, they are included. Under this bill these proceeds are brought into the property of the deceased if there is a controlling shareholder. You take the net profits of the previous year, and if these profits are in excess of the insurance there is nothing that is added to the assets of the estate. All this section tells you is how to calculate profits and how to calculate losses, and it says you do it according to income tax principles.

Senator CROLL: Whether we agree with the principle or not, the formula is the right formula.

The CHAIRMAN: We have approved of the principle.

Senator CROLL: Therefore we must approve of the formula.

The CHAIRMAN: Well, we don't have to.

Senator J. J. CONNOLLY: May I raise the question I raised in the same connection this morning? Is there any sense in providing that this will be net before taxes?

Mr. LINTON: Well, we think that the formula as expressed here does that.

The CHAIRMAN: Yes, it does. It provides for a determination of your net profits under the Income Tax Act, or your taxable income. However, I would rather have profits than taxable income. The net profits might be more. I should point out that the first part of the subsection just describes he badges of ownership of a policy of insurance. If you can exercise certain rights in connection with it then you are the owner of it, and it comes into the estate.

Subsection agreed to.

On sub section (6), paragraphs (a) and (b):

The CHAIRMAN: Of course that is a kind of magic there that I shudder at. I think, when you erect an entity, a corporation which is a legal entity on its own behalf, under certain circumstances you may have a 49 per cent interest in other people, the deceased, who may be a minority shareholder, and who only has control because he is a blood relation or married to some person, then the act of the corporation is his act. I shudder. However, it is up to the committee.

Senator BOUFFARD: It may give rise to a great many injustices and inequities.

Senator HOWARD: Why not stand the clause, then?

The CHAIRMAN: Well, 6 (a) is all right.

Senator CROLL: We dealt with the principle involved a little earlier. Did we stand it?

The CHAIRMAN: No, we didn't stand it. We dealt with the principle involved. I suggest that we stand section 3(6)(b) for the moment.

Mr. LINTON: This paragraph (b), whatever you may think of it, does not extend to a corporation controlled by the deceased and his family. It has to be controlled by him.

Senator POWER: Is there a definition of a corporation controlled by the deceased?

Mr. LINTON: Yes, but it still confines it to controlled by the decased.

The CHAIRMAN: Let us look at that definition.

Mr. LINTON: It is in section 58(1)(c).

The CHAIRMAN: The definition of a "corporation controlled by the deceased" is this. It means:

> "a corporation that, at the time in respect of which the expression is being applied, was controlled, whether through holding a majority of the shares of the corporation or in any other manner whatever, by the deceased or by any other person on behalf of the deceased;"

Mr. LINTON: That does not include controlled by him or his family. It has in some way to be controlled by him.

The CHAIRMAN: I might comment that I believe the definition enlarges the mischief instead of reducing it.

Senator MACDONALD: I cannot see that, not if a man has to control it either directly himself or have control over somebody else.

The CHAIRMAN: Then you are getting into the stage of blood relationship, marriage or adoption. What does it mean—"in any other manner whatsoever"?

Mr. LINTON: It means that he must in fact be shown to control the company, and if he cannot be shown to be the actual controller the tax would not succeed, and the fact it is owned by another relative wouldn't give him control *per se*.

The CHAIRMAN: They would have to be very friendly.

Mr. LINTON: They would have to show that not only were they very friendly but that the deceased controlled the company.

Senator CROLL: Where did you get this definition? Is it your own creation or did you borrow it?

The CHAIRMAN: They wrote it up.

Mr. LINTON: That is new.

Senator MACDONALD: I think it is a very good definition.

The CHAIRMAN: It is an excellent definition, I agree.

Senator CROLL: The Chairman is quite correct. The words "in any manner whatsoever" may mean what Mr. Linton may think it means and wants it to mean, not that it would be improper, but it leaves itself wide open.

Mr. LINTON: It would be open to court interpretation if anybody disagrees with it.

Senator CROLL: This act is not written for the immediate benefit of us lawyers.

Senator BRUNT: I think it is for our benefit.

Senator CROLL: But I would like to get something on there that does not need a court interpretation tomorrow morning. It is very nice to have what you said but we have to examine some of these things.

Senator BOUFFARD: According to the definition I don't think it is necessary that the deceased must own the majority of the shares.

Mr. LINTON: No, it does not go that far. He might have control through another corporation or he might have nominees holding shares for him or he might have actual control if he owned 47 per cent and nobody else, say, owned more than 1 per cent of the shares.

The CHAIRMAN: Or he may have a voting trust agreement.

Mr. LINTON: Yes, but in some way he would have to govern the company.

Senator MCLEAN: His wife might own stock.

Mr. LINTON: That would not give him control.

Senator MACDONALD: If you strike out the words "or in any other manner whatsoever" you would have to insert a great many more.

Mr. LINTON: Yes.

A VOICE: Oh, I don't think so.

Senator CROLL: I don't think so either.

The CHAIRMAN: Well, gentlemen, what do you think of this subsection?

Senator HAIG: Very few will be affected by it.

The CHAIRMAN: Senator Haig, if only one person was to be affected by it and it was wrong, I would oppose it to the last ditch.

Senator HAIG: I think it is a well-drawn section.

Section 3(6) (b) agreed to.

On Section 4(1).

Senator HAIG: That seems fair.

Senator WHITE: Mr. Linton, are you going to go back for so many years and examine all the properties that the deceased has made and ascertain whether it is full value or otherwise?

Mr. LINTON: No, not in any general way, sir.

Senator WHITE: Why is it in there then?

Mr. LINTON: It has to be if you use the word "disposition". As some senators have pointed out, one kind of disposition is a sale. It is certainly

not desired to bring into tax, property the deceased sold, and therefore this excludes anything that was sold for full consideration.

Senator WHITE: Yes, but doesn't this give you the right to decide whether or not the property has been sold for its full value?

Mr. LINTON: I don't think so, sir. We would have to be able to prove that there was something other than full consideration.

The CHAIRMAN: Something less than full consideration.

Senator WHITE: But you would have the right to go back and investigate.

Mr. LINTON: That's right.

Senator WHITE: How far back would you go?

Mr. LINTON: As a rule we would not go back at all, only to any transaction about which some record existed that might be doubtful.

The CHAIRMAN: The limitation would be three years anyway.

Section 4(1) agreed to.

On Section 4(2):

The CHAIRMAN: Mr. Linton explained that yesterday afternoon to us in connection with annuities, wasn't it?

Mr. LINTON: Yes.

The CHAIRMAN: Where some property is transferred by a person in his lifetime and the person who receives the property agrees to pay a certain annuity per year as long as the person lives. Now, that property or some part of it, may come into the estate of the deceased, depending upon this formula.

Senator POWER: May I ask out of my ignorance, because I did not follow it, if that refers to property for charitable purposes or given to a university?

Mr. LINTON: No, that would be exempt.

Senator POWER: I am assuming that perhaps a man gives $100,000 to a university on the condition that $3,000 is paid to somebody.

Mr. LINTON: Well, in a sense this would come in, but anything left as taxable out of the operation of this section would itself be exempt under the charitable exemptions which would be encountered later, so nothing would arise to tax in that sense.

Senator POWER: Isn't that one way of cheating the Crown?

Mr. LINTON: It is if you do not consider charitable donations to be properly exempt.

Senator POWER: Well, if this is given as a charitable donation on consideration of an annuity payable to a relative, what happens then?

Mr. LINTON: It is exempt as a donation to charity like any other donation to charity.

Senator POWER: Even though there is tied to it a proviso that a life rent would be payable to a relative of the deceased?

Mr. LINTON: Oh, not to the deceased, but to a relative of the deceased?

Senator POWER: To a relative.

Mr. LINTON: The benefit that passed on death, or gift, to the relative would itself be taxable, but the part going to charity would be free.

Senator POWER: It was under $3,000.

Senator CROLL: Surely Mr. Linton cannot have the question properly. Put it again, Senator Power.

Senator POWER: I am giving the case of a man who gives $100,000 to a university, but puts on a condition that $3,000, less than five per cent, is to go to his son or nephew, or somebody.

Mr. LINTON: A provision in his will?

Senator POWER: Yes.

Mr. LINTON: Well, the annuity he provides for the relative capitalized for the life expectancy would be taxable, but the rest would not.

Senator POWER: But if it is less than five per cent?

Mr. LINTON: Oh, it would not come under this at all.

Senator POWER: It would not come under this at all?

Mr. LINTON: No.

Senator POWER: The annuity itself would be taxable?

Mr. LINTON: That is right.

Senator POWER: The capital would not be?

Mr. LINTON: That is right.

Senator LEONARD: I wondered if the department uses a lower rate than five per cent in calculating the taxable value of an annuity in the ordinary case?

Mr. LINTON: In the construction of the mortality tables and cost of annuities?

Senator LEONARD: Yes.

Mr. LINTON: Yes, the current rate in those is four.

Senator LEONARD: Would you consider using four per cent here?

Mr. LINTON: That is a matter of policy. As I said this morning, the first draft started off with six, and it was put down to five.

Senator LEONARD: It does not seem quite right to use the four per cent value to throw up the value of the asset for taxation, and use a higher rate to bring down the amount that is exempt.

Mr. LINTON: Well, I don't think those two are really related. Most of the calculations that will be used for the mortality tables will be used for such things as guaranteed annuities, and things of that nature, whose value and certainty is much greater than the things that will fall under this.

Senator LEONARD: This might be the same type of guarantee or security?

Mr. LINTON: I suppose conceivably, but very rarely.

Senator BOUFFARD: In the case of a gift of the price of sale made by the deceased to daughters and sons, you would not add to the deceased's property the value of the land that has been sold. I understand that the daughters would have received the gift, but apart from that would you consider the property sold?

Mr. LINTON: Was the value of the benefit to the daughters equal to the value of the property?

Senator BOUFFARD: Yes; I suppose it would be for full consideration?

Mr. LINTON: Well, only the case of the daughters would be a matter for taxation, if it was within the period.

Senator BOUFFARD: At the same time you say the purchase has to be made in consideration which is payable to the deceased for his own use and benefit?

Mr. LINTON: Well, I think we would regard it as the subject of a gift by him to them.

The CHAIRMAN: Question.

Some SENATORS: Carried.

The CHAIRMAN: We now turn to subsection 3 of section 4. There is a lot of language in that section, Mr. Linton.

Mr. LINTON: I think perhaps the note is the best explanation. It is to prevent double deduction of any consideration paid, inasmuch as this paragraph (1), subsection 1, already provides for a reduction by the amount of consideration, and if this subsection 3 of section 4 were not here the same thing would be deductible again under the first subsection of section 4 and it would come out twice.

The CHAIRMAN: Yes, that is correct.

Senator MONETTE: Before you pass to section 5, may I again refer to subsection 2(a) of section 3. Would it not be wise to include here another section that under no circumstances shall a share of the community belonging to the wife of the deceased be included? I think it would be made clear if another section said that under no circumstances the half share of the community belonging to the wife can be included in the computation of the net value.

The CHAIRMAN: What have you to say, Mr. Linton?

Mr. LINTON: I think we should like to look this over, but it strikes me offhand that there might be less danger to this suggestion, rather than narrowing the competency to dispose.

The CHAIRMAN: Then it does not destroy your jurisprudence?

Mr. LINTON: That is right.

The CHAIRMAN: I think that is a good suggestion of yours, Senator Monette.

Under the heading "Deductions allowed in computing aggregate net value", we have section 5 which lists the items deductible.

Senator BRUNT: Might I ask Mr. Linton why he changed the word "shall" to "may". Why should these debts not be deducted on the basis of "shall".

Mr. LINTON: I am afraid I am not competent to answer that.

Mr. THORSON: That is standard language. If the act provides that there may be deducted a certain amount then of course it is open to anybody to deduct that amount. The effect is precisely the same and I think it is proper to use the word "may" rather than shall because it never should be made obligatory to make a deduction.

Senator BRUNT: It is "shall" in the act.

Mr. THORSON: I suggest, Mr. Chairman, it amounts to the same thing.

The CHAIRMAN: I think the consideration is the same.

Senator HAIG: What is the idea of not allowing the deduction of solicitors charges or expenses of administering property in determining the aggregate net value. I would like to know why that is. That work has to be done and the people who want it most are the very people who are collecting the money because a lawyer knows the procedure and he will insist upon the tax being paid because he has to deal with these national revenue people all the time and if they find that he is a double crosser he will soon be made unwelcome.

Mr. LINTON: The main difficulty we have is that in practical matters you cannot tell how much those fees would amount to.

Senator HAIG: Well, in the province of Manitoba there is a tariff fixed by the court and there is a tariff in nearly every other province too for that matter.

Mr. LINTON: Am I not right in saying that it varies with the amount of work to be done.

Senator CROLL: Yes.

The CHAIRMAN: What can be done in Ontario is that a judge may fix the fees higher than the tariff.

Senator HAIG: He can also do that in Manitoba.

Senator MONETTE: And in the province of Quebec the jurisprudence is that the court costs are fixed by the tariff but the right is always reserved as beween lawyer and client.

Senator CROLL: Have you not got to find a formula, Mr. Linton, whatever the formula may be? You cannot deny it. You may set the tariff at $1 or it may be $2 but I think in fairness there should be a formula for it, and I do not think that you can exclude it.

The CHAIRMAN: What strikes me, Senator Croll, is that if you allow solicitors' charges to be deducted it is up to the estate to furnish the figure, it is not up to the department to run after them or to go looking for it.

Senator CROLL: What bothers the department is that there may be an overcharge, but some formula has got to be found for this.

The CHAIRMAN: Mr. Linton hits at a lack of uniformity in the solicitors fees, but there is also a lack of uniformity in funeral expenses.

Senator J. J. CONNOLLY: This is not new.

Mr. LINTON: If you allow these fees as expenses are you not bound to allow executor's fees and all the expenses that will be incurred in connection with the settlement of these estates. Because solicitors may be working on the estate for years, you cannot calculate the fees and if you make an assessment using this theory, it is not related to the situation at death.

The CHAIRMAN: Oh yes you can, Mr. Linton, because I must get my returns in within 6 months and you can assess in 6 months and if I do not include all the expenses, well, then, that is my problem.

Mr. LINTON: But if they are allowable there is nothing to prevent you from claiming them after and there is no way of knowing what they will be. What the act is trying to do is trying to establish a value at the date of death and apply a tax on that value. Now, the value at date of death is certainly not something that contemplates the deduction of these future amounts whether they be executors fees administration charges of all kinds. The tax is on the value at the date of death.

The CHAIRMAN: But the items that are included there are all expenses that have occurred after death.

Mr. LINTON: To the extent of funeral expenses and surrogate court fees, because those are readily ascertainable, because there is no doubt that following death burial is necessary.

The CHAIRMAN: There is no doubt about the need for the services of a lawyer either, in most cases. If the bill is not filed, you can file it after six months?

Mr. LINTON: That is the way the act reads now, and if we provide that no deduction could be claimed unless it was claimed within six months many hardships would fall on estates.

Senator HOWARD: But could you not deal with executors fees and legal fees, solicitors fees on the basis that if the figures are not provided in the return within the six months period then there is no right to file them afterwards.

Mr. LINTON: If we did that is it generally possible within six months to determine exactly what those expenses will be?

Senator CROLL: Not exactly, but, Mr. Linton, see if you can convince the committee. There are certain things in connection with an estate that have to be done. You say he has to be buried and there will be funeral expenses, and probate fees will have to be paid and there is a good deal more work that has to be done. The doctor gets paid and the deceased may very well get himself a very expensive funeral.

Mr. LINTON: The act confines that to a reasonable one.

Senator CROLL: I know, "reasonable".

Senator ASELTINE: It is according to his station in life.

Senator CROLL: Whereas on the other hand you allow no deduction for lawyers fees at all and yet in order to have the funeral account paid the lawyer has to do certain work and his fees are not deductible whereas the funeral account is. It strikes me as not being in balance.

Senator MACDONALD: It will not benefit the lawyers in any way to have it included as an expense.

Senator LEONARD: Perhaps Mr. Linton would like to consider the use of the tariff which is permitted in Ontario, which sets out definite fees to solicitors for taking out Probate and for settling succession duty and stops there. Not everything that is done by way of legal fees has anything to do with the death of the deceased but those fees are exactly in the same category as probate fees.

Senator BRUNT: There is no doubt but that taking out probate is a benefit to the taxing authorities. What provision have you, Mr. Linton, if a person dies leaving a considerable estate and nobody does anything about it.

Mr. LINTON: We would have a recourse against the beneficiaries, the heirs or whoever is entitled to the estate.

Senator BRUNT: Suppose the heirs do not name an executor.

The CHAIRMAN: And an executor could renounce his office.

Senator CROLL: But in all this you force him to do something for which no allowance is made.

Senator BRUNT: Here you have lawyers taking out probate in order to be able to deal with an estate. Surely their fees should be allowed, at least their initial fees, because you are benefiting.

Mr. LINTON: One difficulty I see about Senator Leonard's suggestion is, what would you allow in Quebec where in many cases there is no probate at all?

Senator BRUNT: Give them the same thing.

Mr. LINTON: But there is no tariff by which you could be guided.

Senator LEONARD: I don't think that matters. For example, in British Columbia there is a higher tariff. You could take a tariff of what you considered to be a reasonable charge, and allow that.

Senator BRUNT: You set it up as a table, and that is it.

Mr. LINTON: You mean to set it up as a prescribed table and allow it in every estate, whether it had to be paid or not?

Senator BRUNT: That is right.

Mr. LINTON: That might be practical, but it then becomes a matter of policy as to what should be done.

The CHAIRMAN: Will you make a note of that, Mr. Linton?

Mr. LINTON: Yes.

Senator HOWARD: May I ask, is it not a fact that in the United States both the attorneys' fees and auditors' fees are allowed as deductions?

Mr. LINTON: Yes.

Senator HOWARD: You are not going to do that in Canada?

Mr. LINTON: That is right.

Senator BRUNT: He is going to think about it.

Senator BOUFFARD: I think you might as well consider the auditors' fees, because in that kind of business most of these people who have to pay succession duties will have to have an audit of some kind and that is an expense they will have to pay.

Senator CONNOLLY (*Ottawa West*): May I say, you are talking about legal fees in connection with filing of probate and succession duty filings which apply in the various jurisdictions, and which is not a very serious charge against an estate. What we are thinking of here is some way to try and reduce the aggregate net value of the tax so that it won't be as high as it otherwise might be, and also to give that much more to the residual beneficiaries. But the big charge against estates for the most part, even those not too large, are charges made by executors for compensation.

The CHAIRMAN: Yes, but you have this problem: the moment you get by the hurdle of getting probate, you then get into the administration of the estate; there is income and outgo, there are legal fees in connection with that administration, and those are proper charges against the income of the estate in its administration. Therefore, I would not in fairness be prepared to suggest that we should go further than to say those things that are necessary to be done for which expenses are incurred so that the estate can be properly set up and operated. And that is of assistance to the department, as the tax collector.

Senator THORVALDSON: Then you would say go as far as applying and getting probate, and filing succession duty papers?

The CHAIRMAN: Yes, to the point where the estate is in a position to operate.

Senator CONNOLLY (*Ottawa West*): The department says, if the individual does not do it, they must have it done.

Senator THORVALDSON: I have always felt that the present act was unfair in that respect.

Senator CONNOLLY (*Ottawa West*): It is worth considering.

The CHAIRMAN: Mr. Linton is going to have a look at this, and I think he understands what we are thinking. We are not trying to impose charges and expenses of administration, but I think there is a line up to the point where it becomes truly a matter of administration, and expenses should be taken into account.

Senator MACDONALD: It should be emphasized I think, that this is no benefit to the solicitors; this is of benefit to the estate.

Section 5 (a) stands.

The CHAIRMAN: We come now to paragraph (b).

Some SENATORS: Carried.

Senator POWER: Does that not run into trouble with respect to marriage contracts in Quebec?

The CHAIRMAN: I don't know.

Senator POWER: What happens about moneys or properties converted to the wife by reason of the marriage contract, in separation of property agreement?

Mr. LINTON: It would operate to bar the payment under the marriage contracts being deducted as a debt.

Senator POWER: It would?

Mr. LINTON: Yes.

Senator LEONARD: Is that not the law under the present act?

Mr. LINTON: Yes, and always has been.

Senator POWER: And you have relied on that, have you?

Mr. LINTON: Yes.

Senator POWER: And nobody kicked?

Mr. LINTON: No.

The CHAIRMAN: If the wife's community property has not been brought in, I don't know how you can ask for a deduction on the basis that it is a debt.

Senator BOUFFARD: Because it is a case of a man who is married under the regime of separation as to property, and instead of having community of property, he gives before the marriage by way of marriage contract a certain amount to be paid to his wife at his death.

Senator CONNOLLY (*Ottawa West*): Or during the marriage.

Senator BOUFFARD: Yes, he can pay it any time he wants to.

Senator CONNOLLY (*Ottawa West*): What happens to those payments?

Mr. LINTON: The ones that are paid during marriage?

Senator CONNOLLY (*Ottawa West*): The gifts that are made under marriage contracts in Quebec, in contemplation of marriage, in a contract that provides for a separation as to property, can be made either during marriage or at death.

Mr. LINTON: That is correct. If it is not made at death it is not deductible as a debt; and if it is made during life it is treated as a gift at the time it was made. If it is given at any time more than three years before death, it escapes tax like any other gift.

Senator BOUFFARD: Why make a distinction between the amount paid during life and the amount paid at death?

Mr. LINTON: On the principle that it is treated the same way as a gift by any other person would be treated. If a person left it as a bequest, it would be taxable; if it was given more than three years before death it would not be taxable. We treat marriage contract gifts the same way as we treat ordinary gifts.

The CHAIRMAN: A marriage contract, from what has been said here, which covers what is payable and is paid on death, is equivalent to a testamentary disposition, is it not?

Mr. LINTON: That is the way it is treated.

Senator BOUFFARD: In some cases. Let me give an illustration. Let us say under his marriage contract a man takes out an insurance policy, and pays the premiums on it during his lifetime until the policy has been paid up. The premiums have been paid every year. What would happen to that policy?

Mr. LINTON: Is he the owner of the policy?

Senator BOUFFARD: He pays the premium, but the policy is payable to his wife.

Mr. LINTON: He appears as the owner as long as he lives.

Senator POWER: But he could not pledge that policy to a bank.

Mr. LINTON: No, he could not do that. If he was the owner of the policy it would be taxable.

Senator POWER: He could not dispose of it in the usual way.

Mr. LINTON: No.

Senator POWER: Judgment has been rendered in such cases as where a man has gone bankrupt, has assigned his policy to the bank, and after his death the bank collected the money, but 10 years later the heirs have been able to recapture that money from the bank.

The CHAIRMAN: Senator Power, the bill we have before us already provides for what are badges of ownership, and if you can't borrow money on a policy, you are not the owner of it under this bill.

Mr. LINTON: I don't think so.

The CHAIRMAN: That is what it says.

Mr. LINTON: It says those things will carry ownership, but the ownership itself might be independent of those things.

Senator BOUFFARD: And apart from that, he would have the right to cancel a policy.

Mr. LINTON: If he had the right to cancel the policy, he would be the owner of it for this purpose.

Senator BOUFFARD: The policy is his property, and belongs to him. In such cases no policy given by a marriage contract would stand, because he always has the right to cancel it.

Senator MONETTE: I will try to answer the question if I can. If Mr. Linton, you want to give your co-operation, I am reading paragraph (b):

(b) For any debt incurred or encumbrance created arising out of an agreement made by the deceased at any time in consideration of marriage, to transfer to or settle property upon any person.

That is before marriage as well as after marriage.

The CHAIRMAN: Yes.

Mr. LINTON: Consideration of marriage, I would think, would have to be before marriage.

The CHAIRMAN: Does it cover an agreement made after marriage?

Mr. LINTON: I don't think so.

Senator MONETTE: Before marriage. Well, at the time a husband, for instance, has a right to make some encumbrance or create such a debt for which he would be obligated in the future; and the question is whether that would participate of the nature of a gift, of a will, or of a donation *inter vivos.* It is, according to me, a donation *inter vivos,* and there would remain the question whether it was made within the three years before death or not. It is a donation.

Mr. LINTON: Not with this section. This would operate to exclude it as a debt if it remained unpaid at the date of death.

Senator MONETTE: It is a debt created, anyhow. He may not have created it, but is a donation *inter vivos.* If it is an insurance policy it partakes of the same notion; it is a donation *inter vivos;* and although you have already some clauses in this bill facing this issue of insurance policies, I would think, if he takes an insurance policy in consideration of a marriage in favour of his wife, or in favour of third parties, it is a donation *inter vivos.* There would be no difficulty that I can see. But if he after marriage makes an agreement in favour of his wife, that would not be valid. If he makes it in favour of strangers, that is another thing.

Mr. LINTON: That agreement between consorts would not be valid in Quebec, but even if it were valid it would not fall under this, because this would be a gift made in consideration of marriage, and he could hardly make the gift in consideration of a marriage which had already taken place.

Senator MONETTE: I see your point, but does not the wording warrant my explanation?

Mr. LINTON: I don't think so.

Senator MONETTE: Well, I am ready to follow your opinion.

Senator J. J. CONNOLLY: It does seem to me that the explanations which have been made make it more advantageous in the province of Quebec, tax-wise, for prospective husbands to marry without a marriage contract than to marry with one.

Senator BOUFFARD: Certainly.

Senator J. J. CONNOLLY: They are better to marry in community.

Mr. LINTON: Not necessarily, because if the wife dies first, and the husband provides all the money, if they are in community half of all money, everything, is taxable, if they are not, nothing is taxable.

Senator MONETTE: I am pleased to hear the remarks of the honourable senator, because we have that system of community. I have heard so much since we discussed this, from ladies and other people, complaining that after all, they pay their share in the community, and that therefore they should rank equally with the husband, before they produce and maintain children, they provide for a good humour to the husband, and so on, and they think they should rank equally with him, and therefore the best system of community, with us, is the community without any particular stipulations, insurance policies and so on, and when women are in community, then the wife is sure that everything the husband could make, half of it belongs to her, so she need not move or exert herself to earn money. She moves to get children and bring them up correctly. We hear in the province of Quebec many lawyers and business people think we have not a very bad system. The only thing that is felt to be wrong, and this must be justified maybe, is that while there exists the community property, that is while both consorts are living, it is the husband who can dispose of the property, and he could not dispose in one way only, that is by gift *inter vivos* to strangers, he could dispose in favour of his children, but if he disposes otherwise, he should have the consent of his wife; and the wife in turn could not dispose of any property because he is chief of the community. I am not explaining this to receive congratulations on our system. We are not those who emphasize the quality of that system. People from other provinces emphasize it.

Paragraph (b) agreed to.

On paragraph (c):

The CHAIRMAN: That is the dower provision.

Paragraph agreed to.

Paragraphs (d), (e) and (f) agreed to.

The CHAIRMAN: Now we have got division C, computation of aggregate taxable value. This is the one we have had some discussion about. I think everybody is pretty familiar with it.

Senator J. J. CONNOLLY: What is the test of "infirm"?

The CHAIRMAN: You will find that on page 45, section 58 (j). You will remember we had some discussion on that in the Senate, as to what it meant.

Senator J. J. CONNOLLY: How in practice would you apply it? Would you get a medical certificate?

Mr. LINTON: I think in doubtful cases we would get a medical certificate. If it was clear that the condition was such as to qualify him, I do not think we would. "Ordinarily" is designed to overcome claims based on temporary conditions. The claimant might have a broken leg or something of the kind, and not be able to walk about for a week or two. And "substantially gainful occupation",—we do not want to exclude him because as somebody suggested, he did some therapeutic knitting or something of that kind and made a pittance out of it.

The CHAIRMAN: The only suggestion I have, Mr. Linton, if the committee will bear with me for a minute, is that I cannot see why the $60,000 exemption should not exist on the death of any person leaving a spouse, and if you are going to deal with infirmity and you want to get any credit for it, you should make it a separate item and say that if this infirmity condition exists there is an allowance for it.

Mr. LINTON: That is a policy matter which I am not competent to discuss.

Senator THORVALDSON: As all the lawyers here know, there is a tremendous amount of jurisprudence in respect to these words: "A person incapable ordinarily of pursuing any substantially gainful occupation."

There is some Canadian jurisprudence but a much greater volume of American jurisprudence on the subject, which is generally quoted in our courts.

The CHAIRMAN: My point has not so much to do with the interpretation of the words, although I do say something about that, but it has to do with the idea of requiring that a husband surviving his wife must be infirm and there must be either one child under 21 or over 21 that is dependent on the husband or the deceased wife or both of them because that child is infirm,—in order to get the $60,000 exemption.

Senator THORVALDSON: I was referring to what you were discussing a while ago, the meaning of infirm.

Senator CONNOLLY (*Ottawa West*): It is worthwhile to have Senator Thorvaldson's comments on this point on the record.

Senator CROLL: Mr. Thorson, is that word "infirm" used in any other statute? For instance, is it used in the War Veterans Allowance Act?

Mr. THORSON: I don't know about that particular statute but I do know it is very close to that in the Public Service Superannuation Act.

Senator CROLL: What about the Disabled Persons Act?

Mr. THORSON: I don't think it is in that Act but I can't say with certainty. It is used in the Public Service Superannuation Act.

Senator CROLL: Has it been found workable?

Mr. THORSON: I believe so.

Senator CROLL: A lot of people think the civil service is a little infirm at times.

Senator BOUFFARD: I think section 7 (1) (a), (b) and (c) will have to stand because when I was speaking on the second reading of the bill in the house I suggested a certain amendment with respect to the work that a wife has done during her marriage, and I think this is where it should be put in if it is to be accepted. Another amendment I want to propose has to do with extending from 21 to 25 years the age of the exempted child, provided that the child is following a regular college or university course, and that a deduction of $15,000 be allowed. Another amendment I wish to suggest is that a residence left by a husband to his family, where they resided with him before he died, and and the moveable effects in that house, be exempted up to the value of $25,000. I think this is the place for such amendment, although I don't say they are going to be carried.

Senator CROLL: Stand the whole section but before we deal with the matter again, as far as I am concerned, I want to see in writing what the suggestions are so that I can study them and not try and guess what they mean.

Senator MACDONALD: What suggestions?

The CHAIRMAN: Those of Senator Bouffard.

Senator BOUFFARD: When this section is discussed again I will bring up the amendments that I want to move, and they can be read.

Senator CROLL: Yes.

The CHAIRMAN: That only applies to section 7 (1) (a), (b) and (c). I think the other items can be proceeded with.

Senator BOUFFARD: Yes. This only has application to section 7 (1) (a), (b) and (c).

The CHAIRMAN: Then we will go on to the next one on the top of page 10.

On Section 7 (1) (d):

The CHAIRMAN: Those are a lot of words. Mr. Linton, is an illustration of that one where a man may leave all the residue of his estate to a charitable organization and then stipulate that the organization must pay a certain annual sum to his wife or children during their lifetime? Is that the type of thing you are covering here?

Mr. LINTON: That would be one thing. The deduction would then be the net that the charity is entitled to.

Senator CROLL: What is another example?

Mr. LINTON: Where somebody leaves a fund to charity on condition that the charity itself pays the estate tax, and without this provision the result can be that the estate tax can be carefully calculated and worked out to be, say, $50,000 and you leave the charity $51,000. Without this you get a deduction of $51,000 although the charity itself only benefits to the extent of $1,000. So this overcomes a method of tax avoidance.

Senator MACDONALD: Under this act a person can leave his whole estate to a charity?

Mr. LINTON: Yes, sir. If he did that there would be no tax.

Senator MACDONALD: What is the definition of a charity?

Mr. LINTON: "A charitable organization in Canada" is all there is, and the word "charitable" I think imports enough jurisprudence to make clear what is a charitable organization, and the "in Canada" is not very difficult.

Senator MACDONALD: A charitable organization can use the funds for advancing its work in some foreign country?

Mr. LINTON: That's right, sir. Take a United Church mission, for instance.

Senator MACDONALD: In China or Russia?

Mr. LINTON: Yes.

Senator CONNOLLY (*Ottawa West*): As long as it goes to the United Church in Canada.

Mr. LINTON: That's right.

Senator CROLL: There is one thought going through my mind. Is this section directed at a famous case that took place in Ontario, and you are reaching for it now? Don't mention the name.

Mr. LINTON: It is intended to reach those situations such as I outlined where something is left to a charity.

Senator CROLL: Never mind. Forget it.

The CHAIRMAN: It only operates from the date the bill becomes law.

Senator MONETTE: During the debate on second reading in the house Senator Roebuck said that subsection (d) appears to be different from the law obtaining in the United States. I don't know what particulars he had in mind and since he is absent I wonder if Senator Croll would know what he was thinking about.

Senator CROLL: Thank you but I am not sure I know what is in my own mind sometimes.

The CHAIRMAN: I think he had in mind to have the words "in Canada" removed.

Senator MONETTE: I don't mind one way or another. I just wanted to mention it.

Section 7(1)(d) agreed to.

On Section 7(1)(e):

Senator BOUFFARD: I think this clause should stand, because I think it might lead to inequities. Take the case of a man making a gift to his child, or to his wife, or grandchild, of $1,000 a year. In the course of three years he dies. Well, this is exempted from any gift tax on account of the amount. I would move that it be considered as a reasonable thing, because otherwise if you take a man that might give $15,000 in the course of one year, that might be reasonable for him, whereas a man of very modest means giving a gift of $1,000, that would not be considered as being reasonable perhaps. I think that all gifts which are exempt from gift tax should be considered as reasonable, as long as they do not go over the amount of a taxable gift. I think the ordinary gift to the family, the immediate family, should be just as well considered as donations to charitable causes or toward education.

The CHAIRMAN: That is really a question of policy.

Senator BOUFFARD: I want to move an amendment to this section.

The CHAIRMAN: I think we would have to stand it for the Minister, then.

Senator John J. CONNOLLY: I wonder if Senator Bouffard wants to do that, because I am wondering if that language does not contemplate the kind of regular gift to members of his family as part of ordinary and normal expenditure.

Senator LEONARD: This section goes quite far in a beneficiary's interest. It allows a man to make a gift that is reasonable having regard to the amount of his income, which if made even within six months before death is not taken into account in taking the aggregate net value.

The CHAIRMAN: It goes very far and is beneficial.

Senator BOUFFARD: The only difficulty is in defining "reasonable".

Senator LEONARD: The onus is upon the taxing body to show what is reasonable having regard to the amount of income.

Senator BOUFFARD: If the committee feels this amendment should not be brought out I do not insist that the section stand, but I thought that it would be a pretty good principle that a taxable gift should be considered as being normal expenditure.

Senator HAIG: If a father or mother of five or six children gave $1,000 a year, say at Christmas, and the income justified it, surely that would be accepted under this?

The CHAIRMAN: That is covered, yes. This act should protect people with an income of say $20,000 a year who want to make gifts to their family—not to give all their money away, but it just helps them.

Mr. Linton, there is a question of policy involved, and I do not think we want to commit you.

Senator BOUFFARD: When it is a question of the wife, as it is, it is not any more a question of policy, but of interpretation. Supposing a father gave $1,000 a year in gifts, would that be considered as reasonable?

Mr. LINTON: It will depend on his income, sir. If his income was $1,000 a year, of course it would not.

Senator BOUFFARD: No, of course.

Senator MacDONALD: But it could be considered reasonable within the section.

The CHAIRMAN: Anything further on this subsection?

Some SENATORS: Carried.

The CHAIRMAN: Paragraph (f) of section 7.

Senator LEONARD: This is the section which Senator Power wants to have brought in, and I agree with him, as an exclusion on property taxes.

The CHAIRMAN: Then it stands.

Senator POWER: Instead of making it a deduction, why not make it property not included and make it aggregate value?

Mr. THORSON: I do not really think it would make any difference, sir. In this case I do not think it matters at all where it is, the result is exactly the same. But it is brought in under the general words which have to do with pensions generally, then there is a specific exclusion. Whether it goes in under the general words and is subject to the qualifying words or you do not include it at all does not matter.

Senator POWER: This has to be taken into consideration in computing the aggregate taxable value of the estate, and then you deduct it. The deductions allowed in computing are a certain number of things, debts and encumbrances of the deceased. I want the pensions to be in the same category.

Senator LEONARD: I think it should come under section 3(1)(k).

The CHAIRMAN: Senator Power, all Mr. Thorson is saying is that whichever way you do it you accomplish the same result, whether you put it on one side and put it on the other—which I call put and take.

Senator POWER: Why put and take?

The CHAIRMAN: The result is the same.

Senator CROLL: It is not a matter of result. There has been a general understanding that has run pretty deep in this country that one of the things legislators and parliament and administrative people should keep their hands off is pensions. That has been a matter that has been left to the veterans, and that has been the tradition of this country. I think Senator Power is absolutely right. I think it is well for this Senate to strike a blow in that direction to maintain that position, that no other department or any administrative body shall play around with pensions, no matter whether it is a put and take business or not, it is sacrosanct as far as they are concerned, and it is untouchable. That is the theory, and we might as well establish it once again.

Senator MACDONALD: The pension is added in the first instance to the aggregate value, and then the rate is struck, as I understand it.

The CHAIRMAN: No.

Senator POWER: No; it was up to this act.

The CHAIRMAN: You have to make your deduction.

Senator POWER: You did not before. I know of a case where it was not that way. This is new, this is an advantage, this is better than the old act, and so far as pensioners are concerned I am not contesting that at all; I am only contesting the principle of making up pensions, and adding and putting and taking, when they should be exempt.

Senator WHITE: Of course, the pension is computed or capitalized, is it not?

The CHAIRMAN: Yes.

Senator WHITE: Now, for probate no deductions are taken out so you would be adding to the legal fees, the probate fees.

Mr. LINTON: I do not think this would have any effect on the probate situation, which would be purely a matter for the provincial court.

Senator WHITE: But there are different fees for estates of different amounts.

Mr. LINTON: Are those fees not based on the value which is determined by rules of the court?

Senator WHITE: It is the aggregate value for probate, and there are no deductions.

Mr. LINTON: What we make taxable does not affect the probate fees.

Senator POWER: Mr. Chairman, I am convinced that since the passage of this act in 1942 the province of Ontario did tax these pensions and I am glad to say that the province of Quebec did not.

Senator MACDONALD: I never heard of them being taxed in the province of Ontario.

The CHAIRMAN: Gentlemen, could we get along and finish this section before we adjourn. We are dealing with subparagraph (g) of section 7 (1) at the bottom of page 10.

If we stand subparagraph (f) should we carry (g)?

7(1)(g) carried.

Now we come to Section 7(2) at the top of page 11.

All that means is that you cannot take it unless you first put it.

The CHAIRMAN: Shall Section 7(2) carry?

Carried.

Now we come to section 7(3), and that is the subsection we dealt with earlier today, having to do with Canadian Pension Commission.

Senator POWER: It is truly incomprehensible to me.

The CHAIRMAN: The pension comes into the estate at 100 percent and your exemptions are increased.

Senator POWER: Not all pensions. Mr. Linton says this deals with allied or associated powers. If it is it gives them an advantage over Canadians.

Mr. LINTON: May I explain this provision. This does not relate to pensions themselves. It just provides that if the Pension Commission finds that the death of this person was attributable to wounds inflicted as a result of war service then the exemption that the estate gets by reason of having a wife or child or orphan are increased by 50 percent. It has no direct relation to the pension itself.

Senator POWER: But normally the Pension Commission does not give a pension unless they find that a state of war existed when the wounds were incurred.

Mr. LINTON: This is not related to the pension. Suppose that somebody died as a result of war service and the Commission granted a pension. Then the result would be under 7 (1) (f) that pension would be exempt and deducted and in addition the exemption by reason of having a wife or child or orphan would be increased by 50 percent against all the rest of his property.

Senator POWER: That is not what you say. Would it not be simpler for you to say it more directly? Why an investigation by the Canadian Pension Commission at all? The Canadian Pension Commission does not grant pensions.

Mr. LINTON: The reason for that is to have some control and some authoritative means of determining whether somebody died as a result of wounds inflicted in a theatre of war.

Senator POWER: Are you trying to make a distinction between a person who dies as a result of wounds while Canada was at war and one who does not? Now I do not know whether we were at war in Korea or not. The president of the United States said that their action there was a police action. Whether Canada was at war I do not know. I am interested in the Air Force people, and let us take the case of a young Air Force fellow who in Canada

trained while Canada was at war in Korea. He gets killed in the course of his training and then the Pension Commission decides his widow is entitled to a pension.

Mr. LINTON: Yes.

Senator POWER: Then take the other case of three years afterwards if ever we have had peace in Korea and I am not so sure about that. But two or three years afterwards the same kind of a pilot goes up in an aeroplane and he gets killed. Now his widow would not be entitled to a pension.

Mr. LINTON: Presumably that would depend on what the Pension Commission found.

Senator POWER: They cannot find anything except while Canada was at war.

Mr. LINTON: If they found the second death occurred while Canada was not at war he would not be qualified for a pension.

Senator POWER: Well, are you making a new kind of pensioner by this provision?

The CHAIRMAN: That is not what it says. It says where the death of a person occurs the Pension Commission is to determine whether or not that death was attributable to wounds inflicted, accident occurring or disease contracted while Canada was at war and while the deceased was on service with Canada in the army, navy or air forces. Now, he may receive such wound while on service from which he subsequently dies, and he may be back home when he dies.

Mr. LINTON: Right.

Senator POWER: It has to be during the period when Canada is at war.

Senator CONNOLLY: Mr. Chairman, maybe what I have to say will simplify it. Suppose that death occurred as a result of injuries sustained while he was on active service and not at the time when there was a declaration of war. In that event he would not qualify?

Mr. LINTON: I think not.

Senator POWER: You have not defined when Canada is at war. You know that the Pension Act speaks of a theatre of war?

Let me take the case of someone who went over to the middle east under General Burns. Over there an air force man flew out of Naples where they had their base and was killed during that time. His widow would get a pension from the Canadian pension commission but Canada was not at war, we were just referees.

Mr. LINTON: The Pension Commission would then find death was not caused by wounds inflicted while Canada was at war.

Senator POWER: Well, it seems to me you are making a new class of pensioner here and giving him 150 per cent exemption.

Mr. LINTON: No sir, it has nothing to do with the pension.

Senator LEONARD: Theoretically all reference to the Canadian Pension Commission could be left out but what you want in this is some authoritative body to tell you what has happened.

Senator POWER: You say there that the death was such that his spouse or children were entitled or would have been entitled to a pension if such service had been with the armed forces in the time of war.

Mr. LINTON: The people involved are Canadian naval, army and air force personnel in circumstances under which the Canadian Pension Commission find that death occurred because of an accident, wounds inflicted or disease contracted while Canada was at war.

Senator POWER: But Canada has to be at war at the time.

Mr. LINTON: Yes.

Senator POWER: I don't know that Canada has been at war since 1921. This applies only to the next war.

Senator MACDONALD: To the last war, or to any future war.

Senator POWER: It deals with anybody who dies as a result of the last war.

Senator MACDONALD: Or any future war.

Senator POWER: But when I come to paragraph (b) I get more puzzled because it says that the death of such person must be attributable to wounds occurring within one year after he got hit by the enemy.

Mr. LINTON: This is not confined to naval, army and air force people.

Senator CONNOLLY (*Ottawa West*): Is it civilians?

Senator LEONARD: And no question of pension arises.

Mr. LINTON: No.

Senator MACDONALD: Under paragraph (a) you have to get two certificates, or at least one certificate from the Board of Pension Commissioners in the first place, saying that the man died as a result of wounds inflicted while Canada was at war, and secondly, that he was receiving a pension.

Mr. LINTON: I don't think he has to be receiving a pension, but I suppose he always would be, in fact.

Senator MACDONALD: Now Canada was not at war during the Korean engagement; so, anybody who died as a result of wounds received there would not come under this section.

Mr. LINTON: I would guess not.

The CHAIRMAN: Carried.

Senator POWER: I still don't understand it, but if everybody else does, I will go along with it.

Senator CROLL: Don't cover too much territory; I don't understand it either, but I am taking it in good faith.

Senator POWER: I am afraid here we are giving something to persons who are entitled to a pension under the Pension Act which we are not giving to other people.

Mr. LINTON: I don't think so.

Senator POWER: Would it not be simpler just to say, where upon the death of the deceased a pension was awarded by the Canadian Pension Commission to his dependants?

Senator CROLL: The part that relieves me of worry is the fact that I have been around here for many years, and the thing has never come up; I have never had any complaints from soldiers groups, their families or anyone.

Senator POWER: I am all in favour of getting this 150 per cent, but I want to know who is going to get it. It appears to me that paragraph (b) would apply only to the next war, and then it would be presumably for civilians.

The CHAIRMAN: Paragraph (b) would cover civilians.

Senator CONNOLLY (*Ottawa West*): May I ask Mr. Linton this question? Could paragraph (b) apply to the situation when Canada was at war and where a whole segment of the civilian population was affected by, say, a fallout or a bomb?

The CHAIRMAN: That is what it covers.

Senator POWER: Would those people get more in the way of consideration under this bill than other persons?

The CHAIRMAN: They get the higher exemption.

Senator POWER: Than the widows and children of those who get a pension from the Pension Commission?

Mr. LINTON: If a person dies and his widow gets a pension from the Pension Commission as a result of something that happened in a war, she would get the benefit of the exemption from the pension, and get this too. The civilian who did not get a pension, but who qualified under paragraph (b), would get this only.

Section 3 (a) and (b) agreed to.

The CHAIRMAN: It is now 10 o'clock. I do not anticipate much discussion on section 8. Can we deal with that now?

On section 8—computation of tax.

Senator BRUNT: The rates are set up, and we accept them.

Section 8 agreed to.

The CHAIRMAN: We will start on section 9 tomorrow morning at 10.30.

Whereupon the committee adjourned.

1958

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

To whom was referred the Bill (C-37), intituled:
An Act respecting the Taxation of Estates.

The Honourable SALTER A. HAYDEN, *Chairman*

No. 3

WEDNESDAY, AUGUST 20, 1958.

WITNESSES:

Mr. W. I. Linton, Administrator, Succession Duties, Department of National Revenue; Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance; Mr. D. S. Thorson, Solicitor, Department of Justice; Mr. D. H. Sheppard, Assistant Deputy Minister, Department of National Revenue; Mr. A. L. De Wolf, Solicitor, Department of National Revenue.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1958

62221-7—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

*Aseltine	Golding	Monette
Baird	Gouin	Paterson
Beaubien	Haig	Pouliot
Bouffard	Hardy	Power
Brunt	Hayden	Pratt
Burchill	Horner	Quinn
Campbell	Howard	Reid
Connolly (*Ottawa West*)	Howden	Robertson
Crerar	Hugessen	Roebuck
Croll	Isnor	Taylor (*Norfolk*)
Davies	Kinley	Turgeon
Dessureault	Lambert	Vaillancourt
Emerson	Leonard	Vien
Euler	*Macdonald (*Brantford*)	White
Farquhar	McDonald	Wilson
Farris	McKeen	Wood
Gershaw	McLean	Woodrow—49.

(Quorum 9)

**ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, August 14th, 1958.

"The Senate resumed the debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Emerson, for the Second reading of the Bill C-37, intituled: An Act respecting the Taxation of Estates.

After further debate, and—

The question being put on the motion for the second reading of the Bill, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

62221-7—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, August, 20, 1958.

Pursuant to adjournment and notice the Standing Committeee on Banking and Commerce met this day at 10:30 a.m.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Baird, Bouffard, Connolly (*Ottawa West*), Croll, Euler, Gouin, Haig, Howard, Kinley, Lambert, Leonard, Macdonald, McDonald, McLean, Monette, Power, Taylor (*Norfolk*), White and Woodrow.—21.

In attendance: The Official Reporters of the Senate.

Consideration of Bill C-37, An Act respecting the Taxation of Estates was resumed.

The following witnesses were heard and questioned:

Mr. W. I. Linton, Administrator, Succession Duties, Department of National Revenue.

Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance.

Mr. D. S. Thorson, Solicitor, Department of Justice.

It was suggested that the Report of the Committee contain a recommendation that section 18 of the Bill be publicized.

At 12.30 p.m. the Committee adjourned.

At 8.00 p.m. the Committee resumed.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Baird, Bouffard, Connolly (*Ottawa West*), Croll, Euler, Haig, Howard, Kinley, Leonard, Macdonald, McLean, Monette, Pouliot, Power, Taylor, (*Norfolk*), Turgeon, White and Woodrow.—20.

Mr. Linton, Dr. Eaton and Mr. Thorson, were further heard and questioned.

Mr. D. H. Sheppard, Assistant Deputy Minister, Department of National Revenue, and Mr. A. L. De Wolf, Solicitor, Department of National Revenue, were heard and questioned.

At 10.10 p.m. the Committee adjourned until tomorrow, Thursday, August 21st, 1958, at 10.30 a.m.

ATTEST.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

WEDNESDAY, August, 20, 1958.

The Standing Committee on Banking and Commerce, to which was referred Bill C-37, an act respecting the taxation of estates, met this day at 10.30 a.m.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: I call the meeting to order. Last night we got as far as section 9 on page 13 of the bill. Section 9(1) deals with the question of provincial credit. That was discussed in the Senate and it has been discussed here. My suggestion would be that it stand. My reason for this proposal is as follows. Incidentally, I think Senator Croll made some observation on it the other day. If the provinces of Ontario and Quebec have not come into the tax rental agreements, well, then, let them welter. In section 9(1) the 50 per cent credit on federal tax is in respect of property, the situs of which is in a prescribed province, which would be Ontario or Quebec, whereas under the present law the exemption is based on property on which provincial taxes have been paid, and that can be a larger area than situs because in Ontario—and I expect in Quebec, although I don't know for sure—you tax not only on situs of property but also on transmission; that is, property may be located outside of Ontario but if the transmission is in Ontario there is tax payable. I think there should be some discussion of that point with the Minister. That is why I say that section 9(1) should stand.

Section 9(1) stands.

On Section 9(2): Deduction from tax: gift taxes.

The CHAIRMAN: Section 9(2) deals with the deduction for gift taxes. I think the effect of it—and Mr. Linton can correct me—is if a man has paid gift taxes under the Income Tax Act within three years of his death and the amount of the gift is included in his estate, there is a credit with respect to the gift tax paid.

Senator THORVALDSON: Before you go on with that I was wondering if all honourable senators here are exactly clear on what the details of section 9 mean? In other words what is the difference in this bill as compared to the existing legislation. I was wondering if the committee would like an explanation from Mr. Linton.

The CHAIRMAN: As the Chairman has said, the big change is in section 9(1). What it does is change the basis of granting credits. In respect of provincial taxes it changes it from the basis of property taxed by the province to the basis of property situated in the province, and the result that the Chairman mentioned flows from it. There are reasons why that change was made, which are part of a more general policy, and I suggest that perhaps Dr. Eaton could be called to explain that.

Dr. EATON: I will try not to be too wordy on this. We will need a little background to explain it. The provincial Governments were in the death duties

field, the succession duties field, all of them. In wartime the federal Government came along and imposed a succession duty law and their rates were just roughly equal to the provincial taxes that were in force at that time. That meant an addition to death duties in Canada, with the provincial level generally the same and the federal Government coming in on top with another slice roughly equal to the provincial level. That system went on for a few years and subsequently the federal Government, instead of having a set of taxes paralleling the provincial Governments, doubled their rates. The federal rates were doubled all across the board and a credit was given in respect of the provincial taxes. That was just a mechanical device for putting an overall level of duties on the people of Canada. That is the general pattern.

Now I jump from there into the present situation where eight of the provinces have rented these taxes to the federal Government. Ontario and Quebec claim the right to impose their own, and do impose their own. So in respect of Ontario and Quebec the law says we will abate our tax, federally, up to one-half, that is, recognizing the general principle that you have one-half the field, and we have one-half of the field. So in Ontario and Quebec the federal rates are abated by one-half.

Now we come to the situation of these two provinces, Ontario and Quebec, who quite rightly under their law have the right to tax property situated say in B.C., and the new rules of abatement here say that the federal tax will not be abated to a person in Ontario in respect of property situated in B.C. Let me take this situation: The federal Government has rented that field from B.C., but if B.C. had been in there by itself B.C. likewise would have taxed that property situated in B.C., and it would have devolved upon Ontario to have given a credit against Ontario tax in respect of that B.C. tax. Now, the federal Government is in the place of, if you like, B.C. in levying a tax on property situated in B.C., a tax imposed by the province of domicile of the deceased, Quebec or Ontario. So we are saying under the new rules that it does not devolve upon the federal Government to give relief to Ontario taxpayers in respect of that property situated in B.C. because we have the prior right in effect in the place of the province to levy our tax there. Now, if Ontario and Quebec—I am not saying they should or should not—but if they want to give relief they can abate half of the federal tax that B.C. would have imposed had we not rented the field from them, and that is the reason for the absence of the abatement of the 50 per cent to Ontario estates in respect of property situated in another province.

Senator LEONARD: There was no reciprocal agreement between Ontario and any other province and Quebec and Nova Scotia when the tax rental agreement came into effect; there was no obligation.

Mr. EATON: No obligation, I agree.

Senator LEONARD: The deal that the federal Government made with British Columbia affected not only this right to tax property in British Columbia but also the right to tax property in Ontario belonging to a person domiciled in British Columbia. Does this not arise from the fact that there was double taxation in effect when the tax rental agreements came into effect? But it is hard for me to see the justice of the federal Government now allowing the tax that has to be paid by a resident of Ontario and Quebec which is legitimately paid, and they have the right to enforce it merely because of a tax rental agreement made with British Columbia or some other province, which agreement was based on this situation that there was this federal tax.

The CHAIRMAN: Mr. Eaton, I wonder if you would address yourself to this: Under the present statute the basis of abatement is on the basis of property taxed?

Mr. EATON: That is correct.

The CHAIRMAN: Now, what is there that justifies in your opinion the change from that basis to the basis proposed in the bill? Doesn't the situation that is described as between British Columbia and the federal authority, and British Columbia and Ontario, exist at the present moment?

Mr. EATON: That is right.

The CHAIRMAN: And yet you are using that as a basis for changing the law?

Mr. EATON: That is right. The policy on this has definitely changed from the way the law is today, and it was realized this was more generous than the new system. Now, answering a little further, as Senator Leonard remarked, I will admit that what I am saying is putting forward a presumption that Ontario and Quebec would remove double taxation, and I am saying to you this, that it is generally accepted among,—well, the United Nations comes forward with this proclamation, that as a general rule it is the country of residence, of domicile, which gives relief from double taxation, and the country of source or the place where the property is situated, that they have the prior right to the first crack at the tax. That theory is acceptable to the federal Government, and it has accepted it, and that is my suggestion if Ontario and Quebec are going to remove double taxation on their people. That is the rule that is generally followed among nations. The federal Government is operating or proceeding on that assumption, that Ontario, in fact, would not net any tax from that property taxed in British Columbia if British Columbia had already taxed it.

Senator LEONARD: Dr. Eaton, you are trying to teach lesson to them by imposing a double taxation yourself.

Dr. EATON: No, we are not influencing them in any way in that regard.

Senator BOUFFARD: You are trying to get the provinces of Quebec and Ontario to abandon that field of taxation?

Dr. EATON: No, we are not trying to do that. It is entirely up to the province if they want to remove that double taxation, but the law says that the federal Government is not going to abate that because we are already abating it in British Columbia on account of the tax rental agreement.

The CHAIRMAN: I would say that what you are trying to do is to move Quebec and Ontario by action rather than by persuasion.

Dr. EATON: No, we are not trying to move them at all.

Senator BOUFFARD: What is the policy in the United States? I understand that nearly every state there also has an estate tax law.

Mr. LINTON: I am not too familiar with the relationship between the states but there is a credit granted by the federal Government in respect of the estate taxes. What the states do as between each other I do not know but I think the federal credit depends on what was paid to the states.

The CHAIRMAN: A great many of the states have a reciprocity arrangement for the avoidance of double taxation.

Dr. EATON: Mr. Chairman, may I say just one more word, just to remove the idea of what might appear an anomaly. You will find that the law says we will abate federal tax by 50 per cent in respect of property situated outside Canada taxed by a provincial Government. Now you might say that is an anomaly. The answer to that is this: Ordinarily the provincial Government does not give a credit in respect of taxes imposed by a foreign Government at the top level, ordinarily the province does not in practice give relief from that, and because of that the federal Government steps in and says we will give an abatement of one-half in respect of that property situated outside Canada but not necessarily on property situated inside.

Senator LEONARD: And it is only given to a person within the prescribed province, is it not?

Dr. EATON: Yes.

Senator LEONARD: If it is given to somebody in Alberta the federal Government does not allow that.

The CHAIRMAN: That is right.

We have had an explanation of section 9(2). It is remedial and it is the present law, so that is carried.

Section 9(2) carried.

Section 9(3) deals with deduction from tax of foreign taxes and I think that is clear.

Section 9(3) carried.

Section 9(4)—deduction from tax: notch provision.

Any questions on that? This gives the assurance of the $50,000 deduction or exemption.

Section 9(4) carried.

Now we come to subsection 5 of section 9, and this simply makes sure that you get the exemption and that the estate exemption will never be less than this $53,056.

Mr. LINTON: That is the limit at which this half notch would apply. Beyond that it would not apply because the whole tax would not reduce the estate below $50,000.

The CHAIRMAN: Any other questions?

Senator WHITE: Mr. Chairman, I want to ask Mr. Linton this question: if the estate was $54,000 and was going to children over 21 years of age they would only have a $40,000 exemption and then you would pay a tax on $14,000?

Mr. LINTON: That is right.

Senator WHITE: How do you justify that?

Mr. LINTON: The point, sir, is that the tax on an estate of $54,000 will never be more than $4,000; so, the idea of this notch provision is to prevent an estate from ever being reduced below $50,000 by tax. An estate of $53,000 or $56,000 is never reduced below $50,000.

Senator WHITE: But take an estate of $60,000: the tax on $20,000 is $2,600. On that estate $40,000 is exempt, and you pay $2,600 on the balance.

Mr. LINTON: Yes.

Senator WHITE: That does not bring it down to $50,000.

Mr. LINTON: No. This provision is to prevent an estate of $51,000 from being taxed at perhaps $2,000 leaving a net estate of $49,000. If the tax would reduce the estate below $50,000, then only half of the difference between $50,000 and the value of the estate is taxed.

Senator WHITE: But you are still giving a $50,000 exemption in one case, and $40,000 in another.

Mr. LINTON: No, I really do not think so, because an estate under $50,000 does not pay tax.

Senator WHITE: But, say, an estate of $60,000 gets a $40,000 exemption.

Mr. LINTON: Yes, and pays tax.

Senator WHITE: Whereas here, you are exempting up to $50,000.

Mr. LINTON: In that one you are exempting up to $40,000.

Senator WHITE: But on a $53,000 estate you are exempting up to $50,000.

Mr. LINTON: As long as the total estate is less than $50,000.

Senator WHITE: There is a certain unfairness there.

Mr. LINTON: I am afraid I don't see it.

Senator WHITE: On the estate of $50,000 no tax is paid, but on the estate of $60,000 there is a tax on $20,000.

Mr. LINTON: That is right.

Senator WHITE: That hardly seems fair, that a $60,000 estate is going to be taxed on $20,000, whereas a $50,000 estate has no tax at all.

Mr. LINTON: I see your point, but that is the way it works.

The CHAIRMAN: The way Mr. Linton justifies it is this: because the present rate of tax is such that the balance of the estate would not be reduced below $50,000 it is all right. But of course the rates could change and you would have a different situation.

Senator WHITE: If you had a basic exemption of $50,000 instead of $40,000, I could understand that.

Dr. EATON: May I say that $50,000 is not a true exemption, but is an exclusion. Everything below that is out, and everything above it is in. This is just a dividing line, as it were, between the sheep and the goats: the sheep are below $50,000 and the goats are above.

Senator HOWARD: Mr. Chairman, before we pass on, may I point to the unfairness of the credit situation as to foreign property? Take the example of the man who has $100,000 worth of property in the United States, and property of the same value in Canada; let us say the American property is located in New York or New Jersey, or one of the close States. He would pay taxes on half the amount, which would be $9,500. When he transfers the $100,000 and adds it to the $100,000 in Canada, the tax is $44,000. It seems to me that instead of deducting the tax paid, you should deduct at the same rate as the tax in Canada, otherwise it is unfair.

Dr. EATON: The tax credit principle is to remove double taxation, and to the extent that the tax has been paid on that property in the United States, included in the Canadian estate, the credit is given of sufficient amount to remove double taxation; and the smaller amount paid in the United States is offset against this. You remove double taxation, but it does not say that you are going to remove Canadian taxes completely on that which is taxed abroad. I mean, it is just to the extent of the amount which will remove double taxation on that which is taxed in Canada.

Senator HOWARD: But by increasing the rate do you not consider that double taxation?

Senator HAIG: No.

Senator HOWARD: Then, instead of saying "double", why don't you say, "easing taxation"?

Dr. EATON: On a person domiciled in Canada you take the total world estate, then you proceed to give a deduction for the tax paid abroad, and that removes double taxation. The fact that that property is counted in the estate does not make the rate higher.

Senator HOWARD: So it is still double taxation.

Senator CROLL: It is not double taxation. If I have a similar estate in this country I would pay the same tax. So what difference does it make?

Senator J. J. CONNOLLY: We have really changed the rate, and set our own rates.

The CHAIRMAN: Well, we have dominion over ourselves and can regulate the rates.

Subsection (6) is the definition section.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Subsection (7) is, in a sense, a definition. It is the net amount of taxes in the other country that may be deducted.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Subsection (8) deals with the situs of property. This is new. Should we have a statement from Mr. Linton?

Mr. LINTON: To carry out the principle that Dr. Eaton explained, of applying these provincial credits on the basis of situs, it was necessary to have some means of determining what the situs of the property was. The obvious thing would be to use the ordinary common law rules, as a number of people suggested. The reason we did not do that is that these common law rules are very difficult things to interpret and apply. The case law behind them is anything but clear. And furthermore, they require a great deal of information to be submitted, which is difficult for an estate to gather. With stocks of companies having multiple transfer conditions, in some cases it has been held that the place where the transfer is finally accomplished is the situs, and that cannot be known at the date of death. In cases of certain deeds the question of whether they are under seal becomes important,—which is not easy for many people to determine, if the property of the deceased is not in their custody, immediately, but is in a box or somewhere else. So it was decided that, for ease of administration by the executor, and also for ease of administration by the department, it would be well to have defined situs as we have it defined in most of the treaties with foreign countries. The rules we used were adapted from these treaties as far as feasible, but some of these rules were not designed to get property distinguished between one province and another, so these rules in subsection (8) were added to the applicable rules that had been used for the treaties to distribute the property among the provinces; and as far as possible we tried to make the rule such as would generally coincide with the common law rule, that the variations would be as limited as possible.

The CHAIRMAN: By establishing these statutory rules with relation to situs you are immediately in conflict with the provincial rules, which are the common law rules.

Mr. LINTON: That is so.

The CHAIRMAN: Yes.

Senator LEONARD: Mr. Linton, if you were allowing one-half of the tax paid in Ontario and Quebec, which are the two prescribed provinces, would subsection (8) be necessary at all?

Mr. LINTON: Do you mean if we were allowing it on the old basis as to whether the province is taxed or not?

Senator LEONARD: Yes.

Mr. LINTON: No, I don't think it would.

Senator LEONARD: It is consequential upon endeavouring to apply the rule of tax credit and reciprocity, which Dr. Eaton explained, to Ontario and Quebec.

Mr. LINTON: That's right.

Senator LEONARD: This will have to stand.

The CHAIRMAN: Is that the reason why subsection (8) is in—because of—

Mr. LINTON: Because of this system of credit on situs that Dr. Eaton explained?

The CHAIRMAN: Yes.

Mr. LINTON: Yes, sir.

The CHAIRMAN: Well, we will stand section 9(1).

On Section 10. Minimum tax.

The CHAIRMAN: We don't have to spend much time on this. If your tax is less than $25 you don't have to pay anything.

Senator HAIG: It helps a good many of us.

Section 10 agreed to.

On Section 11. Returns.

The CHAIRMAN: In dealing with the question of returns is there any material difference between the provisions you now have and what you provide for in this bill, Mr. Linton.

Mr. LINTON: I don't think there is any fundamental difference between what is required under this bill and under the old law except that the returns will demand somewhat different information, largely again based on those situs provisions.

The CHAIRMAN: I would draw the attention of the committee to the fact that under subsection (4) there is provision whereby the executor is required at the time he files the return of information to estimate to the best of his knowledge the amount of tax. I presume that is to facilitate an earlier payment of some money on account of tax. Is that right?

Mr. LINTON: It is an endeavour to carry into this act the general principle that is contained in the Income Tax Act whereby a person should estimate his own tax. The forms under the old Succession Duty Act were designed to do this too, but the calculations were so complicated we never seriously expected anybody to do them. It is thought here that in most cases it will be quite feasible to do it.

Senator CONNOLLY (*Ottawa West*): Will the forms provide space for doing it?

Mr. LINTON: Yes.

Senator MACDONALD: It will be very difficult to do that because an executor does not know what the net value of the estate is likely to be. He does not know what the debts are or what outstanding claims there are.

The CHAIRMAN: It says "to the best of his knowledge and ability".

Senator MACDONALD: Yes, to the best of his knowledge and ability but it is a pretty wild guess, I would think.

The CHAIRMAN: It is not an estimate but a "guesstimate".

Senator MACDONALD: I do not see how that will assist the department in any way. When the department has made a correct assessment they will go back and say "How close did the person come to it in the first instance?"

Mr. LINTON: We hope that in a great many estates there will be an accurate estimate of tax. If it is a complicated estate with doubtful valuations, it will probably not be accepted. However, there are a good number of estates that involve, say, a large farm, an insurance policy and normal debts. Those should be quite feasible.

Senator MACDONALD: I don't see how it will assist in the administration of estates in your department. You will not assess an estate until you get the final returns.

Mr. LINTON: It does this. It enables the person filing to give an amount and that can be used both in putting up security or asking for releases, and that sort of thing. It gives them a figure that they can use and we can use as a tentative basis for dealing with the estate until the final figures are established. Perhaps it will not do too much good but on the other hand it will not be too difficult to do. The old one was too difficult to contemplate.

Senator MACDONALD: I can see it might be of some help in the case of putting up securities.

Senator ASELTINE: The procedure followed by the Director of Succession Duties in Saskatoon is this. The return is filed and they make an estimate of the amount of the duty, and we pay it subject to more being paid later on. There might be a refund, of course. Why is this section necessary?

Mr. LINTON: This would just carry that procedure to the point where the estate would say, "This is what we think is our estimate and should be paid." It should mean that with respect to ordinary estates they will be paid quicker.

Senator ASELTINE: Well, we always wait for your office.

Mr. LINTON: You would not have to here. I think it will speed it up.

Senator MACDONALD: I think you will still have to wait, Senator Aseltine.

Senator CROLL: But the Government will get the money a little quicker.

Senator EULER: If they underpay are they charged interest after the first six months?

Mr. LINTON: Yes.

Senator EULER: And if the overpay?

Mr. LINTON: There is a refund interest of 3 per cent, or 5 per cent if it results from an appeal.

Senator EULER: "Heads I win, tails you lose".

Senator HAIG: I think it is a fine idea to make up the statement. It will give the person figuring out the tax an opportunity to find things out. He may suddenly find he has omitted to put something in. That is what happens in the case of making out an income tax return. You suddenly remember certain things you forgot. Perhaps the lawyer will say to the person, "Here, you didn't take 20 per cent off for this Canadian company or you did not allow a depreciation for something else." I believe you will find the same thing will happen in making up the estate taxes. I have made up a good many of them myself and I have advised the person what I thought his duty would be and what he would have to raise. It is at that time that you go into the assessment more particularly. This will bring out a lot of innocent omissions.

Mr. LINTON: There will be a greater tendency for people to claim the exemptions they are entitled to. Some of these exemptions, like normal reasonable gifts, and even exemptions applying to children, cannot be known by the department unless they are claimed or they appear in some other document. If a person has to calculate the tax on these forms, he is more likely to see these exemption provisions with the result that the department will get more accurate information both for and against the department.

Senator WHITE: You spoke about deductions with respect to children. What evidence will you require as to whether these exemptions apply? Will you need affidavits or birth certificates or marriage certificates or what?

Mr. LINTON: Generally I would say not unless there was some reason to suppose there might be a wrong claim, possibly in the case where the child seemed to be just at the point of reaching his birthday. Generally, however, we would take it as it is now. We do a certain amount of checking from income tax returns in regard to children where they are claimed as dependents, and we might ask for some evidence where a child is claimed for estate tax was not claimed for income tax.

The CHAIRMAN: Anything further?

Section 11 agreed to.

On Section 12—Assessment.

The CHAIRMAN: There do not appear to be any changes here except subsection 5, of which the explanatory note says it is new in part. Would you care to say something about that, Mr. Linton?

Mr. LINTON: Subsection 5 now provides that there is a limitation on re-assessment. Under the present Succession Duty Act the Minister may re-assess at any time; here, he can only re-assess after a period of four years if there has been fraud or misrepresentation, or assets subsequently discovered. You cannot re-assess for re-valuation, or anything of that kind. So that this act imposes a closure on re-assessments which the old one did not.

The CHAIRMAN: I notice the language at the bottom of page 17 says, in paragraph (a) "or otherwise failed to disclose any material fact". Now, you said that if there was non-disclosure of some property, or the property was discovered afterwards, which I can quite understand, you go and assess it after four years, but when you say "or otherwise failed to disclose any material fact", it may be some fact in relation to property which was disclosed, and it may ultimately prove to be a material fact, but not necessarily that the executor or the successor had any idea that it was a material fact, and yet you would have the same opportunity.

Mr. LINTON: I think we would have to show it was a material fact, and I should think a material fact at the relevant time, that is, the date of filing.

The CHAIRMAN: That is imposing a very substantial onus.

Senator CROLL: Is not a fact a fact—something that either was or was not? It says a material fact. They are not looking for non-consequential things, but something he should have disclosed and knew it.

Mr. LINTON: That is right.

Senator BOUFFARD: No, not necessarily.

Mr. LINTON: Not necessarily, although that is the kind of thing we are getting at.

Senator CROLL: How can it be a material fact without his knowing if it exists?

Mr. LINTON: Surely, he could not fail to disclose something he didn't know.

Senator POWER: The fact that the deceased controlled a company and had not disclosed it, would that be a material fact—if he controlled a corporation?

The CHAIRMAN: Well, under the scheme of this act I would say yes.

Senator POWER: Well, that could very easily be forgotten by not being recorded.

The CHAIRMAN: The executor might not know about it.

Senator POWER: He might not know that he controlled a corporation as defined by this act, and the proceedings would go on for a while till the department found out some other way that actually the deceased controlled the company, and I would say that is a material fact.

The CHAIRMAN: There is no question about it.

Mr. LINTON: I do not know that it is a fact he is required to disclose unless somebody asked him.

Senator POWER: It would not be a material fact unless he was asked?

Mr. LINTON: No, there is nothing requiring him to disclose that particular fact unless he is asked.

Senator BOUFFARD: It would be a misrepresentation, anyway. It is not necessary to know about it.

Senator MACDONALD: It would not be fraudulent.

Mr. LINTON: It does not have to be fraudulent.

Senator LEONARD: May I ask Mr. Linton, Mr. Chairman, if these words have been in the statute for some seventeen or eighteen years?

Mr. LINTON: No, they have not.

The CHAIRMAN: This is new.

Senator LEONARD: There have been similar words in the law to the effect that it does not discharge him from failure to disclose material facts. Have you ever had any difficulty or trouble with the executors in that regard?

Mr. LINTON: Under the wording of the old section we have had some quite startling cases of mis-declarations which seem very hard to pursue under the old act.

Senator LEONARD: Have you then changed the wording so as to overcome that difficulty?

Mr. THORSON: The present law is contained in section 36 dealing with certificates of discharge, reading as follows:

> (3) Such certificate shall not discharge any person from his duty in case of fraud or failure to disclose material facts and shall not affect the rate of duty payable in respect of property, the subject matter of the succession . . . .

And then it continues.

Senator LEONARD: Is there any change in substance and meaning?

Mr. THORSON: That language is the same.

Section 12 Agreed to.

On Section 13—Payment of Tax by Executor.

The CHAIRMAN: We have had some discussion on the increase in responsibility or liability of executors under this bill as against the present act. I think possibly since the section is new to some considerable extent that we should have a summary of it from Mr. Linton as to the position of an executor under the bill, and the extent of his liability.

Mr. LINTON: Could I perhaps make a statement so as to embrace the payment of the tax by the various people as this and the next two sections are very closely interwoven?

The CHAIRMAN: Well, we could take sections 13 and 14, which involves the liability to pay tax by executors and successors.

Mr. LINTON: The tax is divided into the tax on two different categories of property. One is the property which is under the control of the executor, and the other is the property which is not under his control. In respect of the property under the executor's control he is required to pay the tax as a debt of the estate charged upon the mass of the estate as a debt. There is a secondary liability as a surety for that payment by the executor on the successors in proportion to the duty applicable to each of them. Now, with regard to the property that passes outside the hands of the executor the primary liability is on the successor but the executor is required to pay on behalf of that successor to the extent of any property that is in his hands which passes to that successor.

The CHAIRMAN: Is that the limit of the liability in the case of property which is not included property?

Mr. LINTON: The limit of the executor's liability?

The CHAIRMAN: Yes.

Mr. LINTON: The liability of the executor in regard to the non-included property is such as I have described, but he is relieved from any liability that may arise after he has distributed the estate or settled the duty, if he can show that he used due diligence to try to ascertain the facts and deal with the property as required.

The CHAIRMAN: There is a provision that the Minister can require the executor to pay tax. Now, what is the extent to which he can require? Can he require him to pay every amount of tax that is payable?

Mr. LINTON: No, he can require him to pay all the property that goes through his hands, and the tax on property that does not go through his hands to the extent of the property of the successor getting that non-included property.

The CHAIRMAN: And it is in these provisions too that where the executor pays tax that the successor should pay that he has a right to recover from the successor out of the assets of the estate that might be going to the outside successor.

Mr. LINTON: From those of outside successor, yes.

Senator WHITE: Mr. Linton, if the executor has no assets in his hands belonging to a successor who gets property outside the will then he is not liable is he?

Mr. LINTON: That is correct.

Senator CONNOLLY (*Ottawa West*): What is the correct position of the executor who has non-liquid assets in his hands and when the successor has property, whether it is liquid or otherwise? I suppose in a case of, say, real estate the executor presumably would have power to sell, a power either conferred by the will, or is it conferred here by the bill as well?

Mr. LINTON: I think he would have power to realize on that but in practice I think he would go to the legatee who is getting that property and say, "Now I have to hold back this property until this tax is paid, do you want to pay it to get the property intact?" And I think generally that is what would happen.

Senator CONNOLLY: It occurs to me now that if there is no power of sale contained in the will in connection with real estate and the executor had to liquidate it to comply with the succession duty requirements I think there would probably be a cloud on the title.

Mr. LINTON: I am not sure of the answer to that, but if that is so and he had not the power to sell the property then we would of course have a right to attack that successor directly for his tax if an impediment of that kind should arise in collecting from the executor.

Senator CONNOLLY: The onus is on the executor and you are trying to push him to discharge that and if he says I cannot sell, I cannot find a buyer, what then?

Mr. LINTON: Well, if that is true and he cannot sell for some reason then he would certainly be barred from transferring that property to the successor, but if he could not sell it then I think our position would be that we would have to go to the successor and attack him for the tax.

Senator CONNOLLY: The onus is on the executor to pay, it is not to withhold.

Mr. LINTON: That is true.

Senator BAIRD: If any of these amounts are outstanding over six months would you charge him five per cent interest?

Mr. LINTON: We would charge the five per cent interest rate against the successor, and the executor's liability has on behalf of a successor for tax or interest would never exceed the value of the property he has in his hands going to that successor.

The CHAIRMAN: Of course the executor's liability is not a personal liability unless he has mismanaged, so he is liable to the extent that he has assets in the estate.

Senator LEONARD: Mr. Chairman, I think where the executor has done everything that is required under this bill and has satisfied the Government that he has done so he is then entitled to a certificate of discharge, and in order to crystallize my own thinking on it I did write out a draft provision which I have here and which I am going to read simply to suggest a kind of basis for a certificate of discharge. It follows some of the present provisions of the Succession Duty Act, and it would go as follows:

> Where there is no tax payable or where the tax has been paid or secured to the satisfaction of the Minister and where the Minister is satisfied that the executor has exercised all due diligence and taken all reasonable precautions to insure that the amount so payable by him was paid in full the Minister shall, if requested by the executor, give a certificate to that effect which shall discharge the executor from any further claim to tax.
>
> (2) The Minister shall not be bound to grant such certificate until the expiration of four years from the time at which he has the right to re-assess.
>
> (3) The present provision that such certificate shall not discharge any person from the tax in case of fraud or failure to disclose material facts . . .

again following the wording of the section.

Mr. LINTON: I would like to explain, Mr. Chairman, why we did not put in a certificate-of-discharge provision. We thought that the four year limitation as it is in the bill would work much the same way, but automatically, so that everyone would benefit by it. A certificate of discharge benefits the person who seeks it and in our experience comparatively few do seek it, so a large body of estates under that system do not acquire the benefits of it whereas under this four-year rule everybody would acquire it automatically. It would save a certain amount of paper work and would tend to benefit everybody against what occasionally happens now when you find that a certificate of discharge is sought when something has been hidden to make sure that when the facts come out the department will not act on them. I can give you a sample of a case where a certain property was in question and inquiries were made as to whether the property was to be sold and the answer came that it was not to be sold, so the discharge was issued and, the day after, the property was sold at a very much higher price than was alleged or admitted would be the value. There is a tendency to seek a certificate of discharge by a person who is trying to get clearance when something is not disclosed whereas the four year limitation here works on behalf of everybody. That is the rationale.

Senator CONNOLLY (*Ottawa West*): I think there is the other case, and I am not speaking now of the trust company executor, but rather of the individual executor who has carried out his responsibility and where there is no question of fraud, no question of valuation of assets. It is like a man who pays his income tax, he likes to have a finality to it each year, and I think individual executors feel that when they have their certificate of discharge in that case this is not a potential liability hanging over the heads, perhaps, of their executors. I think there is some sense, Mr. Chairman, even with the automatic discharge after four years in the absence of fraud, making it possible for the executor, and I am thinking in this case of the individual executor who usually does not like to take on these jobs but does it and if he can get discharged he derives a sense of security from it.

Mr. LINTON: I think he would have no greater security than he has in the automatic provision.

Senator CONNOLLY (*Ottawa West*): After four years though.

Mr. LINTON: But the suggestion that Senator Leonard made was for a four year period anyway.

Senator LEONARD: I was thinking of the fact that there are many clear-cut cases where the executor has completed all his work in two years and is ready to be discharged.

Mr. LINTON: We have the same provision now, in the Succession Duty Act, after one year.

Senator LEONARD: The Minister may say, "Let it go the four years and then you are clear," but there must be a large number of automatic cases where both parties would like the noose to be taken away from them. In any event this suggestion of mine only make it permissible.

Mr. LINTON: On the point of them wanting it, it is surprising how few seek it. When the Succession Duty Act started back in 1941 we presumed this would generally be wanted, and we stocked our various offices with supplies accordingly. Upon re-examining the supply situation in Montreal in respect of certificates of discharge a few years later, we found we had enough at the rate of consumption to last something like 200 years.

The CHAIRMAN: We had better start using them.

Senator THORVALDSON: Would they apply to corporate trustees?

Mr. LINTON: The corporate trustee tends to ask for them more than the individual.

Senator CONNOLLY (*Ottawa West*): That is due to the fact that the individual executor who goes to a lawyer wants to get rid of the estate as soon as possible. Sometimes he forgets, but you do get the business-like type who wants to have a discharge.

The CHAIRMAN: Why shouldn't he be able to get a discharge, if he has obligations and liabilities under the statute?

Senator POWER: If he has a lot of squabbling successors, he could get his discharge and then say "to hell with it".

The CHAIRMAN: The moment he has his discharge he can tell those beneficiaries he has nothing more to do with the estate.

Mr. LINTON: It seems to me, if we do this and issue a discharge in the terms of Senator Leonard's proposal, he is really not relieved of any liability in any event.

Senator LEONARD: He is relieved to the same extent that he is now.

Mr. LINTON: Yes, but if there is any misrepresentation or fraud, the thing does not operate.

Senator LEONARD: It has never operated.

Mr. LINTON: No.

Senator LEONARD: This is, practically speaking, the stamp of approval that everything is in order and has been done.

Senator BOUFFARD: Mr. Linton, I think you would find a discharge most useful in taking a lien on propery and registering the lien against the propery. How would the lien disappear if you did not allow the discharge to be registered? The lien would never disappear.

Mr. LINTON: Would the discharge be registered as a discharge of lien? I don't know that the registrars would register our documents—certainly they pay no attention to our consents to transfer.

Senator GOUIN: I have one question to ask, Mr. Chairman. There is no presumption of fraud, even if some facts have not been disclosed.

Mr. LINTON: Oh no.

Senator GOUIN: The section in the act does not presume fraud.

Mr. LINTON: No.

The CHAIRMAN: Senator Leonard, we have had a full explanation of these two sections. Do you wish to have any part of them stand for the purpose of dealing with that question?

Senator LEONARD: If the provision for certificate of discharge is to be made, it would have to be an entirely new addition, as I see it.

Mr. LINTON: I would think so.

Senator LEONARD: If the matter may be left to the departmental officials to consider it further, and if they have something they could do to meet our request, I think it would be very well received.

Sections 13 and 14 agreed to.

On Section 15—instalment payments.

The CHAIRMAN: This section deals with the payment of tax in special cases, in the case of income rights, annuities, term of years, and provides for instalment payments. This is new. Mr. Linton, would you care to summarize this section?

Mr. LINTON: This provides that a successor who is liable for his own duty and who benefits from something of the nature of an annuity can pay the tax on that benefit in six annual instalments. That is provided for in paragraph (a).

Paragraph (b) provides that where an asset of an estate is an interest in expectancy, for example, where the deceased was a remainderman of another estate, so that it did not fall in until the death of a life tenant, if the successor to that property has to pay his own duty he can delay the payment of that duty until the interest does fall in at a lower than normal rate of interest.

The CHAIRMAN: If the remainderman in those circumstances elects to defer payments, the interest accumulates.

Mr. LINTON: That is right.

The CHAIRMAN: Even though he is not going to enjoy the property until the life tenant dies.

Mr. LINTON: Yes sir, but it will be valued at a discounted amount. So, if he pays at the date of death and does not elect to take advantage of this, he pays a tax based on a discounted amount of value. As the date of falling in approaches, the actual value of the thing increases, and so the tax with interest he has to pay also increases.

The CHAIRMAN: The value may increase, depending on whether there is real property, for instance, and how the life tenant has used that property. It is conceivable that the property may be worth less when he finally takes it.

Mr. LINTON: Wouldn't the life tenant be required to pay for the normal upkeep charges?

The CHAIRMAN: I am talking about the value of the property itself. If it is a farm property, buildings may have depreciated in value, machinery and equipment may be run down, and the land itself may be worth less because of the lack of proper husbandry. However, that is the choise the remainderman has to make: he can take the value at death, and pay tax then on this instalment plan or wait until he enjoys the estate and take his chances on having it valued at that time.

Mr. LINTON: No sir. It is valued at the date of death, and is not re-valued. The interest accrues on it, as the date of realization comes closer.

Senator BRADLEY: So it is a discounted note idea?

Mr. LINTON: Yes.

Senator MACDONALD: I fail to understand why by paragraph (a) the successor who receives an annuity pays the tax in six annual instalments,

whereas the successor who gets an annuity under the provisions of a will has to pay the tax on the capitalized value forthwith.

Mr. LINTON: The reason for that is that the tax on the property devolved under the will is a debt of the estate payable just as any other debt of the estate, and so that successor doesn't have to pay his tax; that is part of the estate tax principle that is embodied here.

Senator MACDONALD: The capitalized part of an annuity not only controls the estate, it does not form part of the estate. . .

The CHAIRMAN: It is not included property.

Mr. LINTON: Not included property; and so, that successor must pay his own.

Senator MACDONALD: How does that work out in practice? Give me an example.

Mr. LINTON: Supposing you have an estate that has a pension payable to the widow; the deceased, thinking that the widow was amply provided for by that pension, left the rest of his property which was an annuity, payable to the daughter, and the residue went to his son. The tax on the widow's pension would be payable by her. She gets nothing from the estate proper—that is non-included property. The tax on that pension is a liability of hers, and she can elect to take advantage of this provision. But the annuity payable from the assets of the estate to the daughter is included property, and the tax on that is like the tax on the residue—simply a debt of the residue—and the tax would be payable by the residuary legatees in effect.

Senator MACDONALD: I don't follow it very clearly. Why would you bring the widow's annuity into it whatsoever? It has nothing to do with the estate. The annuity has been set up more than three years prior to the death of the deceased, and does not enter into the estate.

Mr. LINTON: It depends on what kind of annuity it is. If it is an annuity purchased by the deceased for her more than three years prior, that is all right, but the instance I was supposing was that of a pension payable on his death, as a result of his employment, which would be taxable. The question of whether the annuity is taxable is of primary importance; but assuming it is taxable, this operates in favour of the widow in the case in question, but not in favour of the daughter in the case in question. That is why I used the word "pension", which would clearly be taxable.

Senator MACDONALD: But the capitalized value of the annuity in this instance is not added to the value of the estate?

Mr. LINTON: It is added for arriving at the tax. But the liability for the tax is shifted.

Senator MACDONALD: It is added to the estate in order to compute the tax. Therefore, I come back again to the question: why should the widow be required to pay immediately after death, when other recipients who have an annuity under the will don't have to pay forthwith?

Mr. LINTON: Well, there are two reasons. The annuitants under the will do not have to pay; the bulk of the estate pays it; it does not really fall on an annuitant; and when somebody gets this kind of property outside of the estate proper there might be a hardship if they did not have the time-payment privilege in finding that money.

Senator MACDONALD: There might also be a hardship if the annuity were the larger part of the estate, and going to one person. The payment forthwith would be a hardship there.

Mr. LINTON: But not a hardship on that person. It might be a hardship on the bulk of the estate as a whole.

Senator MACDONALD: But the one person is going to receive the bulk of the estate.

Supposing the annuitant is to receive the bulk, and if the payment is to be made forthwith, it is going to work a hardship on the estate and just as directly on the recipient.

The CHAIRMAN: There is a provision in the section for the minister to defer payment in cases of hardship,—by paying interest of course.

Mr. LINTON: I would think that the cases where someone made a will by which all of an estate was bequeathed by way of annuity would be rare, though it could happen.

Senator MACDONALD: It might be rare where a whole estate is left by annuity, but it might be the larger part of the liquid portion of the estate.

Mr. LINTON: But that annuitant does not have to find the money out of the annuity; it would come out of the capital behind the annuity.—which would shrink the annuity.

Senator MACDONALD: Extension of payment would come in under another section, where there is relief in case of hardship.

Mr. LINTON: It could. It is in the minister's discretion, as to what hardship is.

Senator LEONARD: I think this is the section as to which representations were made to us by, I think, all the witnesses who were here, that hardship resulted from the fact that payment of the duty on the capitalized value of an annuity in six instalments would fall very heavily on the annuitant; in some cases it might amount to complete confiscation of the annuity if the annuitant died within a short period of time. It was under this provision that the suggestion was made, by the Canadian Chamber of Commerce, and, I think, endorsed by some of the others, that if a method could be worked out whereby a rate might be calculated on the life expectancy, and then applied as against each individual payment, on the pay-as-you-go method, equity would be done to the annuitant who died at too early a period; and on the other hand the annuitant who lived longer and thereby gained the benefit of additional payments would not be unduly penalized and the overall revenues of the Government would not suffer. In considering that I have no doubt that the department finds a good deal or difficulty in applying such a tax, although if they come to work it out I think that would be a very excellent way. It struck me that it then becomes rather an income tax instead of a capital tax.

I have a suggestion to make which, I think, may be worth some consideration, directed particularly at the hardship of the excess payment related to the amount of the annuity. No doubt the department has considered it, but I would like to put it forward and at any rate have their views and the views of the committee. It would be an addition to section 15, and it would read:

"Where such equal annual instalments would exceed 15 per cent of the annual sum payable under such income right, annuity, term of years or life, or other similar estate, the minister may defer the time for payment of such excess for such period as he may deem equitable and proper, and so that no payment in such deferred time shall exceed 15 per cent of such annual sum, provided that in the case of such income right or annuity for a fixed term of "years the time for payment shall not be deferred for a period longer than such term of years".

That simply puts the principle in section 16 where the minister may always defer the time of payment in the case of undue hardship or excessive tax payment. It applies that principle to the question of the tax applicable to a person who is receiving an annuity and is being taxed on that annuity. There must be some relationship of that tax to the amount of the annuity.

Beyond some figure it becomes a hardship. Whether 15 per cent is the right figure I do not know. But it seemed to me only right and proper to provide a maximum amount that can be taken out of that annuity, and the balance be deferred for six years.

Senator CONNOLLY (*Ottawa West*): Could I ask Senator Leonard a question on this proposal? These periodic succession duty or estate tax payments would be of the nature of an annual capital levy?

Senator LEONARD: Yes.

Senator CONNOLLY (*Ottawa West*): Then I just wonder, at the same time as these capital levies are being made, of course, this annuity is subject also to income tax.

Senator LEONARD: That is a hardship. Double tax.

Senator J. J. CONNOLLY: Now, where would the incidence of income tax fall? In other words, would you levy capital tax first, or the estate tax first, or would you levy the income tax first?

The CHAIRMAN: I think they are independent.

Senator LEONARD: You would probably say they are independent of each other, and the present procedure is that both taxes are levied.

Senator J. J. CONNOLLY: But suppose, for the sake of argument, the amount is $5,000 a year. Would you assess your income tax on $5,000, or would you assess it on $5,000 less the estate tax?

Senator LEONARD: No, on $5,000.

The CHAIRMAN: On $5,000.

Senator LEONARD: There is another part of the act where this question comes in about double tax. This is dealing purely with the payment of the capital tax that is properly due as against this annuity, but it can happen that the amount of tax payable in six years exhausts the full annuity during that six-year period, and the life annuitant gets nothing during that six-year period.

Senator HAIG: I would like to ask one of the witnesses a question. Let us take the money a person puts into an annuity. Where does that come from? Who put it up? Is it the husband?

Mr. LINTON: Sometimes the husband may have bought the annuity for the wife and sometimes there could be a pension.

Senator HAIG: Take the case of a wife. The husband does not pay any income tax on it when he puts in the annuity.

Mr. LINTON: That's right.

Senator HAIG: The money that goes into the $5,000 has not been paid at all and he is off Scot-free.

The CHAIRMAN: Are you speaking about a pension annuity?

Senator HAIG: Yes. He has paid no money at all. That has gone in there free.

Mr. LINTON: That's right.

Senator HAIG: I want to know if the $5,000 went in without any tax being paid, when is the Government or the public ever going to get back that income tax they lost.

The CHAIRMAN: Each year.

Senator LEONARD: Each year from then on.

Senator HAIG: That should be paid.

Senator LEONARD: That's correct.

Senator HAIG: That is the total on the $5,000 alone or where it went in in his estate?

Senator LEONARD: We are not discussing the income tax. We quite agree it should be payable. We are discussing how the capital tax should be paid.

Senator HAIG: Supposing my income is $20,000 and I put $5,000 into an annuity as a pension for, say, my daughter. I don't have to pay any income tax on that.

The CHAIRMAN: On what?

Senator HAIG: On that $5,000.

The CHAIRMAN: Oh, yes. The exemption is only up to $1,500 a year.

Senator HAIG: That is on the money itself but I am talking about the annuity that I bought five or ten or fifteen years before. I didn't pay any income tax on it. It is exempt. That is the first point. The second is this. A person only pays income tax now on the $5,000 income and not on the $20,000 income, which he would have had to pay if he had paid it originally. That man is only paying income tax on an income of $5,000 but if he had paid like the rest of us he would have had to pay income tax on the $20,000. The result is that the income tax would have been higher.

The CHAIRMAN: Are you saying that if I had an income of $20,000 and I took $5,000 of it and bought a pension payable to my beneficiary on my death, that I made a payment in one year of $5,000 for whatever that annuity would produce, are you saying that the full amount of money would be tax exempt if I bought it out of income?

Senator HAIG: That's what the witness said.

The CHAIRMAN: Well, I can't accept that at all.

Mr. LINTON: The distinction here is between buying an annuity from an insurance company and contributing to a pension fund which gives rise to a pension annuity. As to the pension annuity, what Senator Haig has said is quite right. If you have a annuity in a lump sum payment from an insurance company, it does not apply.

Senator HAIG: The $1,500 would be exempt?

The CHAIRMAN: Yes.

Senator HAIG: But I would pay a bigger rate of taxation on $1,500 if it was part of $20,000 than I would on $1,500 by itself.

The CHAIRMAN: As and when the pension annuity becomes payable in the hands of the person entitled to receive it after death of the one leaving it, that person pays income tax on the amount of the annuity that is received each year.

Senator HAIG: I know that.

The CHAIRMAN: That is the law.

Senator HAIG: But it is paid at a lower rate.

The CHAIRMAN: It may or may not be.

Senator HAIG: You get back to the $1,500 or whatever it accumulates to and then you pay income tax on that income.

Senator LEONARD: You and I are in agreement on that.

Senator HAIG: I have a further question as to succession duty. Say, there is a succession to the wife and the person buying the annuity did not pay any tax on it originally. It is still taxable.

Senator LEONARD: We agree as to the income tax and the amount of the capital tax payable under this section, but we are just discussing whether or not that capital tax should be paid in six years or, if it amounted to hardship, could it be extended over a longer period of time.

Senator HAIG: No. This hardship is caused by another reason.

Senator LEONARD: Hardship can be created even though the amount involved is not sufficient to attract income tax. It can be created because the capital tax is sufficiently heavy to reduce the amount going to the widow.

Senator HAIG: It is only people with more than $3,000 a year who are going to put $1,500 into an annuity. Nobody else is going to do it. It is the people with an income of $20,000 a year who are going to do that. The little fellow has not got the money to do it.

Senator LEONARD: This applies to cases under wills, quite apart from annuities. A life interest in a will can be valued in this way and the payment has to be made within six years.

Senator HAIG: Taxes should be paid on that money as well as on any other money. That is my argument. I don't know why anybody should be allowed off Scot-free.

The CHAIRMAN: This proposal does not exclude any part of the tax.

Senator HAIG: No, but Senator Leonard's proposal does.

The CHAIRMAN: No, it doesn't.

Senator HAIG: Yes, it does. The Minister can let him off at any time.

The CHAIRMAN: No, it is a deferment.

Senator CROLL: It is a putoff.

Senator MACDONALD: It puts off the evil day.

Senator HAIG: It is letting him off. The parties might not live out the period and they would not have paid it back.

Senator POWER: The question here is whether we are going to follow section 16 at the Minister's discretion to do anything with respect to hardship or whether we should accept Senator Leonard's suggestion and specify that if it is over 15 per cent there is hardship; if not, I suppose the Minister could drop section 16. I don't see any necessity for it.

The CHAIRMAN: That's right.

Senator POWER: In any case he probably would exercise his power under that because Parliament would have said 15 per cent was fair.

The CHAIRMAN: The 15 per cent applies to more cases than Senator Leonard has suggested.

Mr. LINTON: It is a matter of policy whether you do that. I have a note of the suggestion and I will bring it to the Minister's attention.

The CHAIRMAN: Then we will stand Section 15 in view of your proposal, Senator Leonard.

Senator MACDONALD: With respect to section 15, are you standing both section 15(1)(a) and (b)?

Senator LEONARD: My suggestion related to section 15(1)(a) and (b).

Mr. LINTON: Perhaps it could be related to (b), inasmuch as if the interest in expectancy is itself an annuity the same thing arises at a later date.

Senator LEONARD: That is right.

Section 15 (1) (a) stands.

Section 15 (1) (b) stands.

Section 15 (2) agreed to.

On section 16—Deferment of time for payment in certain cases.

Section agreed to.

On section 17—Effect of objection or appeal.

Section agreed to.

On section 18—Payment of tax as debt of estate.

The CHAIRMAN: This is new. Would you care to comment on it, Mr. Linton?

Mr. LINTON: This carries out that principle I outlined in the description of payment sections, that the tax is a debt of the estate in regard to payment; and this falls as a debt like any other debt where it is included property.

The CHAIRMAN: And in the ordinary way it would affect first the residuary beneficiary?

Mr. LINTON: That is right, sir. Should we say anything here about the warning the Minister made in this regard having to do with people examining their wills to make sure this principle now being introduced, of an estate tax payable as a debt affecting the residue does not defeat their intentions? This may affect people's wills if any are made on the assumption that what the estate is going to encounter is a succession duty.

The CHAIRMAN: Just speaking for myself, I feel that it is an important change as affecting every person's will, and possibly there should be some plan for public advertising by the department, directing the attention of people to the effect of this.

Senator CROLL: Some trust companies, mortgage companies, insurance companies and banks have monthly publications which are very readable, and if they were asked to prepare a notice so that it would reach the professional people, it could be passed on from there.

The CHAIRMAN: I suggest for the consideration of the committee that possibly we should make a recommendation that the attention of the Minister be directed to the need for the greatest possible acquaintance of the public to the change.

Senator THORVALDSON: If the department has that in mind, perhaps Mr. Linton would like to speak on it.

The CHAIRMAN: Even if they have it in mind—and I am not suggesting an amendment to the bill—I think a recommendation of the committee that these steps should be taken would be in order.

Senator CROLL: If in the course of presenting the bill the chairman took the opportunity to say "and this recommendation was made", it might very well be picked up and go into the records and be spread about without hurting anyone.

The CHAIRMAN: It could be put in the recommendation in reporting the bill.

Senator CROLL: That is what I suggest.

Mr. LINTON: We suggested to the Minister that he make a statement, which he did. I think this proposal of Senator Croll's would be excellent in advancing the thing further. We have in mind advising the Trust Companies' Associations of this sort of thing. I do not know whether it is necessary to advise the Bar Association, but a recommendation by the committee would be very good.

Senator MACDONALD: I think the Bar Association should certainly be advised, and that the association should advise all its members of the change. We of course are very interested in this fact and are following it very closely, but many lawyers are engaged in other business and have not the time to do so.

Senator HAIG: Should not the trust companies be notified also?

Senator CROLL: Yes, I suggested that, too.

The CHAIRMAN: As and when we are drafting our report we can make our recommendation on the publicity of the effect of this change.

Senator GOUIN: In Quebec there is a Chamber of Notaries.

Section agreed to.

On section 19—Interest.

Section agreed to.

On section 20—Penalties.

The CHAIRMAN: This section deals with penalties for delay in filing, etc.

Senator EULER: May I ask a question, Mr. Chairman? Supposing somebody makes himself liable to a penalty of $1,000. Is that a personal penalty, or can he reimburse himself out of the estate?

The CHAIRMAN: I would say these are personal penalties.

Mr. LINTON: I would say so.

The CHAIRMAN: Subsection 2 bothers me a little. It says, "Every person who fails to complete the information on a prescribed form". I suppose it is a matter of interpretation; but he may not be able to complete it.

Mr. LINTON: Perhaps Mr. Thorson has some views on this.

Mr. THORSON: This of course is one of the assessed penalties payable by the executor in question. Where there was a penalty assessed against an executor for failure to file the return required, that, too, would be added to the tax and paid in the same manner as the tax would be payable.

The CHAIRMAN: But I was thinking that in subsection 2, "Every person" includes more people than the executor; it may be any successor.

Mr. THORSON: Quite so.

The CHAIRMAN: He may not be in a position to answer all the questions you have devised on that form. But this provision says that if he fails to complete the information there is a penalty up to $1,000, and that seems to be whether he does so innocently or deliberately, or otherwise, it does not matter.

Mr. THORSON: Mr. Chairman, that is only "information required pursuant to section 11".

Senator EULER: If he is liable it is not necessary to be applied, is it? It is not mandatory?

Mr. THORSON: No.

The CHAIRMAN: But he may be prosecuted.

Senator POWER: Put in a word like "wilfully", or something of that kind.

The CHAIRMAN: That is what I was thinking of.

Senator HAIG: We will have to discuss it with the Minister.

Senator WHITE: Have you had cases in the past where there has been a heavy penalty?

Mr. LINTON: The penality in the old act for failure to disclose property was double the amount of the duty, with no allowance, no mitigation at all. In failure to file the return, yes, we have had a considerable amount of late filing. Where the maximum penalty was applied I think we have had perhaps two or three cases. Perhaps ten or twelve where half of it was applied; mostly, $10, $20 or $50.

Section 20(1) agreed to.

Section 20(3) agreed to.

Section 20(2) Stands.

On Section 21—Refund of Overpayments.

The CHAIRMAN: This is new. Here is where you get your three per cent, Senator Euler.

Senator EULER: I think that is fair.

The CHAIRMAN: All I can say is, it was ever thus.

Mr. EATON: This is an explanation of the difference, and the five per cent is a penalty, and it is expressed in terms of per cent. The three per cent refund is not a penalty, it is a short term rate of interest. One is a penalty designed to do a certain thing, and naturally it is penalty rate. The other is a short term rate of interest.

Senator POWER: But it takes a heck of a long time to get it.

Senator WHITE: How do you justify the five per cent if there is a decision of the Minister in a court action?

Mr. EATON: When he gets his money back it is not a penalty but just a straight payment of interest.

Senator WHITE: But why do you have three per cent and five per cent?

The CHAIRMAN: It is 3 per cent if he does not go to court.

Senator WHITE: How do you justify the 3 per cent and the 5 per cent?

Dr. EATON: I do not have the answer to that, Senator White. He has to find the money to pay the tax, he has to get possession of his money to pay the tax. Now, if that is a sufficient reason or not I do not know.

Senator WHITE: Then on all over-payments, whether the over-payment is decided by the local officer or whether there is an appeal and a court case follows, there is a difference of this 2 per cent.

The CHAIRMAN: I doubt if there is any explanation except that if they go to court and contest the assessment I suppose that it is a reward for victory. I cannot think of any other reason for it.

Dr. EATON: Well, Mr. Chairman, upon assessment he has to pay up even though he has the right to appeal. Now then an over-payment is a thing that can be done voluntarily, and so one could over-pay. If we were to pay 5 per cent and he could only get 2 or 3 per cent in the market then I think in that there is an incentive to over-pay.

The CHAIRMAN: Shall section 21 carry?

Carried.

Section 22. This is headed, "Objections to assessments." The procedure here is copied from the Income Tax Act, is that right, Mr. Linton?

Mr. LINTON: Yes, substantially.

Section 22 carried.

The CHAIRMAN: Section 23 provides for appeals to the Tax Appeal Board. This is new, but is copied from the Income Tax Act.

Section 23 carried.

The CHAIRMAN: Section 24 deals with appeals to the Exchequer Court.

There is nothing new or novel there, is there Mr. Linton?

Mr. LINTON: It is new for this bill.

Senator CONNOLLY (*Ottawa West*): Are you restricted in that appeal to questions of law alone?

The CHAIRMAN: No, it would be a trial *de novo,* as under the Income Tax Act.

Section 24, carried.

The CHAIRMAN: Section 25 deals with irregularities. It is the same provision as is in the Income Tax Act.

Section 25, carried.

The CHAIRMAN: Section 26. Now we come to special rules applicable in determining value. This has a very few pointed rocks jutting up above the surface of the water. This section provides that in determining the value of any property no allowance or deduction shall be made for or on account of income tax.

The subject involved here was discussed in the representations made the other day.

Senator CROLL: Mr. Chairman, there is no change in substance from section 34 (3). This is not new?

Mr. LINTON: No.

The CHAIRMAN: You took statutory authority to do this in 1952?

Mr. LINTON: That is right.

The CHAIRMAN: Prior to that time you did it when the cases seemed to warrant it without the benefit of statute.

Senator LEONARD: While this is not new, Mr. Chairman, I think it has been a subject of considerable discussion and possibly some controversy and I believe that there is generally a desire to do something, if it can be done, to avoid the double taxation feature that is contained in the assessment of the capital value of a pension benefit where a full income tax is to be paid upon that pension benefit as and when received, and the difficulty I think is in determining how to allow for that potential tax liability still to be paid in the future. Now, as some of the witnesses told us, under the personal retirement arrangement, an arbitrary rule of 15 per cent has been set up so to allow for payment of a deferred tax, one might say, when a deduction has been allowed on the payments that went into the personal retirement fund. The suggestion that I have to make is as follows, and I again put it forward very roughly with the idea of setting up the principle and leaving it perhaps to the department or to the minister to see how that can be worked out.

Let me say before I do it that I believe that most people are convinced definitely that there is double taxation here, that the income tax liability which still remains to be paid under the pension benefit is included in the valuation of the benefit for capital tax purposes. Now, the suggestion is this, and it would involve an addition to section 26 and would be in terms as follows:

> "Notwithstanding the provisions of the present section 26 that where under the "Income Tax Act a superannuation or pension benefit is taxed..." and then are the words that are used in the Income Tax Act, "...to distinguish between the benefit where only the income tax element is taxable and where the benefit itself is taxable."

So this confines the effect of this amendment to that benefit which is fully taxable under the Income Tax Act. Then, in determining the value of such benefit under this act the minister shall by regulation prescribe for the estimation of an allowance for such income tax and such allowance shall be deducted from the value of the said benefit as otherwise determined.

Now it may be that the minister may say 15 per cent, the same as in the personal retirement fund, or he might set up some kind of a table related to the amount but any rate it brings in the idea of a principle that there is an element of tax liability in the present valuation of those pension benefits.

The CHAIRMAN: Is there anything you wish to say on this, Mr. Linton?

Senator CROLL: Let it stand, Mr. Chairman.

Senator HAIG: I would also suggest to let it stand.

Section 26 stands.

The CHAIRMAN: Section 27(1) deals with the method of valuing stocks listed on stock exchanges.

Shall section 27(1) carry?

Carried.

Subsection 2 of section 27: I would suggest it stand, because this raises the question of valuations of shares in a controlled company.

Senator POWER: Or in a private company.

The CHAIRMAN: And I suggest that sections 28 and 29 should also stand, and may I say very briefly why: section 28 is the one that says any controlled company even though the person who dies has a minority holding of shares but because there may be other persons who are related to him by blood, marriage or adoption who have enough additional shares to make up control, then the minority holding is to be valued on the basis of being a majority holding.

Section 29 simply says that if a controlled company owes money to its chief shareholder, who may have a minority interest, and that person dies—it may be two or three years before the debt falls due—that for the purpose of valuing that dept it is taken as though it were due at once and not in three years time. I suggest that section be allowed to stand to be discussed with the Minister.

Sections 28 and 29 stand.

On section 30—property disposed of *inter vivos*. This is a new section; would you care to make a short statement, Mr. Linton?

Mr. LINTON: The property that was taxed heretofore by reason of being a gift *inter vivos* was valued at the date of death of the deceased, no matter what had happened to the property. So, you could have a situation where property worth $10,000 was given a donee who sold it at $10,000, and two years after, the donor died and that property was worth $50,000 then. The tax was on the $50,000 that the donee never realized. This section is to confine the value, when the donee sold the property, to the value at the date of sale. It goes further than that and applies to any property that the donee has disposed of, and takes the valuation of that property at the ime of disposition.

Section 30 agreed to.

The CHAIRMAN: I think we could get unaminous vote on that one.

Senator POWER: Except to say that the department has not always carried out that policy.

On section 31—shares of corporation by reference to which stock divided paid.

The CHAIRMAN: Section 31 is also new. Would you give a short statement on that, Mr. Linton?

Mr. LINTON: This is intended to reach a situation where stock is given in a private company by the deceased as donor to a donee, and the company issues Treasury shares as bonus stock to the shareholders.

The CHAIRMAN: Stock dividends.

Mr. LINTON: Or as stock dividends—that is the terminology we have used. With the result that the shares given have become halved in value, so if you were taxing the donation you would tax the new amount of shares; otherwise you are taxing half the donation given, since the interest in the company has not changed, but the number of shares has—they have been watered down.

The CHAIRMAN: You take half as an example.

Mr. LINTON: Yes.

The CHAIRMAN: The stock dividend might be one to ten.

Mr. LINTON: Yes.

Senator HAIG: That would apply to Trans-mountain.

The CHAIRMAN: I should like to raise this question with Mr. Linton suppose in section 31 you are talking about shares listed on the stock exchange,

Mr. LINTON: The principle would still govern.

The CHAIRMAN: The usual tendency where you have a stock dividend or a split—but this would cover only stock dividend, not a split.

Mr. LINTON: No.

The CHAIRMAN: Where you have a stock dividend you may find the shares increase in value; the market goes up when it should go down, and vice versa.

Mr. LINTON: Suppose those stock dividends were one share for every 10 held, the interest of each shareholder in the company is represented by the proportion held after the dividend, to the total shares held; and if you only tax the donation, the number of shares, you are losing part of the donation.

The CHAIRMAN: All I am saying is that the market price for stock which is listed is taken at the date of death. If the market price goes up, you have an additional amount on the valuation of those shares.

Mr. LINTON: That is right. Of course that is the principle of valuing at the date of death. If the donated portion is still held, and, apart altogether from the stock dividends, has increased in value, the increase is taken in because it is in the value at date of death.

The CHAIRMAN: In section 31 you are supposing this is disposed of at the date of death, not at the date of gift?

Mr. LINTON: That is right. All gifts are valued at the date of death.

The CHAIRMAN: This is subject to three years limitation.

Mr. LINTON: Not always. The donation might be with reservation of benefit.

Senator MCLEAN: May I ask a question about this matter of valuation at the date of death? The exchequer does not get charge of an estate for perhaps two months, which would mean the executors would have to sell short in order to realize on it.

Mr. LINTON: That is a point; some of these representations which were made are not relevant to this section, but you may want to take the matter up.

Senator MCLEAN: I asked that section 27 stand for that reason, that it might take the executors two or three months to get charge of an estate.

The CHAIRMAN: You are raising the principle of optional value.

Senator MCLEAN: Yes, there should be an alternate rate. Will that point come up again?

The CHAIRMAN: Yes.

Section 31 agreed to.

On section 32—shares of controlled corporation where beneficiary of insurance policy.

Mr. LINTON: Section 32 is introduced so that any insurance of a controlled corporation that becomes taxable under section 3(1) (m) will not again become taxable in valuing the shares of that corporation. It is designed to eliminate the double taxation feature which existed in Bill 248.

The CHAIRMAN: If you bring the insurance in as part of the assets of the estate to value the shares, you don't add the proceeds of insurance to the assets of the company to value the shares.

Mr. LINTON: Precisely.

Section 32 agreed to.

On section 33—property where quick succession.

The CHAIRMAN: This deals with quick succession, and there is nothing new in it. In other words, if there is a second death within the first year the duty the second time is only 50 per cent. I notice it says on the value of the property: do you mean that the limitation of this section is that you must take the same value as the original value a year before?

Mr. LINTON: No.

Senator CONNOLLY (*Ottawa West*): And it only applies to the property that passed on the first death.

The CHAIRMAN: That is right.

Section 33 agreed to.

Senator HAIG: When do you propose to adjourn?

The CHAIRMAN: Before coming to Part II if you are going to raise the question of optional values this is the place to do it. Senator McLean has raised a point with respect to some suggested addition to that part.

Senator CROLL: We will come to that section and Senator McLean can raise it at that time.

The CHAIRMAN: I don't think we come to the section later; it must be raised now.

Senator CROLL: The Chairman knows about it, and the matter can be talked over with the minister.

The CHAIRMAN: Yes. That comes in division (f) of the rules applicable in determining value.

Whereupon the meeting adjourned until 8 p.m. this evening.

At 8 p.m. the sitting was resumed.

The CHAIRMAN: Gentlemen, we have a quorum. We are at section 34, page 29. Part II deals with estate tax in respect of persons domiciled outside Canada. This is a new Part, and I think it might be advisable to get a statement from Mr. Linton.

Mr. LINTON: Mr. Chairman, this section introduces the new concept of taxing Canadian assets of foreign estates at a flat rate. Heretofore the tax was at the same rates as applied to domestic property, and there were proportionate allowances for debts and on exemptions and so on. Now this section and subsequent sections put the flat rate of 15 per cent on all Canadian property in a foreign estate, reduced only by the debts that are charged against that property,—such things as hypothecs or mortgages or secured debts.

Senator LEONARD: I think that is a good suggestion. The only thing I was wondering about was whether or not the question of debt could go further than a secured debt and apply to a debt payable in Canada. No doubt you considered that. Have you any comment on that?

Mr. LINTON: Well, originally, Mr. Chairman, the bill was drafted to allow no debts at all. But certainly, I think, the various aspects of debt allowances have been considered, and this was what emerged. On the policy of doing so perhaps Dr. Eaton might say a word.

The CHAIRMAN: I was wondering before Dr. Eaton says a word, whether you could deal with this too? If I am a nondomiciled person, and I buy a property in Canada, and there is either a mortgage on the property or I put a mortgage on the property to provide some of the purchase money, then the mortgage is allowed as a deduction. If my credit is good, and I go to the bank and I borrow a substantial sum of money to buy the property, then I am not allowed to deduct the amount of that debt as against the value of the property.

Senator HAIG: Why not?

Mr. CROLL: The money was not directed to the property. That is the difference.

The CHAIRMAN: I borrowed the money and used it.

Senator CROLL: You did not say that before.

The CHAIRMAN: Oh, yes.

Mr. LINTON: On the assumption that, in the example given, the money borrowed from the bank was in no way secured by the property purchased, the debt would not be allowed.

Senator CONNOLLY (*Ottawa West*): Does the section in effect mean this, that a debt incurred in connection with a piece of real property would be the only debt that would be recognized?

Mr. LINTON: No. Supposing a stock brokerage account was opened, and the stock purchased was on margin, that would be allowed. Chattel mortgages would be allowed.

Senator CONNOLLY (*Ottawa West*): I was going to say it would not have to go to the point where you would have to have a registered encumbrance, like a land mortgage or a chattel mortgage.

Mr. LINTON: As long as there was an encumbrance, a charge against the property, or the person to whom the money was owed could proceed against that property.

Senator LEONARD: I take it the 15 per cent is an arbitrary rate, without relation to the value of the property or any consideration, and you are going as far as you feel you can go in bringing in a charge against the particular property which is liable to the 15 per cent tax.

Senator HAIG: Did you not get that on account of negotiations you have had with the countries on the tax rate between them?

Mr. LINTON: No.

Senator HAIG: Is that not the way you got the idea?

Mr. LINTON: No.

Senator CROLL: Is Dr. Eaton going to say something?

Dr. EATON: We are following here the pattern we have adopted in income tax and one which has been pretty well generally adopted throughout the world. Canada was one of the countries that led off in what I shall describe as an impersonal tax rather than a personal tax on a graduated basis. That makes pretty good sense. After all, non-domiciled people are not living in this country. They are not part of the Canadian community. They have invested here—

The CHAIRMAN: Some of them live here.

Dr. EATON: They may live here but if they are not domiciled here their property will be treated on a non-personal basis.

Senator HAIG: What about when you make a deal with Belgium and these other countries? Is that the basis you use?

Dr. EATON: No sir, it has nothing to do with that.

Senator HAIG: But you are going to charge 15 per cent.

Dr. EATON: We will charge everybody 15 per cent regardless of treaties.

Senator HAIG: I thought the treaty that was made with the United States provided for 15 per cent.

Dr. EATON: That is income tax.

Senator HAIG: That is what I say, in income tax.

Dr. EATON: Yes, but here there has been no negotiation of 15 per cent.

Senator HAIG: Isn't that where you get the idea though?

Dr. EATON: No, not at all.

Senator HAIG: Why didn't you take 20 per cent and not strike on 15 per cent?

Dr. EATON: Well, why not 15 per cent? I will make the statement that the revenue from a 15 per cent tax gives us about the same as we were getting under the old law at graduated rates on a net basis.

Senator CONNOLLY: And less work.

Dr. EATON: Yes.

Senator CONNOLLY (*Ottawa West*): Senator Haig is right. There is a connection between the 15 per cent of income tax and the treaties. There is a rule of thumb there that wasn't bad.

Dr. EATON: Well . . . . O.K.!

Section 34 agreed to.

On Section 35: Computation of aggregate value.

Section 35 agreed to.

On Section 36: Computation of tax.

The CHAIRMAN: This has to do with the 15 per cent rate.

Section 36 agreed to.

On Section 37: Deduction from tax: provincial duties.

The CHAIRMAN: This deals with the deduction from tax, provincial duties, et cetera. Now, it should be noted here that the 50 per cent deduction for provincial duties in the case of non-domiciled persons is on the basis of provincial taxes paid, whereas for native sons it is on property situate in the province and not on provincial taxes paid. I am only calling your attention to the different bases of approach. Does this carry?

Senator LEONARD: We have no objection.

The CHAIRMAN: That's right.

Section 37 agreed to.

On Section 38: Situs of property.

The CHAIRMAN: This deals with the situs of property. This section is at least new in part. Mr. Linton, you dealt with the matter of situs before. Would you care to make a statement on this?

Mr. LINTON: Yes. The situs rules in this part of the act are introduced for the purpose of establishing this foreign estate tax. They have been taken from the various treaties that have been negotiated in which situs rules were agreed upon between Canada and, say, the United States and Canada and the United Kingdom, and Canada and others. These treaty rules are not all identical although they are all very close and, this is again, close to them. It fits, therefore, with the taxation agreements that we have had all along, but it is now embodied in the act instead of being in an agreement.

Senator HAIG: Agreed.

The CHAIRMAN: Mr. Linton, I am told that at the present time deposits which a Canadian might maintain in a bank in the United States, in the event of his death, if he has enough assets there, the deposits are not subject to probate.

Mr. LINTON: They are not subject to tax.

The CHAIRMAN: Yes, they are not subject to an estate tax. That is what I meant to say.

Under the present law, what is the position of deposits in a bank account here if the non-resident person has no other assets in Canada?

Mr. LINTON: They are subject to tax.

The CHAIRMAN: So this is no change?

Mr. LINTON: No change in that.

The CHAIRMAN: Any other questions on situs?

Section agreed to.

Section 39—Administration.

The CHAIRMAN: We come now to page 33, Part III, which deals with administration. Now, under section 39, subsection 2 in part is new. Is there any particular feature there you should direct your attention to, Mr. Linton?

Mr. LINTON: I do not think so, no.

The CHAIRMAN: Which is the new part, that which brings these people under the provisions of the Civil Service Act?

Mr. LINTON: Yes, in effect they are at present, but this was not embodied in the old act because at the time of the original Succession Duty Act, when it was passed, they were not. They are now and are part of the Civil Service Commission system, too, now. They were in the superannuation scheme originally, but were not under the Civil Service Commission system, back in 1941.

The CHAIRMAN: I see that subsection 4 is new. That is purely administrative, though?

Mr. LINTON: Yes.

Senator CONNOLLY (*Ottawa West*): Referring to section 4, you must qualify eventually for that, must you not?

Senator LEONARD: Not necessarily.

The CHAIRMAN: I would think the federal authority for federal purposes could designate certain people or certain positions and say, "We will give them the power to administer an oath".

Senator CROLL: We have a federal-wide Q.C.

The CHAIRMAN: That is right.

Section agreed to.

On Section 40—Collection and Enforcement.

Section agreed to.

On Section 41.

The CHAIRMAN: This provision is new in part, but it must be a provision that is borrowed from the Income Tax Act certifying the amount of the assessment and depositing it in the Exchequer Court, and being able to issue an execution?

Mr. LINTON: Many of these administrative sections have been taken from the Income Tax Act.

Section agreed to.

On Section 42.

The CHAIRMAN: This is in the nature of a penal section, a person leaving Canada or removing property.

Senator CROLL: Could you give me a case that would fall within that, Mr. Linton?

Mr. LINTON: I can give you a sample. There was a case where we were advised by people in the know, on the quiet, that a large amount of property, approximately $1 million, was the subject of a transaction which might be subject to succession duty, and which upon examination we discovered was so

subject in our opinion. That property was on its way out of Canada, and we had to proceed without anything in the act by means of a writ in the Exchequer Court, a writ of immediate extent, to seize that property. We had a little trouble finding it, but we did, and stopped it going out of the country and got the tax on it; but to have to proceed without anything in the act in a situation like that seemed very unsound. This happens pretty rarely, but there is that good sample as one case where it almost happened.

The CHAIRMAN: That is a provision you find in provincial statutes. I know you have it in Ontario in the Absconding Debtors Arrest Act, for instance, and this is the principle of it.

Senator ASELTINE: You will have to take your exemptions with you.

Senator CONNOLLY (*Ottawa West*): How did you obtain the writ?

Mr. LINTON: I do not think I am knowledgeable enough in the law to answer that question.

Senator CROLL: That was the purport of my question.

Mr. DE WOLF: A writ which the Exchequer Court recognizes for the purpose of seizing goods and chattels was issued. It is a common law writ that the Exchequer Court uses for this purpose.

Senator CROLL: Let me put it in this way: someone in your department, and I am just curious, made an affidavit and said, "I do believe thus and so on information that was given to me" without disclosing the information. You were on pretty thin ground at that time and you might have stepped into something that would upset the applecart in which case you would leave yourself wide open. How did you avoid that? It happened in this case that you were right.

Mr. DE WOLF: That is something I personally cannot answer because collection is not under my particular jurisdiction. Somebody else looks after collections. I understand that the affidavit you mentioned was taken and we proceeded to the Exchequer Court and the Exchequer Court granted the writ and the property was seized.

Senator THORVALDSON: And possession is nine points of the law.

The CHAIRMAN: Section 42 looks all right to me but I would attract your attention to the fact that there are two things in it, one is if the Minister has reason to suspect that a person by whom any amount is payable as tax, interest or penalties in respect of the death of a deceased, or that a person outside of Canada by whom any such amount is payable is about to remove or cause to be removed from Canada property, so that the action which they could take is an action against the person to restrain a person from leaving Canada and action can also be taken to restrain property likely to move at the instance of some person outside of Canada so as to get away from an estate tax liability here. Well, the first part is akin to our absconding debtors arrest law in Ontario. It is unfortunate but we need that authority.

Senator BAIRD: Do I understand this right? For instance I have in mind going with my estate to Nassau. It represents probably $100. Would I be allowed to go and settle there and take that $100?

The CHAIRMAN: Oh yes, that does not touch on this at all. This is only where a person responsible for a payment of some estate tax and interest is about to leave the country or is about to remove some property from the country.

Mr. LINTON: If your executor decided to take all the property to Nassau it might apply.

The CHAIRMAN: It might not be necessary to take the property. If he was going to leave himself you could keep him here.

Shall the section carry?

Section 42 carried.

Now we come to section 43 which is the lien section. Would you explain that, Mr. Linton?

Mr. LINTON: According to this section a lien is put on all real estate in Canada belonging to a decedent. This lien principle is some extension from the old act in so far as it now applies to all assets whereas in the Succession Duty Act it applied only to real estate of foregin domiciled decedents.

The CHAIRMAN: Why do you say "it may be registered" rather than say "it shall be registered"?

Mr. LINTON: Well I do not think we would want to register it in most cases. In most cases we would never have to resort to it.

The CHAIRMAN: To some persons dealing in real estate and wishing to obtain a good title, if an executor gets consent from the Minister to transfer the property then the executor transfers the property but this lien exists at the time. How do I get rid of that? There is no provision in here for the discharge of the lien and there is nothing in here that says that the consent of the Minister operates as a discharge, and I think that both those should stand.

I would suggest that this section stand.

Senator ASELTINE: Let the section stand.

Senator CROLL: First, may I ask Dr. Eaton, have you met that situation in the Income Tax Department?

Dr. EATON: Perhaps Mr. Sheppard can answer that.

Mr. D. H. Sheppard, Assistant Deputy Minister, Department of National Revenue: I don't think it is the same thing. I understand registry offices do not require our consent to transfer property. They are transferred without the consent. So, we need the liens.

Mr. LINTON: May I add to that, if the registrar did recognize our consent, as stock transfer agents and banks do, there would be no need for this provision.

Senator BOUFFARD: So far as the province of Quebec is concerned, a lien on a property does not disappear until after 30 years, unless there is a discharge. In other words, the lien remains for 30 years. It seems to me there should be some provision whereby the Crown can discharge liens.

Senator ASELTINE: Would it be necessary to obtain that document before any land changes hands? Would the registrar register a transfer of deed?

The CHAIRMAN: It is not a case of what the registrar will register. The registrar would not accept for registration the consent of the minister to transfer the property. Then you may be in the situation where you are taking title from the executor of an estate in Ontario, and you know this statute provides for a lien, but no lien is registered. How do you safely take title in those circumstances?

Senator ASELTINE: Let the section stand.

Senator CONNOLLY (Ottawa West): In Ontario the registry offices, as well as the registrars, do not require the production of the succession duty releases.

Mr. LINTON: That is the trouble.

Senator CONNOLLY (*Ottawa West*): But you still have this over-riding lien. When it is in the law, it is hard to say whether third parties taking the property without notice of lien are taking it free of lien; they are presumed to know the law.

The CHAIRMAN: It immediately raises the question of provincial versus federal jurisdiction, because the Registry Act in Ontario attaches certain characteristics to notice because it is registered, but f it s not registered, then it is something else. Where does one end and the other start? All I know is there can be a lien without registration, and if you are acting for a purchases, you have to be very careful.

Senator BOUFFARD: Apart from that, in Quebec a lien is preferable to a mortgage, according to provincial law; a lien for taxes comes before any kind of mortgage.

Senator HOWARD: That is right.

Senator BOUFFARD: That means there may be a mortgage on a property, and if the mortgagor dies, the lien will immediately be established on that property.

The CHAIRMAN: In priority to the mortgage.

Senator BOUFFARD: And will come before the mortgage, in the case of sale under any other mortgage that might be on the property. Therefore, the lien has a great bearing on it, and you have no right of discharge. It seems to me if the Crown gives the heir the right to sell, that right to sell by the Crown should be equivalent to a discharge of the lien on that particular property.

Mr. LINTON: Perhaps we should re-consider this point.

The CHAIRMAN: Yes; I have marked the section to stand.

Senator WHITE: May I ask Mr. Linton a question? When the minister spoke in the house he pointed out that the purchaser of realty would have the same responsibility cast upon him for his own protection, of making sure whether estate taxes had been paid.

Mr. LINTON: That is right.

Senator WHITE: If the solicitor for a purchaser from an estate communicated with your district office to inquire if the tax were paid, you couldn't give him any information, could you? How would the solicitor for the purchaser go about ascertaining whether the tax had been paid on that estate?

Mr. LINTON: I think he would have to go to the executor, who would get the information; and of course, we would be very willing to give a certificate if it had been paid, but I am afraid a certificate would not discharge a lien, as several persons here have said.

Senator WHITE: All you would give would be the usual consent.

Mr. LINTON: That is all the machinery we have at the present time.

The CHAIRMAN: Which is not really enough.

Senator BOUFFARD: Could I ask Mr. Linton this? In so far as Quebec is concerned, unless you are going to have a lien, which is preferable to an existing mortgage at the time of death, it seems to me that some other expression than lien should be used. The lien should go with the mortgage that existed at the time of death.

Mr. LINTON: Might I ask Senator Bouffard if the situation is such that the lien could be put on with some provision that it did not rank ahead of mortgages?

Senator BOUFFARD: Yes, you can take the lien the way you want. The law says in Quebec the lien for taxes comes before mortgages. That depends on the law. If your law says it does not, it won't.

Senator MONETTE: The time of the registration of the lien matters not. In mortgages time is essential; they go by precedence according to the time of registration, but the lien is a lien; it has precedence over a mortgage.

Senator CONNOLLY (*Ottawa West*): I think perhaps there is a good deal to be said in favour of the department having a lien on property to secure payment of duty.

The CHAIRMAN: I don't understand anybody to protest against that.

Senator CONNOLLY (*Ottawa West*): I wonder if the consent of the minister, issuing under a section we are coming along to—

The CHAIRMAN: Section 46.

Senator CONNOLLY (*Ottawa West*): —whether that consent might, for that purpose, or for that property, release any lien. I am thinking of a practical way out.

The CHAIRMAN: We were discussing that; and the point is that a consent as such is not registerable. It has to be in the form of a discharge.

Senator CONNOLLY (*Ottawa West*): The consent perhaps could be so worded as to be in the form of a mortgage. Even if the registrar does not take it, the purchaser would have some assurance. In the case of Senator White's man, the purchaser would have some assurance that the lien did not apply to that property.

The CHAIRMAN: It is not a case of having "some assurance". I should think, if you are acting for a purchaser, you want complete assurance.

Senator CONNOLLY (*Ottawa West*): I would suggest that perhaps you might so word the consent to the transfer that it would have that effect.

The CHAIRMAN: I think it has to be put in a form that is registerable.

Senator MACDONALD: Under the Ontario Registration Act we would have to file a consent and register the consent with every property owned on which the deceased has a mortgage. You recall that you have to register them.

The CHAIRMAN: What we are discussing here, though, is the case of a purchaser who is entering into an agreement to buy a piece of real estate from an estate. You know under the provisions of this act there is a lien to the federal authority in connection with unpaid estate taxes. How do you, acting for the purchaser, establish a clear title for your intending purchaser?

Senator MACDONALD: Why cannot you get a consent to the transfer?

The CHAIRMAN: A consent to the transfer does not operate as a discharge.

Senator MACDONALD: I think, under the Ontario Succession Duty Act, that a consent to the transfer frees the land.

The CHAIRMAN: We are not dealing with the Ontario Succession Duty Act, and nothing in the Ontario Succession Duty Act would have anything to do with this.

Senator MACDONALD: That is the point I am trying to explain, that we could have a similar consent from the dominion succession duty department.

The CHAIRMAN: That would be something tantamount to a discharge.

Senator MACDONALD: No; there is not a discharge in Ontario.

Senator WHITE: A certificate that the duty is all paid. But there is no lien in Ontario.

Senator MACDONALD: If there is a consent of the Crown for the purpose of selling the property to another buyer, that is tantamount to a discharge. Otherwise, if it is only in favour of the first buyer, the privilege would revive if the first buyer sells to another one. Well then, it is no good for the first buyer to say it is tantamount to a discharge.

The CHAIRMAN: All we are saying is, let us correct it in such form that there can be a good title.

Senator THORVALDSON: Take the case of Manitoba and other western provinces. We have the Torrens system, and I don't think the federal Govern-

ment could apply a statutory lien against land in Manitoba, the title of which is guaranteed by the province of Manitoba, without directly filing a lien. We have had that situation with regard to all the provinces where you have a Torrens system.

The CHAIRMAN: You mean that the provision in our constitution which gives the federal Government such ancillary powers as may be necessary to carry out a proceeding of this nature would not enable them to create a lien?

Senator THORVALDSON: I don't think it would.

The CHAIRMAN: However, we are standing the section.

Senator MACDONALD: I think it is very important.

The CHAIRMAN: Section 44: Actions.

Senator CROLL: What is the purpose? Is that to avoid taking action against officers of the Crown?

The CHAIRMAN: No.

Senator CROLL: What is it?

The CHAIRMAN: If you withhold and remit a tax that somebody else owes, you cannot be sued for it.

Senator MACDONALD: In Quebec they have two ways, of either keeping the privilege or saying the privilege is no more available. In some cases you can keep a privilege by registering the privilege within a certain time, or you can get away from the privilege if no action is taken with notice to the registrar within a certain length of time. Maybe you could adopt one of these two forms, and say that a lien might be discharged that way.

The CHAIRMAN: You were asking the purpose of section 44. Mr. Linton?

Mr. LINTON: I think, Mr. Chairman, it is just as you said.

If, for instance, an executor withheld something from a successor who got property under the control of the executor, and also got property outside the executor's hands, according to the act the executor withheld some of the property that went through his hand—and used it to pay the tax as he was required to, no action would be taken against him.

Section 44 agreed to.

On Section 45: Inspection.

The CHAIRMAN: This Section is borrowed or imported from the Income Tax Act and gives a right of inspection and inquiry to ascertain whether, where and under what circumstances there might be assets.

Senator POWER: It is the "Succession Duty Gestapo."

The CHAIRMAN: Let us say it is the policing section.

Senator LEONARD: Are there any changes of consequence from Section 126 of the Income Tax Act?

Mr. LINTON: No.

The CHAIRMAN: They have got to have some machinery.

Senator CROLL: Well, they couldn't improve the Income Tax Act there. There is no room in that section for improving it.

Senator POULIOT: Before this is carried, I understand that we are on a section that deals with inspection—

The CHAIRMAN: And inquiry.

Senator POULIOT: Well, Mr. Chairman, I find this type of provision is unfair. For instance, under certain provisions of the Income Tax Act members of the R.C.M.P., or other persons, can go and seize all the documents in a place

and leave no records at all. This sort of thing is contrary to the principles of human rights. It has happened to doctors under the Income Tax Act, and the same thing would apply under the Estate Tax Act.

The CHAIRMAN: The same thing would apply to a lawyer.

Senator POULIOT: Well, it is pretty difficult for a person when all his papers are taken by the officials of the department and he cannot use them for months and sometimes for years. Copies of his documents could be made at his place of business. I do not see why all his papers have to be brought to the department where he cannot use them. It is most embarassing for him.

The CHAIRMAN: Senator Pouliot, you have raised a very interesting point. Under the provisions of the Combines Investigation Act where you have seizure provisions somewhat similar to these, there is a requirement in that Act that copies must be made of all documents which are seized and those copies must be provided to the person from whom they were taken within 30 days.

Senator POULIOT: That is fair.

Senator POWER: At his expense.

The CHAIRMAN: No.

Senator POWER: Well, it is under the Income Tax Act.

The CHAIRMAN: Under the Combines Investigation Act it is at the expense of the Crown.

Senator POULIOT: I know of a case where the R.C.M.P. went to a doctor's office and took all his papers and records and he could not get them for months. In order to consult them he had to go from Riviere du Loup to Quebec City. I find that sort of thing is unfair. I do not agree with that kind of legislation at all.

The CHAIRMAN: What have you to say Mr. Linton?

Mr. LINTON: I have not had much experience with this since we have not had this section in the act before, and I have never been involved under the proceedings of the Income Tax Act.

Senator POULIOT: I know, Mr. Linton, that this is a new thing for you but why do you take this provision from other pieces of legislation and put it in this bill?

Mr. LINTON: The reason for taking this into the bill is for the occasional cases. I must say we have had very few cases in estates where this kind of thing would have been used, but we have had one or two. We have had cases where there were safes in the house in which it was thought with pretty fair certainty that there were assets and important documents in it, and there was no machinery to do anything about this. It was felt that if we were going to administer the act in any fair way we had to have some means of preventing people from defeating its terms by just hiding their records.

Senator POULIOT: Well, this is contrary to human rights and fundamental freedoms.

Senator HAIG: This section is not intended for honest people, so we don't need to worry.

The CHAIRMAN: There is power to inspect.

Mr. SHEPPARD: But it does not give power to search.

The CHAIRMAN: What does "inspect" mean?

Senator CROLL: What is the difference between seizing and searching? If a person seizes something what difference does it make if he doesn't search?

Senator POWER: In one case you go fishing and in the other it just has to be indicated.

Senator POULIOT: In one case they go fishing and in the other case they go angling.

The CHAIRMAN: I would point out that Mr. Sheppard was asked to tell us his experience with respect to a somewhat similar provision in the Income Tax Act.

Mr. SHEPPARD: It had to do with searching, and that is why I made the comment I did. If you are thinking about searching under the Income Tax Act, it is only conducted under these circumstances where we have evidence of fraud, and a search warrant is obtained on the consent of a judge of the Exchequer Court. Based on that someone goes out and seizes the records, but after having seized them they do make them available to the company, if it is a company, in any way that is convenient. I mean to say, we cannot permit the documents themselves to get out of our possession because if we did the copies would not be considered as good evidence in court, as I understand it. However, we do our best to make the records available to the taxpayers, and I think that by and large there has not been any particular hindrance to their business activities as a result of that.

Senator POULIOT: There has been in some cases, Mr. Sheppard. As soon as you get a judgment of the Exchequer Court you are entitled to search?

Mr. SHEPPARD: That's right.

Senator POULIOT: And when you are entitled to search you are entitled to confiscate. I would like to know what the idea is behind the words that are used. It is the departmental officials who decide whether it is necessary to search or not, and then it is the Mounties who decide whether the property will be seized or not.

Mr. SHEPPARD: The services of the Mounted Police are merely to keep the peace. The officers of the department do all the work in connection with the search, and that is done by authority of a judge of the Exchequer Court.

Senator POULIOT: By authority of the judgment, but when the judgment is rendered it does not mean necessarily that a search is made and that the department will take possession of documents.

Senator MACDONALD: You say he cannot seize?

The CHAIRMAN: I should point out, Senator Pouliot, that there is no provision in this section for going to an Exchequer Court judge for a search warrant. Here the Minister issues an order to some persons who are in the employ of the Minister, and under that authority in writing they may enter any premises and inspect, examine, any property, including any books, records, etc., and require the owner to give them all assistance, and if during the course of the inspection it appears that an offence under the act has been committed they may seize and take away all books and records.

Senator POULIOT: I know that, but it is done in the name of the Minister.

The CHAIRMAN: Yes.

Senator POULIOT: Just the same as before a justice of the peace or in the name of Her Majesty the Queen?

The CHAIRMAN: That is right, but what I was pointing out is that this is even an easier process to invoke than having to go to the Exchequer Court.

Senator POWER: Under the Income Tax Act you at least pretend to go before the court, do you not?

Mr. SHEPPARD: What I was referring to was that in the case of income tax there is also power given to issue a search warrant.

The CHAIRMAN: But here you go in on your inspection tour, and having seized some documents, if you make up your mind an offence has been committed you seize them and take them away without going to a court.

Senator BOUFFARD: And you may question the person and force him to answer without even authority.

Senator HAIG: What happens in actual practice? They go to an office to check the books. Upon examination of the books they suddenly find Brown's mortgage entered, and that it was paid three months ago. Then they say, "Let me see the Brown mortgage"; and they find it, and it has not been reported. So they take away the books. That can happen very easily. A good many offices in my part of the world act as a semi-trust company, and people bring in their mortgages and say, "Mr. Haig, I wish you would look after that mortgage", and we enter it in the ledger, and it is put in the trust account, and at the end of the year we send the person a cheque for the principal and interest. Now, the fellow may forget it, and the only man that knows about it is the fellow who died, and when they come to check it up that comes to light and they give that report. I think it is a reasonable provision.

Senator CROLL: Of course it is a reasonable provision.

The CHAIRMAN: All I am suggesting is that if records are in fact seized I think there should be some provision for furnishing copies to the person whose records have been seized. There is nothing in this section which provides for the furnishing of copies.

Mr. THORSON: The purpose of subsection 4 is to authorize the making of copies, giving the copy the same probative force as the original, and consequently permitting the return of the original.

The CHAIRMAN: That may be the purpose, but the statute does not say that, or that the original shall be returned, and I feel that you might want to keep the originals to establish fraud or concealment.

Mr. THORSON: Exactly.

The CHAIRMAN: So I say the person should get a copy, and if you are going to make copies why not say that copies will be furnished on request?

Section 45, subsections 1, 2, 3, 5 and 6 agreed to.

Subsection 4 stands.

On Section 46—Transfer of Property.

The CHAIRMAN: This is new in part. Mr. Linton, have you anything to say about it?

Mr. LINTON: Well, it is new in so far as it is implementing an Estate Tax Act rather than a succession duty, so it is doing what another section in the old act did, section 49, but necessarily in different terms, and the penalty may be different.

The CHAIRMAN: The fine is from $100 up to $10,000. The magistrate has a wide range.

Senator CONNOLLY (*Ottawa West*): How do you arrive at a maximum?

Mr. LINTON: The maximum penalty?

Senator CONNOLLY (*Ottawa West*): Yes.

The CHAIRMAN: Well, they don't; it is the magistrate who does that.

Mr. LINTON: Do you mean why do we seize on this figure as the maximum?

Senator CONNOLLY (*Ottawa West*): Yes.

Mr. LINTON: I find it hard to answer that. All these penalty ranges were discussed and all considered in relation to each other, and an amount was put in that was felt under the circumstances arising in this section to be a fair maximum. There is no scientific basis.

The CHAIRMAN: Probably $10,000 is given as the maximum because of such an intimidating effect such an amount might have.

Senator POULIOT: No court is bound by an adjudication of the department?

The CHAIRMAN: Oh, No.

Section agreed to.

On Section 47—Consent of Minister to Transfer.

The CHAIRMAN: This would be tied in with the question of lien, and I think only for that purpose we may stand it. I think it is clear reading as to the consents that are necessary. The transfer is a property that can be made without the consent of the Minister; that is all pretty clear.

Senator HAIG: There is no change at all?

Mr. LINTON: The main changes in it are that the limits of property that can be paid without the consent of the Minister under advice have been raised. Under the old act it was $1,500 for such things as insurance policies, and $500 for such things as bank accounts. The respective limits have been raised to $11,500 and $1,500.

Senator EULER: Why the odd amount of $11,500?

Mr. LINTON: Well, the original figure was going to be $10,000, and the insurance companies suggested after they saw Bill 248 that they would have a large number of policies for $10,000 on which there would be small amounts of accruals of dividends and bonuses, and so on, so that a large number of policies which were really intended to be released by the wording would be caught by that small difference, and that is why they made it $11,500.

Senator POULIOT: May I ask a question?

The CHAIRMAN: Yes.

Senator POULIOT: In case of doubt, you give the benefit of the doubt to the department or to the estate?

Mr. LINTON: I think I would have to say that depends on circumstances.

Senator WHITE: Section 47(2) says:

> Notwithstanding subsection (1) any property passing on the death of a deceased, not exceeding $11,500 in value or amount in the case of any one transferor, . . .

Now if there are two policies, one each for $5,000 going to A and B, what would happen there?

Mr. LINTON: The amount of $11,500 is for each transferor of an insurance policy, that is, each insurance company, and if the two policies were in the same company, there would be a total limit of $11,500.

Senator WHITE: Let us say they were in different companies.

Mr. LINTON: Each company could release up to $11,500.

Senator WHITE: What about the liability of the executor under section 4(3)? Who is liable for that $10,000?

Mr. LINTON: The money that would be payable under this would only be payable by the insurance company to the person entitled. If the person entitled to this cash proceeds was the executor he is obviously not jeopardized in any way. If it is a named beneficiary outside the executor's control the executor is only liable for his tax up to the amount of the property that he has that would go to that successor, so it would not affect his liability.

Senator MACDONALD: I see in that instance the total tax is not chargeable against the estate.

Mr. LINTON: No, when there are outside beneficiaries who get the property direct, they are liable.

The CHAIRMAN: The intent of this section carries, but stands only because of the relationship of the lien in subsection (3).

Section 47 carried.

The CHAIRMAN: Section 48. This section deals with the consent to open or remove contents of safety deposit boxes, etc. There does not appear to be any material change in this, Mr. Linton?

Mr. LINTON: No.

Senator CONNOLLY (*Ottawa West*): In subsection 3 of section 48—I take it that that section permits the executor to go to a safety deposit box and remove such things as birth certificates, title deeds, leases, agreements and papers of that nature.

The CHAIRMAN: As a matter of practice I think it is even done now.

Mr. LINTON: It should not be done except for the will although the Chairman may be right about what is done in practice. But under this section the categories of things he can take out has been broadened. Most of these things are documents that would not affect the Crown's security or endanger the collection of taxes and yet would facilitate the administration of the estate.

Senator CONNOLLY (*Ottawa West*): Can they do it without consent to open?

Mr. LINTON: The rgeulation will prescribe that the bank, or its official as now, will represent the Minister and he will be present at the opening of the box and list these things.

The CHAIRMAN: Section 49 deals with security for payment of taxes. That is said to be new in part. To what extent is it new Mr. Linton?

Mr. LINTON: The Minister may now accept security, but it is not specified at present, that it may be by way of a mortgage or other charge. It is just made more specific.

Section 49 carried.

The CHAIRMAN: Section 50, execution of documents by corporations.

Shall the section carry?

Carried.

Now we come to section 51 which deals with offences and punishment, and this is new in part.

Shall the section carry?

Senator ASELTINE: Let us hear about it.

Mr. LINTON: It is related to sections 52 and 53 of the present act and perhaps the comparison can best be brought out as I think we did in the committee in the House of Commons by reading these sections of the act. Section 52 of the act says:

> Every person failing to deliver the statement required by section 16 is liable to a penalty of $10 for each day of default which elapses after the time limited for delivering such statement, but such penalty shall not in any case exceed $1,000.

This first subsection applies to a person failing to deliver a statement that has been demanded by the Minister, and the penalty is not less than $100 and not more than $10,000. But this is only after a demand has been made and has not been complied with.

Then subsection 2 of section 52 of the act reads:

> Every person failing to complete the information required on the forms prescribed by the Minister for reporting the particulars required by section 16 is liable to a penalty of $10 where the aggregate net value of the property the subject matter of the succession does not exceed $50,000 and to a penalty of $100 where the aggregate net value exceeds $50,000.

Those were very low penalties.

The CHAIRMAN: Yes. Inflation has taken place here too.

Mr. LINTON: Section 53 of the act reads:

> For every default in complying with the provisions of section 18 and section 20, the persons in default are each liable on summary conviction to a penalty of not less than $25 for each day during which the default continues.

The daily feature has been eliminated.

Senator POWER: Where did you get the imprisonment? Did you have it in the act?

Mr. LINTON: There was imprisonment for making false statements in the act.

Senator POWER: Now you are getting imprisonment for what? For lesser offences?

The CHAIRMAN: Under section 45 for instance if they went in to inspect a place where there were books and records and the owner was there and refused to hand over or refused to answer questions he could be charged under this section.

Senator POWER: Under subsection 2 of section 51 apparently imprisonment is provided for a term not exceeding six months and I was asking Mr. Linton if under section 52 of the act imprisonment is provided for.

Mr. LINTON: No.

Senator POWER: Well, then, this is new?

Mr. LINTON: It is for a new provision that would be contravened by a person who came under it. Section 45 is the one that discusses inspection of premises. We did not have that before and this is a penalty that flows out of it.

Senator EULER: Section 48 covers the consent to open a safety deposit box on the death of any person. To what extent do you have power to go now?

Mr. LINTON: It extends to any box in which he had any kind of ownership or lessee right and any box in which the bank knows there is property of the deceased, but if you are thinking of wives' boxes and such things it does not extend to those *per se*.

Senator EULER: The provincial law does, though.

Mr. LINTON: Yes but we never felt we could go that far. We have not that power.

The CHAIRMAN: Shall section 51 carry? This section deals with offences and punishment.

Section 51 carried.

Shall section 52 carry? This deals with certain offences. You will note that these sections have been borrowed from the Income Tax Act.

Senator POWER: Also the word "acquiesces"? Was that in the Income Tax Act?

The CHAIRMAN: Yes, "acquiesces".

The CHAIRMAN: Mr. Linton you are building up quite a barrage of authority and offences that you can throw at any violator. Will you tell us of your experience in succession duty administration in that regard?

Mr. LINTON: Our experience in the 17 years under the old act is that we do not encounter many violations but those we did encounter we were very seldom able to find any strength in the statute to do anything about.

The CHAIRMAN: I think if you find violations you should have strength.

Mr. LINTON: That is what we thought.

Senator CROLL: But we are not giving you the strength to go looking for violations though.

Section 52 carried.

The CHAIRMAN: Section 53. This section deals with communication of information.

I was curious, Mr. Linton, about a statement you made either earlier today or yesterday, and I made a mental note of it, where you spoke about examining income tax returns and seeing whether a man had indicated in those returns that he had dependants and checking them against succession duty returns. Are income tax returns available to you for that purpose.

Mr. LINTON: It is all the same department, and our office sections are so constructed that the same section of the department works on the deceased's income tax and the succession duties for the greater benefit of both.

The CHAIRMAN: Both which?

Mr. LINTON: Both taxes.

Senator HAIG: That is the best answer I have heard yet. I think you are in the Government.

The CHAIRMAN: You understand this section 53 is a long section and it is a section dealing with communication of information.

Senator CROLL: It has the same provisions as the income tax section.

Mr. LINTON: No.

Senator HAIG: It is in the law now.

Senator CROLL: Is it in now?

Mr. LINTON: It is not the same thing.

The CHAIRMAN: A lot of it is new.

Mr. LINTON: If you want a description of this, Mr. Thorson could give it.

Mr. THORSON: This deals with a lot of detail that is not presently dealt with in the Succession Duty Act. The corresponding section in the act, that is section 55, is similar in substance. However, there have been problems arise under section 55 of the Succession Duty Act, and doubts cast as to precisely what the ambit of that section is. This is merely to clarify what we regard as being the present situation.

Senator CROLL: Mr. Chairman, would you mind taking a minute to read through the section slowly.

The CHAIRMAN: I will read it.

(Section 53 read).

Senator POWER: Referring to subsection 6, as a matter of retribution, why should it be provided by section 51(2) that every person guilty of an offence is to be liable to a penalty of a fine of $5,000 and six months imprisonment, when an official faces a penalty of only $1,000 and two months?

Mr. LINTON: We hope none of our officials will ever—

Senator POWER: And we hope none of our taxpayers will either.

Mr. THORSON: It is a case of the punishment fitting the crime.

Senator CONNOLLY (*Ottawa West*): Under subsection 5, does the authority in writing mean that a solicitor, for example, who goes to court to discuss a tax matter on behalf of a client, must bring a letter from the client showing that he is authorized to act?

Senator CROLL: He always did that.

The CHAIRMAN: That is the practice in the Income Tax Department.

Section 53 agreed to.

On Section 54—Officers of corporation.

The CHAIRMAN: That provides that if a corporation is quilty of an offence under this act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the crime, is a party to it. In other words, the department in its prosecution can be highly selective, and if there is a wealthy director, they can go after him and forget about the company. I think they need the broadest power.

Senator ASELTINE: The company would look after the director.

Section 54 agreed to.

On section 55—procedure and evidence.

The CHAIRMAN: What procedure are you talking about in that section, Mr. Linton?

Senator CROLL: That is an unusual way of drawing a statute, by saying that the procedure in another statute will be applicable to this one.

The CHAIRMAN: I agree.

Mr. THORSON: If I may answer that, the provisions of section 136 go on for a considerable number of pages and contain some 14 different subsections. This is an attempt to avoid the very long repetition of having that portion re-enacted in this bill.

The CHAIRMAN: Of course I am more concerned as to why it is regarded as being necessary to this statute, that this long and repetitious procedure should be mentioned. Why do you need it?

Mr. THORSON: Do you wish an analysis of section 136?

The CHAIRMAN: No.

Mr. THORSON: This is considered to be a useful section dealing with matters pertaining to evidence.

Senator CROLL: Someone new who reads the act, has to go back to the Income Tax Act. I am not quite sure that he would understand. I realize what you are trying to do here.

The CHAIRMAN: There would be one other way, but an unusual way, and that is the provisions could be appended as a schedule to this act.

Mr. THORSON: That is quite true, Mr. Chairman. You could even re-enact them into this act, but this procedure is an attempt to avoid the re-enactment of these many pages of provisions which we did not feel could conveniently be included.

The CHAIRMAN: For such an important statute as this, do you not think it should be self-contained?

Mr. THORSON: I feel these provisions are subsidiary to the main point in the bill, and are purely mechanical.

Senator CROLL: Can you think of any similar legislation where that situation applies?

Mr. THORSON: There are a number of different statutes; I would hate to be pressed to name them.

Senator CROLL: Don't say there are a number; think of one.

Mr. THORSON: Dr. Eaton suggests that the Old Age Security Act contains reference to provisions of the Income Tax Act.

Dr. EATON: That is they are deemed for certain purposes in income tax to be in this act. It is a separate tax imposed as social security tax, and in both the Excise Tax Act and the Income Tax Act they are dealt with and referred to as taxes in the other act.

Mr. THORSON: It is not an uncommon device.

Senator CROLL: Very well.

Section 55 agreed to.

On section 56—agreement with provinces
agreement with other countries

The CHAIRMAN: Section 56 deals with authority to make agreements with other Governments, not only provincial governments, but foreign governments.

Mr. LINTON: That is right, Mr. Chairman. We have now introduced into the act credits for foreign taxes without waiting for treaties to implement them. This is a step that was taken in the treaties in the matter of exchange of information. This now can be done within the terms of the act, without the treaties being negotiated and introduced by an over-riding act.

The CHAIRMAN: I wonder if this is the place to raise the question that has been raised in our house whenever tax conventions come before it, that the provisions with regard to the exchange of information, where a foreign country is seeking evidence in Canada in relation to one of its subjects and his operations in Canada for the purpose of supporting the prosecution or proceeding for tax violation in the foreign country. In other words, we make available in Canada the records of a taxpayer's operations here who may be a citizen of another country, available to that other country, so that they may, in their country, go after him either for taxes or by prosecution. There has been a lot of complaint in our House about it, but the obvious answer to it is, "the agreement has been signed and executed, and there are only two things you can do, either approve it and pass the bill, or reject it. It has been negotiated; you cannot undo it." I wonder whether this is the place where we could put in some appropriate language. What would you say, Mr. Linton?

Mr. Linton: We get great advantages out of this exchange of information. It is not only the other country who gains advantage by pursuing its taxpayers with information we provide, but we gain from information they provide, both in pursuing our taxpayers and in pursuing their taxpayers who have Canadian property and neglect to declare it.

The CHAIRMAN: But if the foreign authority comes into Canada and, under the protective wing of the Canadian authority makes its examinations of records here that always seems to be a—

Mr. LINTON: As far as I know they never come here and examine our records. We give them advice; we answer questions they may ask. There may have been very rare occasions when in some specific case there may have been some discussion on the premises, but for their investigators to examine our records. I don't know that it has ever happened.

An Hon. SENATOR: Have you ever made a seizure on their behalf?

Mr. LINTON: No.

Mr. SHEPPARD: I was going to say that I do not think the exchange of information goes quite as far as you have stated, Mr. Chairman. They are entitled to the information we would have for the purpose of our act. But that does not give them the power to come in this country and make an examination.

The CHAIRMAN: I was looking at the Succession Duty Convention with the United States, and I noticed these words:

"With a view to the prevention of fiscal evasion, each of the contracting States undertakes to furnish to the other contracting State, as provided in the succeeding articles of this convention, the information which its competent authorities have at their disposal or are in a position to obtain under its

revenue laws insofar as such information may be of use to the authorities of the other contracting state in the assessment of taxes to which this convention relates."

When I spoke about their coming in, I was talking about the practice. It may not occur too often, but I have run into it once or twice. True, one was under the Securities Commission, but on another occasion it was something else, which I prefer to leave anonymous at the moment; and I would not want the practice to go that far. I think it is going far enough. That is a mild way of putting it.

Mr. SHEPPARD: I think the meaning of the clause there is that they have the right to get anything that we have the right to get in the normal pursuit of information for our own purposes.

Mr. LINTON: And not that they can get it for themselves.

Senator CROLL: I missed that. Do I understand that, unless we have good reason to go out and get it for our own purposes they cannot get it?

The CHAIRMAN: That is not what the section says. The section says it is information which, for instance, the Canadian authorities might have at their disposal or be in a position to obtain under their revenue laws.

Senator CROLL: That is the small print you are talking about. I am talking about the large print. It does not say that.

The CHAIRMAN: I think anything you can ask for under our law you can be asked to give to them.

Mr. SHEPPARD: You can't very well go and ask for information without a reason for getting it.

The CHAIRMAN: I am talking about the authority you have. Administration is something else.

Senator CONNOLLY (*Ottawa West*): Does not that go so far as to permit them to make a seizure?

The CHAIRMAN: Oh yes.

Senator CROLL: Oh no, not a foreign country.

Mr. LINTON: They cannot do it.

Senator CROLL: They can't make a seizure. Our own department can't make a seizure on their behalf.

Mr. SHEPPARD: There can only be a seizure if there is an offence under our own act.

The CHAIRMAN: You are so optimistic, Senator Croll.

Dr. EATON: It is no comfort to you, but I have negotiated a good many of these treaties, and every home government feels exactly the way you feel, but they all do it.

The CHAIRMAN: I know. Here I am doing it now!

Now you have the provision with respect to regulations, in Section 57. I suppose if this thing is going to operate, you have to let them make some rules. Carried.

Now then, Part IV, Interpretation and Application. Well, that is the definition section. Is there anything in here, Mr. Linton, that you want to direct our attention to?

Mr. LINTON: New definitions. They do not necessarily mean anything new as far as the tax is concerned. There are more definitions here than there were in the old act,—such things as "amount", which is purely mechanical, was not defined before: "Assessment", included reassessment, "Corporation controlled by the deceased". I think, in going through the other sections, we have seen the effects of that, and we have had reference to this definition on at least one occasion.

The CHAIRMAN: In Section 9 you are dealing with provincial taxes, and you speak of property situated in a "prescribed" province. Then you say what the word "prescribed" means; it means prescribed by regulation. Then I come to the interpretation section, and I see the word "prescribed" as, "in the case of a form or the information to be given on a form, means prescribed by the Minister". I still do not know what they mean by "prescribed", because in Section 9, when they talk about a "prescribed province" I don't know what moves the Minister to designate a province.

Mr. LINTON: I think the "prescribed province" is by the Minister of Finance, whereas these definitions in the end of the Act refer to those of the Minister of National Revenue.

The CHAIRMAN: This "prescribed" as it occurs in the definition section has nothing to do with the word "prescribed" as it occurs in Section 9.

Mr. THORSON: That is correct. Of course you read any definition in the act subject to the provisions of the Interpretation Act, which says the definitions apply unless the context otherwise requires. In Section 9 the context does otherwise require.

The CHAIRMAN: I am curious about this word "prescribed". It is referring to a previous section, but I do not think anyone reading this act would know what province was likely to be prescribed to come in the category of a prescribed province. How do I find that out? What is there that impels the Minister of Finance to prescribe any province by regulation?

Senator THORVALDSON: The fact is that the prescribed provinces are the ones that are not under the tax agreements.

The CHAIRMAN: But where is that set out in the bill? There is nothing in the bill that says the prescribed provinces are the provinces who have not joined in the tax rental agreements. Therefore, I say that the Minister has full discretion and can designate or not designate as he likes.

Mr. THORSON: I would suggest that the Minister of Finance would be a very brave minister indeed if he prescribed a province other than the ones that have not joined in the agreements.

The CHAIRMAN: That may be a debating answer but let us get down to the facts of the case. If we are drawing a bill as important as this bill, and we are giving a provincial tax credit, it is certainly important to the people who live in those two provinces and who believe they are going to be designated; and there is nothing in the bill that says the Minister does not have to do it.

Mr. THORSON: That is quite true, Mr. Chairman. The reason the expression is used is that it is common terminology in the taxing statutes of Canada generally to speak of a prescribed province in this context. For instance, you have a reference to a prescribed province in sections 33 and 40 of the Income Tax Act. The term is used in order to provide flexibility where an agreeing province becomes a non-agreeing province or where a province not previously an agreeing province becomes one.

The CHAIRMAN: As I understand it now a prescribed province would be such province or provinces as from time to time—

Senator CROLL: That's a little rough. I think you are right, Mr. Chairman, in this case, but let's pass the section.

The CHAIRMAN: I don't think I am being rough at all. I am just being reasonable.

Senator CONNOLLY (*Ottawa West*): What does section 58(1) (m) mean?

Mr. LINTON: I don't know that I can say what it means any more than reading it. I don't get the difficulty, I am afraid.

Senator POWER: It is not a matter of any difficulty. Senator Connolly wants to know why we are elevated to the status of officers.

Mr. THORSON: I would refer you to the definition of "employee". Here an officer is equated to the status of an employee, and in those provisions where an employee is referred to in the act you may read into that same provision the definition that you find in paragraph (m) of subsection 1 of section 58, of the expression "officer".

The CHAIRMAN: You are going further in this act than you do in the Income Tax Act, in which you say an employee includes an officer but you don't say an employee includes a director.

Mr. THORSON: Yes, I believe in the Income Tax Act the expression officer is defined to include these various other persons.

The CHAIRMAN: Well, I hunted for it and I could not find it. Perhaps I was not reading it right.

Senator WHITE: Mr. Linton, I would refer you to section 58(2) on page 46 of the bill, where you define the meaning of "child". You say this includes an illegitimate child. What about a case where a person who dies intestate has an illegitimate child? Under section 7 there is a basic exemption of $10,000. Just what would happen there?

Mr. LINTON: This would apply to the illegitimate child who inherits. It would have no application if he was not a successor. If he is a successor he is treated for all purposes as a legitimate child.

Senator WHITE: It does not mention anything about the illegitimate child being a successor here.

Mr. LINTON: No.

Senator WHITE: Well, if under section 7 a child includes an illegitimate child, and then in the case of an intestate in a province where an illegitimate child does not inherit, you would still have the $10,000 deduction?

Mr. LINTON: Oh! I see. I'm Sorry. Yes, relating this definition to section 7 the children's exemptions would arise when there was an illegitimate child whether he inherited or not.

Senator WHITE: How did you allow that to get in there?

Mr. LINTON: We thought it was fair that way.

Senator EULER: Does an adopted child qualify?

Mr. LINTON: Yes.

Senator BOUFFARD: It does not apply to grandchildren.

Mr. LINTON: No, unless they happened to fall within the category of someone who has legally or in fact under the custody and control of the deceased.

The CHAIRMAN: Any other questions on the definition section?

Senator BOUFFARD: I think you intend to stand paragraph (s).

The CHAIRMAN: Then shall section 58, subject to paragraph (s) standing, carry?

Hon. SENATORS: Carried.

Section 58, except for paragraph (s), agreed to.

On Section 59: Application of act.

The CHAIRMAN: These provisions are all formal and technical. As I understand it the Dominion Succession Duty Act is not going to be repealed. It will continue, I suppose, for an indefinite period of time?

Mr. LINTON: That's right.

Senator POWER: What did you say?

The CHAIRMAN: I said that the Dominion Succession Duty is not going to be repealed.

Senator POWER: Even after this is proclaimed?

The CHAIRMAN: No.

Section 59 agreed to.

On Section 60: Coming into force.

The CHAIRMAN: I would like to ask a question before this carries. Can anyone of you tell me when it is planned that this statute or any law based upon this bill will be proclaimed or come into force? Is there any indication?

Mr. LINTON: I think we can only say what the Minister said in some other place, that it would not be for some months.

The CHAIRMAN: I think there was a suggestion somewhere that it would be January of 1959.

Mr. LINTON: There has been no official suggestion of that as far as I know.

Section 60 agreed to.

Senator HAIG: I move that we adjourn.

Senator MONETTE: Mr. Chairman, before we adjourn, I have here the text of a new subsection which I propose, to provide that any sections of this act shall not affect the community share of a surviving spouse when the husband or wife dies. When section 4 of the bill is considered, I would amend the section by adding subsection 4, to read as follows:

> Notwithstanding anything in this act, the share of the surviving spouse in the community of property that existed between such surviving spouse and the deceased immediately prior to the latter's death shall not be included in determining the property passing upon the death of the deceased.

The CHAIRMAN: We have already prepared a draft, a copy of which is in the hands of the Minister, but in case your draft might be different, we should have it also.

Senator MONETTE: Yes.

Whereupon the committee adjourned.

1958

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

To whom was referred the Bill (C-37), intituled:
An Act respecting the Taxation of Estates.

The Honourable SALTER A. HAYDEN, *Chairman*

No. 4

THURSDAY, AUGUST 21, 1958

WITNESSES:

Mr. Donald Fleming, P.C., Minister of Finance. Dr. A. K. Eaton, Assistant Deputy Minister, Dept. of Finance. Mr. Ernest H. Smith, Finance Officer, Taxation Div., Dept. of Finance. Mr. W. I. Linton, Administrator, Succession Duties, Dept. of Nat. Revenue. Mr. A. L. De Wolf, Solicitor, Department of National Revenue. Mr. D. S. Thorson, Solicitor, Department of Justice.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1958

62223-3—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

*Aseltine	Gershaw	McLean
Baird	Golding	Monette
Beaubien	Gouin	Paterson
Bouffard	Haig	Pouliot
Brunt	Hardy	Power
Burchill	Hayden	Pratt
Campbell	Horner	Quinn
Connolly (*Ottawa West*)	Howard	Reid
	Howden	Robertson
Crerar	Hugessen	Roebuck
Croll	Isnor	Taylor (*Norfolk*)
Davies	Kinley	Turgeon
Dessureault	Lambert	Vaillancourt
Emerson	Leonard	Vien
Euler	*Macdonald (*Brantford*)	White
Farquhar	McDonald	Wilson
Farris	McKeen	Wood
		Woodrow—49.

(Quorum 9)

**ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, August 14th, 1958.

"The Senate resumed the debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Emerson, for the Second reading of the Bill C-37, intituled: An Act respecting the Taxation of Estates.

After further debate, and—

The question being put on the motion for the second reading of the Bill, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affimative."

J. F. MACNEILL,
Clerk of the Senate.

62223-3—1½

MINUTES OF PROCEEDINGS

THURSDAY, August 21, 1958.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 8.00 p.m.

Present: The Honourable Senators: Hayden, Chairman; Aseltine, Baird, Bouffard, Brunt, Connolly (*Ottawa West*), Croll, Euler, Haig, Kinley, Lambert, Leonard, Macdonald, Power, Taylor (*Norfolk*), Turgeon, White and Woodrow.—18.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel, the Senate, and the Official Reporters of the Senate.

Consideration of Bill C-37, An Act respecting the Taxation of Estates was resumed.

The following witnesses were heard and questioned:

Mr. Donald Fleming, P.C., Minister of Finance.

Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance.

Mr. Ernest H. Smith, Finance Officer, Taxation Division, Department of Finance.

Mr. W. I. Linton, Administrator, Succession Duties, Department of National Revenue.

Mr. A. L. De Wolf, Solicitor, Department of National Revenue.

Mr. D. S. Thorson, Solicitor, Department of Justice.

At 10.30 p.m. the Committee adjourned until Wednesday, August 27th, 1958, at 10.30 a.m.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, THURSDAY, August 21, 1958

The Standing Committee on Banking and Commerce, to which was referred Bill C-37, an act respecting the taxation of estates, met this day at 8 p.m.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Gentlemen, it is 8 o'clock, and we have a quorum. The Minister is here, and I think we should proceed.

The first and most important item, I would suggest, Mr. Minister, so far as the committee is concerned is the item having to do with the treatment of pensions, and if you could deal with that you would be hitting at a question that is basic in the concern of the committee as to this whole bill.

I should state, as a preliminary, I think, the views—not the conclusions, bu the views of the committee in relation to it. There are two: One is the valuation of the pension itself, and the feeling that included in that capitalized value is an element of income tax, and that there should be some provision by which before tax is assessed the income tax element is deducted from the capitalized value ascertained in accordance with the bill. Secondly, there is a feeling in relation to the payment that it is very onerous to exact complete payment of the capital tax at once or on the installment basis of six years as provided in section 15, I think it is; and the suggestion here has been under consideration that the capital tax should be deducted annually from the pension payments at a rate not in excess of 15 per cent. If, of course, the pension is for a term of years that would have to be controlled by the period that the payments run. You could not lay out a program of payment that ran beyond the term of years, but only subject to that; and the restriction in relation to this treatment of pensions in general is this, where such pensions or superannuation payments are subject to income tax under the Income Tax Act, then this treatment is the treatment that it feels should be given. Now, I think I have stated it correctly.

Senator LEONARD: May I be permitted for one minute just to elaborate? First of all, in connection with the valuation of the pension benefit, I might say, Mr. Minister, that we were impressed by the representations that were made by the various witnesses; but I should say also that we have had most excellent information from your officers and were all very much impressed by what they have done in giving evidence before this committee.

The practical suggestion was made in dealing with the question of the valuation, of that kind of pension or superannuation benefit which is taxable in full under the Income Tax Act. The suggestion made to us was an attempt to perhaps spread that tax over the life expectancy so that the Government would not lose any tax, because what it lost by a short fall through the death of an annuitant prior to his life expectancy would be picked up again in the case of some who lived beyond him; but I think we realize that as practical difficulties, and that it really amounts to an income tax that hardly fits into an estate tax.

On the other hand, it seems to us that a precedent had been created particularly in the case of the self-employed retirement fund, where when income does go into a retirement fund it is allowed to come out on a flat rate of tax, notwithstanding it has gone in at some unknown rate of tax; and it seemed to us that it was not beyond the wit and ingenuity of the Government officials and of yourself to find some method of overcoming this double tax, and which we are all convinced is in existence, namely, that when the superannuation benefit or pension is valued for estate tax purposes no allowance is made for the fact that there is a potential tax liability for income tax in the payment still to come by reason of the fact that income tax has been deferred upon the payments that went in to make up that superannuation benefit. We are all agreed that the deferred income tax is properly payable, and it is a question of the valuation.

Now, in the endeavour to arrive at some method we thought the best way we could do it would be to enunciate the principle and then leave it in the hands of the Minister and of the department to find some practical way of applying that principle so that the suggestion we have came down to an amendment along those lines and in the section which says that no allowance shall be made for income tax and valuation; that is, section 26.

No allowance shall be made for income tax in valuing the property, which is section 26, but we will add a subsection which says,

> notwithstanding anything in subsection 1 where a superannuation or pension benefit is taxable under the Income Tax Act.

Those are the words used in the Income Tax Act to describe the only superannuation or pension benefit which is taxable under the Income Tax Act to the full amount of it as distinct from the content of it.

> There shall be deducted from a value of the said benefit as otherwise determined by this act an allowance for the income tax payable thereon and the minister shall by regulation prescribe the manner in which such allowance shall be determined.

What it should be is entirely in your hands, I think, whether it should be a table or a method or a flat rate as a practical solution to it, but it seems to us that the double tax does exist, that the principle of trying to avoid it should be recognized and that some practical method might be found by you and by your department to overcome that double tax.

Hon. Donald Fleming (Minister of Finance): Mr. Chairman and honourable senators, first let me express again my warm thanks for the opportunity extended to me of coming before you again at this meeting this evening to discuss matters which you have reserved for further consideration in the study you have conducted on this bill. You have set forth a pretty broad term of reference I think, Mr. Chairman, and I hope that I will remember all the points that have been raised and not need to have my memory jogged on them, but if I do overlook some of them please jog me on them, because I would like to deal fully with all the points that have been raised.

I take it that the first question that I should deal with is one pertaining to the scope of those provisions on page 3 of the bill, which are to be found in clauses 3(1)(j), (k) and perhaps (l), and then pass on from that to questions of the basis of valuation and then from that, Mr. Chairman, to some of the more specific points to which you referred and to which Senator Leonard has made more extended reference.

We start with the principle, I take it, that the tax created by this act should apply to all property passing on the death of the deceased. Now, in many cases it is not property that passes directly from the deceased, it is property the passing of which finds its occasion on the death of the deceased.

The Dominion Succession Duty Act—and I realize that there have been statements, Mr. Chairman, that because provisions have been contained in the Succession Duty Act for the past 17 years that is, of itself, no reason why they should be carried forward or regarded as sacrosanct. Nevertheless the principle has been well established all these years that annuities pensions in general are to be treated as part of the succession and to be subject accordingly to the provisions of the Succession Duty Act. One need refer only to section 3(1)(g) of the present act.

Now, we have accepted that principle in writing the definitions that are contained in section 3, page 3, of this bill. We have dealt with a particular case or two in the application of that principle, that may extend beyond its application in the Succession Duty Act. I don't think it can be said to be an extension of principle—the principle is well established—but an extension of the application of the principle. We have included in the definition of "property" the kind of payment we are speaking of here, annuity or pension payments, the periodic benefits, those which were not in the lifetime of the deceased the subject of a legal obligation, the payment of which arises following the death of the deceased and are occasioned by his death. We considered that to be a fair and reasonable extension of the application of the principle.

There is as well in paragraph (l) the provision which you mentioned, Mr. Chairman, by which there is included in the succession a payment which is admittedly voluntary in its nature, made for the benefit of—let us take the case of the widow of the deceased, by the employer of the deceased. That type of payment, as all honourable members of this committee know, is recognized in the Income Tax Act, in a provision which exempts payment, not exceeding three months' salary of the deceased.

We have included those in the scope of the definition of "property", the estate passing subject to estate tax, because if you do not do so, you are leaving the door wide open to cases where it would be the simplest thing in the world for employers and employees to have an understanding. Let us take the case of a senior officer of a corporation: he has an understanding, and he knows he can depend on those who succeed him in the management of the company to make provision for his widow by the payment of periodic benefits. No contract is set up that is legally enforceable, and there is nothing upon which the deceased or his widow could have sued in his lifetime; there is nothing on which the widow can sue following the death of the deceased. But, as I say, if you do not have that provision, such a case could be multiplied many times over, based upon attempts to avoid the incidence of estate tax by having quite informal understandings instead of legally enforceable contractual undertakings.

One further observation on the matter of annuities and pensions. If you do not have provisions such as we have included in this bill, it seemed to us, Mr. Chairman, you would be creating a discrimination in favour of a particular type of property, which did not seem justifiable. Why should you have some special rule applicable to the periodic type of payments as a benefit passing or arising out of the death of the deceased?

Now, may I pass on to speak about the basis of valuation?

There is, I take it, no difficulty at all under the estate tax where the periodic payment is created under the will and represents simply the division, by the terms of the will, of an asset as between the life tenant on one hand and the remainderman on the other. One of the great advantages of the estate tax is that you do not have to determine the respective values of these two interests; you simply take the value of the asset; you are not concerned about the individual successions. There is no problem or difficulty there. This type of tax has the beauty of simplicity on its side there.

But let us take the case of the annuity that is not carved out of the assets of the deceased by division between life interest and remainder. What is to be the proper basis of valuation? Well, this established basis of valuation, as all honourable members of the committee so well know, is that you look at every asset, the asset existing at the date of death, an asset to be included within the scope of the estate for tax purposes. What is that asset? It is a capital asset. That is fundamental, it seems to me, in our approach to this question. There is at the date of death a capital asset, and that capital asset consists of the right to receive for life—because we are talking about the life interest here—stipulated annual payments, or payments that can be expressed in terms of an annual payment. Now, that capital asset is capable of determination; its value can be determined at the date of death, according to well-established principles, and these principles are not confined to situations of this kind, they are used in scores and scores of situations in everyday business experience. You simply calculate according to well-establisheed actuarial formulas the present value of these future payments, and the length of the period over which these future payments are to run is the expectancy of life—worked out, again, according to well-established tables.

Of course there are very few lives that will work out precisely according to the table, but long experience has proven these tables to be sound as applied to the generality of people in a particular country; and the tables that are in use are tables that have been kept up to date in the light of medical experience, based upon sound statistical procedures, in the light of the fact that life expectancy has risen. These facts are all taken into account; and there is nothing extraordinary about this, it is a well established procedure.

Let us face frankly the two situations: the one where the annuitant does not live out the full span of life according to the tables, and the one where the annuitant lives longer than that span. It is quite clear that if the tables are sound—and they are based upon experience—that as far as the revenues of the Crown are concerned these situations will all average out, so that in the aggregate the Crown is taking its tax based upon a fair method of determining that span of life and the payments that run with it. Is this fair to the individual? That is the next question and I want to face that situation frankly, for I would be less than frank with honourable members of this committee if I did not say we examined this subject with great care and at great length in drafting the provisions of this bill.

Take the case of the annuitant who lives longer than the life span. In that case the Crown goes a bit short. It has determined the tax on the present value of this asset and has not taken into account the period that the annuitant has survived the span contemplated by the tables. I suppose nobody is going to say, "Well, in that case the Crown should come along and re-assess." But, with great respect, Mr. Chairman, there would be just as much equity in providing legislation whereby in a case like that the Crown should re-assess as in the converse case that I will present to you now.

Let us take the case where the annuitant does not live out the life span according to the tables. Let us take an extreme case where the annuitant lives for two years when the tables would give her a life expectancy of 25 years. That is an extreme example. What are you going to do in that case? You have charged the estate—let me observe that—the estate, with a tax based upon the assumption that these annual payments were going on for 25 years but they went on for only 2 years. Are you going to re-open the assessment and say that the Crown here has assessed too much and you are going to re-open it?

What is the situation? In the first place under this act the tax has been levied upon and paid by the estate. Presumably it has not been paid by the

annuitant. Someone might be able to think up a particular case where the annuitant has paid the tax. But what happens on the death? You cannot re-open that assessment and give back to the deceased annuitant the portion of the assessment that in the light of actual later events proves to have been an over-assessment based on the assumption that death was going to occur later than it did. You cannot give that benefit back to the deceased annuitant. What are you going to do? In that case are you going to re-open the assessment and turn a refund back to the estate, back to the executor to distribute? I suppose that could be done if you are going to do it in the simple case I have put where the death of the annuitant occurred two years after the death of the deceased. But that was a simple case. Let us take a case where this occurs 20 years after the death of the testator. Suppose the life expectancy in the case of the young widow was 30 years and she lives only 20. Is it going to be said you should reopen the estate and re-assess it after 20 years?

Mr. Chairman, I think it is going to mean that the Department of National Revenue will be kept pretty busy with a lot of assessments in cases where periodical payments are provided, terminable on death or similar events, if that type of situation were permtited to be made the occasion of a revision of this proposed legislation.

The CHAIRMAN: I should point out that this particular aspect is not involved in the suggestions of the committee.

Hon. Mr. FLEMING: I beg your pardon?

Senator LEONARD: I don't think we made ourselves clear.

The CHAIRMAN: No. We accept the method of evaluation. We are not asking for the re-opening of assessments. All we say is that having made the capitalized valuation in the case of pensions that also attract income tax in the annual payment of them there should be a calculation of the income tax element, and a proper calculation made of the total capitalized value before you tax. So we are not going down the line and making impediments in the way of administration.

Senator BRUNT: You might give us the formula for dealing with the voluntary payment.

Hon. Mr. FLEMING: Well, the voluntary payment is included under clause (1) at page 3.

Mr. Chairman, you have raised the question as to why the bill does not provide for deduction in determining value of that capital asset, the periodic payment, why provision should not be made to deduct the income tax that may in future be payable in respect of it. That view, I take it, proceeds upon the view that, in words I think both you and Senator Leonard used, there is some double tax here.

The CHAIRMAN: I did not say that.

Hon. Mr. FLEMING: I would like respectfully to submit to the committee, Mr. Chairman, that there is no double tax.

The CHAIRMAN: I spoke of capitalizing tax—income tax.

Hon. Mr. FLEMING: I think perhaps the point of view is not unlike that which I think was inherent in the comments of Senator Leonard. What is double tax? Double tax surely means the same tax, the same type of tax, levied twice. It does not mean that the same transaction may not be subject to two different types of tax. I have some money in my pocket—not very much. Before it got there, or if not yet, then I am going before very long to have to pay income tax on it, and the storekeeper from whom I buy goods is going to be including in the price of the goods some sales tax; he may be including also some excise tax in addition to sales tax. These transactions all involve various

taxes, and the fact that the same particular payment may be subject at the same time to estate tax and to income tax does not for one mintue, in my respectful submission, justify any contention that there is double taxation there.

Now, in the case that has been put by you, Mr. Chairman, you say the deceased has acquired in his lifetime by reason of payments—and I take it we are not going to deal with the case where he has received income tax benefits in his lifetime for payments that he has made by way of pension, when he buys a pension?

The CHAIRMAN: No, we are dealing with the case of any pension which after the death of the deceased is payable by reason of his death and the proceeds of which are taxable under the Income Tax Act.

Hon. Mr. FLEMING: Because, you see, many of these pensions are of the nature of pensions which have been or to which an individual has acquired a right by reason of payments that he has made during his working years and has had the right to deduct those payments from his income tax. We are dealing now simply with this periodic payment arising out of it.

Senator LEONARD: Mr. Chairman, may I interrupt for a moment just for the sake of clarification? There are the two types of pensions you mentioned. There is the one a man has acquired out of payments upon which income tax has been paid in his lifetime. We raise no question as to that type of pension whatsoever. The usual type of pension is the one we are concerned with, the one acquired by an employee of a company and for which he has been allowed an income tax deferment during his lifetime, and that impresses me as being merely a deferment of the liability, and quite properly when the annuity is payable after his death it attracts the full amount of income tax. The deferred income tax is then caught up and paid after his death. The two annuities are quite different. One is an annuity clear of income tax except as to the income content arising out of his death. The other is a pension which attracts full income tax on the full amount of the pension. Those two have entirely different sets of values. We suggest the deferred income tax which has been allowed in his lifetime and which quite properly is made payable after his death is, nevertheless, an item at death, a liability against the value of the pension benefit that arises upon his death, and suggest that some allowance might be made in valuing that pension.

Hon. Mr. FLEMING: Thank you for that clarification, sir. In this case that has been put, there is no argument at all, of course, for not applying the income tax. The question is simply whether you should make some abatement of the estate tax, because, you know, periodic payments may attract an income tax in the future. I submit, Mr. Chairman, that if you are going to permit the deduction of income tax—a putative calculation, because no one knows precisely in advance what it is going to be, for the thing is provisional, it is hypothetical, I don't know, in the first place, how you are going to calculate it.

The CHAIRMAN: Except this, that you have a mortality table on which you calculate life expectancy. Now, if you do that, I suppose you can apply the same principle to this?

Hon. Mr. FLEMING: You can take the same life expectancies, but you cannot take the same assumed tax rates at death, and that is, if I may respectfully say so, an insuperable task, to calculate such benefit. The calculation would be both putative and hypothetical, but I do not stop there. Parliament may change the rates, change the basis of it all overnight. It is the question of discrimination. Now, how can you justify singling out that particular type of asset and say that in calculating the value of it you are going to apply a rule that you don't apply to any other type of asset? You are going to deduct from the calculated present value of those future payments some figure that

you assume to be the income tax leviable year after year on those future payments. Now, let us take the case of the proceeds of an insurance policy. An insurance policy in capital form will bear its share of estate tax and whatever may be the yield in future years from the proceeds of that policy will be subject to income tax, and nobody proposes that the capital value of that policy should be reduced for estate tax purposes by the assumed income tax to be imposed, I assume, on the earning power of the proceeds of that policy in years to come. Now if this what I call discrimination were sound it is going to be good for the annuity business, but with great respect it seems to me that would be an intolerable discrimination to a particular type of property. I submit therefore that there is no basis for this.

The CHAIRMAN: Mr. Minister, we have a feeling that the discrimination is against the pensioner who is receiving that annual payment in imposing this extra burden and lessening the quantity of the pension payment that would be otherwise received.

Senator LEONARD: The analogy of your case, sir, is only that a pension which now exists as to which there is only income tax on the future interest. That stands on exactly the same footing as an insurance policy and there is no discrimination, and we all agree with that. But we do think that where a man had not paid income tax in his lifetime and owed it at his death it would be allowed as a liability. The mere fact that it is going to paid over a number of years in the future because it was not paid in his lifetime does not alter the fact that it is a liability and a detraction from the value of that particular asset. A discrimination now exists because that one pension that is subject to a tax on the full amount of the pension is valued at exactly the same amount as the other pension which is subject only to an income tax on the future interest earnings of that particular pension.

Hon. Mr. FLEMING: With great respect, Mr. Chairman, I do submit that the way this bill is drawn it prevents a discrimination that would arise if you apply what is proposed now. It would give a benefit to the annuitant in the calculation of the value of that periodical future payment. You are going to create a discrimination in favour of a particular type of property, and I submit that is not defensible, and I come back and comment on the amendment that Senator Leonard suggests in this respect, to the fact that there is no way of calculating such an allowance. That was I think to some extent recognized in the suggestion that the senator made in his draft amendment to section 26, but I did note that the difficulty in this respect was plainly recognized by the amendment in providing for a deduction as the Minister might prescribe. Now with great respect, Mr. Chairman, I would recoil from any proposal of that kind. No Minister should be put in the position of determining tax.

Senator LEONARD: This is a matter of regulation and if I might just deal with that one moment. On two occasions, one is in connection with the self-employed retirement fund, a similar situation has arisen and an arbitrary rule of 15 per cent has been established. I am not suggesting that 15 per cent should be the case here but at any rate when the difficulty was recognized there was a method found. The other one was of course under section 105A where we go to the distribution of accumulated profits. An arbitrary method had to be found and the 15 per cent formula was found there again on the point in question now. Under this act the taxation of Canadian assets of non-residents a formula of 15 per cent has been found.

So that I suggest there is some virtue in our recognizing the principle, if the discrimination exists, and we think it does, and find a reasonable formula for dealing with it.

Hon. Mr. FLEMING: With great respect, Mr. Chairman, I do not think those are dependable analogies. A tax on refund of premiums or a flat tax on the property of persons domiciled abroad is very different from creating a flat tax on the assumed future income tax, year by year, over a period of years in place of a tax that the act is going to create.

Now, you are asking Parliament or asking the Minister according to the form of that amendment to substitute some tax by regulation for what may be a tax that may be changed 30 times in the lifetime of the periodical payment.

The CHAIRMAN: We are not asking for the substitution of any tax, we are only asking that a formula be arrived at. The only tax that is warranted by the annual payment is imposed on the person who receives the money. That is not imposing a tax at all.

Senator LEONARD: It is a formula for valuation.

Senator CONNOLLY (*Ottawa West*): Could I say it this way: when it comes to the question of valuation for duty purposes what we feel, as Senator Leonard and the Chairman said, is that the income tax liability, the content of income tax in the valuation which normally would be made should be recognized, but once the pension payments are being made they will be subject then to the regular income tax year by year. We are not asking that that tax be modified in any way. In other words, if the pension, say, is $2,500 a year or $3,000 a year, the recipient of the pension will pay tax on the amount of income that that person gets in the future.

Hon. Mr. FLEMING: I follow that entirely, Mr. Chairman, but I do point out that what is proposed is the calculation of a reduction in the estate tax, the basis of which is a putative calculation of income tax liability year by year and that, with great respect, is something that should not be made the responsibility of a Minister. Parliament will have to say what should be done in that case, and with great respect I say that that is not a case analogous to those put by Senator Leonard where a flat tax imposed in advance is the best tax in those circumstances. This is a case of trying to establish some nice round figure and take that as a substitute for the varying rates of tax that may be applicable and basing a present calculation on that as to the date of death applied in determining the capital value of the future periodic payments.

Senator CROLL: Mr. Minister, you put great emphasis on discrimination and make a point of it. Can you think, in the case of an estate, of any other asset that has a built-in liability as has this pension? Talking about discrimination, who is being discriminated against that you cannot discriminate. What I say is that this has a built-in liability and you are now discriminating against these people as against the others. That is my suggestion.

Hon. Mr. FLEMING: We did work out a couple of examples and we could relate them to the committee, Mr. Chairman, if that is satisfactory.

The CHAIRMAN: Yes, that is satisfactory.

Hon. Mr. FLEMING: Mr. Smith worked out today a couple of examples which perhaps would be of interest to the committee to illustrate this point. Mr. Smith will describe them.

Mr. E. H. SMITH (*Department of Finance*): Mr. Chairman, it is difficult to put in a short compass all I have in this table. Perhaps I could say that I thought it might be useful if one could find in the files of the Department of National Revenue an actual case of what happened and what was the effect of Estate tax plus income tax on a pension. These examples I have were just selected at random.

The first one I have was the case of an estate of about $98,000. I do not want to give you all the assets, but there was a pension given to a widow, age 42, of about $1,900 a year, the capital value of which was established at

$32,000. That is quite a large pension in relation to the total size of the estate. Then there were three dependent children and they got pensions of various amounts. I assumed that after the succession duty had been paid the widow was left with certain assets from which she would get her income: bonds of about $30,000, stocks $1,000, cash $1,000, real estate and personal effects $18,000 on which there was no income. Her total income—and I must say the income from the pension to the children is not her income, but is separate—came to $3,200 a year.

Senator BOUFFARD: Including the pension?

Mr. SMITH: Including the pension.

As a widow with three dependent children she can claim married status on account of one child and $250 in respect of the other two, and she would probably claim the standard deduction of $100. This would give her a deduction of $2,600, and a taxable income of $600. The tax on this would be aproximately $80. She would get a small dividend tax credit because she had stocks of $1,000; I assumed she would get $50 from that source, on which she would have a small dividend tax credit of $10, leaving a total tax of about $70.

So, her pension is being taxed in this case at a little over 2 per cent for income tax. Her succession duty on the whole estate was about $7,500, which is 8 per cent of the value of the estate. So, you will see that the pension is being taxed at 8 per cent for succession duty, 2 per cent for income tax.

I then figured out what the estate tax would be on $98,000 for a widow with three dependent children. In this case $90,000 is exempt, the taxable value is $8,000, the tax is $860, and the effective rate is a little less than 1 per cent. Under the estate tax her tax in respect of pension is 1 per cent, and her income tax would be a little higher, since having paid less under the estate tax she has more income. I would make her effective tax rate 2.5 per cent. Therefore, the effective tax rate on the pension for income tax is 2.5 per cent, for estate tax just under 1 per cent, or a total of 3.5 per cent.

Senator HAIG: How much money do those two items represent?

Mr. SMITH: I don't know whether you should compare the two; one is on capital and the other is annual income.

Senator BRUNT: A small amount.

Senator CROLL: Less than $1,000 altogether?

Mr. SMITH: An estate tax of $860 and an annual income tax of about $70.

Senator CROLL: Less than $1,000 altogether?

Mr. SMITH: Yes. If the committee is interested in another example of a bigger estate of about $400,000 I have the figures on such an estate.

Senator BRUNT: Just give us the percentages; don't go through all the details.

Mr. SMITH: This is an estate of about $425,000—and the department changed some of these figures so that the estate might not be identified—there was a pension of $5,000 a year for a widow aged 46. This made a value of $80,000 for the pension, quite a large one, out of an estate of $425,000. By the time she had paid the duties, and her daughter paid some duties, she was left with $325,000, of which if I remember correctly, $100,000 was in stocks and a similar amount in bonds. The income from all these things, including the $5,000 pension, was $14,500. As a single person she could deduct $1,000—I omitted the standard deduction in this case. The dividend tax credit—which in this case is important—on the $5,000 income from her stocks, results in a credit of $1,030, and a net tax of $2,354. Taking that as a percentage of her income,

it is an effective rate of 16.2 per cent. The effective succession duty rate was 25 per cent. Adding them together you get about 41 per cent, which is quite a bit higher, but on a larger estate.

I then calculated the estate tax on this same estate, and it was considerably lower. It came to an effective rate of around 20 per cent. The amount was $110,000 for succession duties, $85,000 for estate tax. The difference in the two was mainly by reason of the widow's larger exemption, but another factor was the joint property. Some of that of course is not taxed under the new act, whereas it was under the old one. So, she would have paid considerably less succession duty than estate tax.

To summarize, the effective rate on this pension in this estate originally valued at $425,000 was about 20 per cent estate tax, and 16 per cent income tax.

Hon. Mr. FLEMING: Mr. Chairman, just one or two observations to complete the picture, if I may.

I should like to remind you, Mr. Chairman and honourable members of the committee, that the right or opportunity to defer income tax is a very considerable benefit under the law; and having extended that benefit in the lifetime, surely it is not going to be said that there is any onerous burden laid on that situation, in the light of what we are proposing here.

The second point, I was asked, if there were any other cases. I think Senator Croll asked if there were any other cases where a tax levy did not take account of a built-in tax liability. If I may, I will ask Dr. Eaton to give one example from his expenrience, and Mr. DeWolf another.

The final matter you asked me about, Mr. Chairman, had to do with the payment of tax in annual instalments under section 15 of the bill. The bill permits the payment in six annual instalments; and, assuming I could follow the suggestion, it was that there be a right to extend the period of payment so that there would be no obligation to pay in any one year more than 15 per cent of the estate.

The CHAIRMAN: No.

Hon. Mr. FLEMING: Is it 15 per cent of the benefit?

The CHAIRMAN: Of the benefit.

Hon. Mr. FLEMING: I think there will be a very great difficulty presented in trying to apply a limitation of that kind. It would mean a great deal of calculation on the part of the officials, and, I should thing would mean carrying some estates on for a very long period. Now this is one of the provisions that was carefully examined—they all were carefully examined, but this one was very carefully weighed—to try to arrive at what might have been regarded as an equitable period over which to give the opportunity to distribute the discharge of the tax liability.

The CHAIRMAN: Mr. Minister, I was wondering if I could call your attention to this. I would say a substantial portion of these pensions would be paid by insurance companies or by employees or trustees of funds; and as to employers and life insurance companies and others who would be paying them, are already making payments of an income tax nature from which they make income tax deductions monthly and remit; therefor, as to the certainty of getting your money, I don't see much problem in that, or as to complication of bookkeeping, I do not see much of a problem there.

Mr. FLEMING: Would you permit a word from those who are dealing with these matters, Mr. Chairman?

The CHAIRMAN: Yes.

Mr. FLEMING: I do not want to be rigid or dogmatic about a period like this. We did write in a provision for a period, over a six year period; we thought it was reasonable under the circumstances. If there is something

specific, we would be glad to give consideration to it. But I must say that the difficulties of any such formula as has been proposed will, I think be very considerable. Perhaps those who are dealing with these matters can best describe them. Would you hear Dr. Eaton and Mr. De Wolf dealing with concrete cases, in reply to Senator Croll; and then, perhaps, one of the other officials could deal with this point you have raised just now.

Dr. EATON: As to this other kind of payment, I made the mistake myself in the other place before the committee, by assuming that this is the only kind of payment that is treated in this way, and it was pointed out that there are, in the case of life insurance agents, deferred commissions which can be coming in after the death of the deceased, which come to his estate. These are fully taxable as income, and the estimated amount over the period is capitalized.

Mr. DE WOLF: The example which I have in mind is this: We had a peculiar situation, which arose in this way. An estate was entitled to an annuity of $10,000 per year. The annuity arose in this way, that the deceased person owned a building; the building was leased to a company at a rental of some $30,000 per year; $10,000 of that was payable to the deceased's estate for a period which would expire on the death of the survivor of a group of persons, which included the deceased, but would have about 45 years to run after the death of the deceased. When this income was received by the deceased's estate from the estate of her father it would be disbursed to the various beneficiaries. There would be no allowance for income tax, although income tax would have to be paid in respect of this annuity which the deceased's estate would receive and which would pass to her beneficiaries.

Senator CROLL: I merely point out that these examples are not normal examples. Mr. De Wolf's was unusual, and Dr. Eaton's applies to a very small minority of our people who have incomes of that size. The proportions are probably 100 to 1, so the discrimination, I point out, works the other way.

The CHAIRMAN: If we have exhausted this particular subject of pensions, could we move on to the next.

Hon. Mr. FLEMING: Perhaps you would hear Mr. Linton on that last point, about the annual payments.

The CHAIRMAN: Yes.

Mr. LINTON: Mr. Chairman, as I understand the proposal, it does not adopt the suggestion that was made in some of the representations, that this payment would be deducted at source; or does it intend that?

The CHAIRMAN: I think so.

Senator LEONARD: It intends it,—just to carry your six year provision further—in cases of hardship, and not to make the payment payable to the department by the insurance company—

The CHAIRMAN: Yes.

Mr. LINTON: Either way is contemplated.

Senator LEONARD: Either way would be contemplated.

Mr. LINTON: If you had the employer deduct it you would have the difficulty of him knowing what to deduct. I take it that what would be deductible would be variable in each case, depending on the relationship between the amount to be paid normally from an instalment, and the amount of the instalment.

Senator LEONARD: You would instruct him.

Mr. LINTON: We would have to instruct him in each case what this was. The idea would be, I take it, if we had a $1,000 payment, and the instalmnts, by the six year period now provided, come to say $200, that would be over the 15% and the $50 would have to spread further than the six years. How much further?

Senator LEONARD: Fifteen per cent is something just suggested, but I suggest to you that there must be some point at which hardship starts. If you thought 20% was all right, that would be in your own hands. But at some figure you would say, "we are collecting $200 out of this annuity", and you would carry it on as long as it was necessary.

Mr. LINTON: Is the suggestion that we would carry on for six years, and the balance for some longer period?

Senator LEONARD: Until you were paid.

Mr. LINTON: At discretion, I suppose?

Senator LEONARD: Yes.

Mr. LINTON: There is going to be a good deal of recalculating, as well as disagreement with the estate, as to how long it should be. They would like it to be infinitely long, and we would be interested in keeping it reasonably short. I think it would be a matter on which there would be major dissent. And then we would have to establish contact with the payor for deduction at source, and machinery would have to be set up to keep track of that. The Chairman has suggested that these payors are insurance companies and so on. There would be no difficulty in collecting from them. But a great many of these people will not be such payors, but small employers and small pension funds, in regard to which a great deal of pursuit may be necessary.

Senator LEONARD: I don't think it will be necessary to debate the details, but it would seem to me that if you can do it for six in that settlement you could do it for seven or eight or ten.

Mr. LINTON: We are not proposing in the section to have it paid at the source.

Senator LEONARD: You have in section 16 a provision that if there is undue hardship the minister may defer payment; and we have had these cases presented to us, where the amount taken, even after the six year period, amounts in some cases to 100%, in some cases to 50%. Perhaps you would be able to establish a figure where you would say, "Beyond that there is hardship, and we will not go, and that will be the determining factor, and in that case there will be seven or eight years", as the case may be. That is the whole tenor of the suggestion. If there is any flexibility that you can introduce, rather than a rigidity of six years, which is very good in so far as it goes, we would like to see it.

Mr. LINTON: Might I just say a word on the hardship? This is not to deny that the case could happen as you suggest, but most of these pensions are payable to people who inherit other property too and generally the pension is not absorbed for the six years while the tax is gathered, though it could happen. I just think I should say it is a rather infrequent thing.

Senator LEONARD: There seems to have been so many cases presented to us that perhaps when they have happened they have stood out.

Mr. LINTON: I think that may be it.

The CHAIRMAN: What is the next heading the committee would like to hear the Minister on?

Senator BOUFFARD: I think, Mr. Chairman, there was a good deal of accord in so far as clarification of community of property, and perhaps we could deal with that.

The CHAIRMAN: Yes. Mr. Minister, with respect to the "competent to dispose" question which occurs in section 3 (2) (a) on page 5 of the bill, many points were raised under that section and under a further section of the bill to the effect that unless there was clarification this might run afoul of the community of property concept.

Your representatives here, including Mr. Thorson and Mr. Linton, were very clear and firm that not only was there no intention but, as a matter of fact, to the present moment the Succession Duty Act has not been extended to gather in that particular property aspect.

Senator Monette and Senator Bouffard, who are quite familiar with the community of property law, feel that the law is not as clear as Mr. Thorson and Mr. Linton would have us understand and that if everybody agrees it is not the intent to include community of property, then there should be a clarification in the bill, and that the proper place to insert it would be in the exclusion section, section 4 of the bill. I think you have seen the wording on that, Mr. Minister.

Hon. Mr. FLEMING: Mr. Chairman, I can assure you and all members of this committee that I fully confirm and adopt what was said to you by the officials concerning the intent of the legislation in this respect. It had not occurred to any of us that there was any room for doubt or question in the terms of this bill, but I assure the committee I have no objection if it will contribute to an abundance of clarity in the bill—

The CHAIRMAN: And peace of mind.

Hon. Mr. FLEMING: —to have a suitable provision added here. It will simply be declaratory and confirmatory of what we think was the clear intention, and certainly our understanding of the effect of this provision. There was a question as to where would be the most suitable place to insert it. You mentioned the possibility of inserting it in the exclusions. Mr. Thorson, the very competent draftsman of this bill, thinks that the more appropriate place to insert such a provision would be on page 5, in section 3(2), on the general subject of property of which the deceased is competent to dispose.

Senator BOUFFARD: I would not mind that at all. I would be agreeable to that.

Hon. Mr. FLEMING: I believe the draft prepared by Senator Monette contemplated an amendment to section 4 of the bill. The draftsman of the bill, and with respect, I share the view he has expressed, feels that the better place to insert such a provision—

Senator HAIG: He told me "any place at all."

Hon. Mr. FLEMING: —is in the definition of a property in which the deceased is competent to dispose, and that is in section 3(2) on page 5 of the bill.

Senator BOUFFARD: We don't mind where you put it as long as it becomes clear.

The CHAIRMAN: Mr. Minister, I think the committee would like to hear you on the question of creating a lien under this bill, and that is done under section 43. We suggest you should read section 43 together with section 47 which is the "consent to transfer" section. We feel that the consent should operate as a discharge, and that there should be some provision for securing a discharge because certainly an intended purchaser would want to be satisfied.

Hon. Mr. FLEMING: We have considered that point and have a suggestion to make. The point is a real one having regard to the problem of establishing clear title in land transfers. This question was raised in the other place.

The difficulty is that while Parliament can create a lien, there are difficulties of registration. One cannot compel registrars of liens, or masters of titles, depending on the system of land tenure and registration, as can the provinces, which have a succession duty of their own, to accept for registration certain forms of release. But we have a suggestion to put forward on that. Mr. Thorson will put it forward if it meets your pleasure, Mr. Chairman.

The CHAIRMAN: Yes, Mr. Thorson.

Mr. THORSON: It seems to me that some sort of provision could be drafted to provide that the Minister may, under circumstances where a consent to transfer would be granted, provide for the registration of the discharge of the lien in some form which would be prescribed pursuant to the regulations.

The CHAIRMAN: That seems satisfactory, doesn't it?

Senator BOUFFARD: Mr. Thorson, and Mr. Minister, I think there was something else in the discussion of this matter in so far as Quebec is concerned. A lien is what we call a privilege and it exists at the minute the law creates the lien and then it comes before any mortagage. I do not think it is the view of the department that once a man dies and there is a lien that you are going to take over his property, that the lien is going to come before the mortgage that was established at that time. I think Mr. Thorson knows very well that in bankruptcy and where you have created liens you have also indicated the rank that the lien would bear upon the property. There was the case of *Larue* that went to the Privy Council where it was decided the federal Government had a right to create a lien. But if you do not indicate where the lien is going to rank, then it is going to come before the mortgage, and any mortgage that has been established on the land at that time will come after the amount of the lien unless you say in the law which creates the lien that it is not going to come before the mortgage in existence at that time. I think this is extremely important, otherwise you are not going to have anybody who will loan money on any mortgage if a lien to the amount that may come with the succession duty tax can be established and passed before the mortgage.

Hon. Mr. FLEMING: Mr. Chairman, it is quite clear in the terms of section 43 that the lien attaches only to the estate or the interest of the deceased in the land in question, whatever that interest may be. If he is the owner of the land free of encumbrance, then of course the lien in that case will attach to that property as the first charge on it. On the other hand, if there are prior charges on the property validly created by the deceased and in effect at the date of his death the lien created by section 43 will attach only to the interest of the deceased in that property at the date of his death.

Senator BOUFFARD: I am afraid that so far as Quebec is concerned it is not the law as I understand it. The lien comes before any mortgage. The Civil Code says that privileges, which is a lien, comes before a mortgage, and especially a privilege of a lien to the Crown comes before a mortgage. I am sure the department does not want the mortgagor to suffer on account of the fact that his lien would be created at a time when he already had his mortgage registered.

Senator HAIG: I suggest that the solicitor for the department consult with the Department of Justice on this question to be sure that the law is right, and then go ahead.

Hon. Mr. FLEMING: The extent of the law is quite clear; and in the case the senator has put if the mortgage was a valid charge upon the property at the date of death there would certainly be no attempt to so override that mortgage to create a lien on more than the deceased possessed. The interest, the estate of the deceased in the property at the moment of death was an equity of redemption, subject to the mortgage, in other words. Now, there is no thought

here of applying the lien to anything more than the interest or estate of the deceased in the property. We will be glad to have a look at the point that has been raised by the senator, because certainly the intent of the legislation, and of the person who introduced it, is quite clear in that respect.

Senator MACDONALD: I hope the release would be wide enough to include the interest of the mortgagee in the property because a mortgagee has an estate or interest, and so there would have to be a provision whereby the mortgage could be assigned.

The CHAIRMAN: Are you speaking about Ontario or Quebec?

Senator MACDONALD: I am speaking about Ontario.

The CHAIRMAN: Under Ontario law if there is a mortgage that is registered against property, that mortgage is registered prior to the time this lien comes into existence.

Senator MACDONALD: I am talking about the lien. The department would have a lien against that property because it is property in which the deceased had an interest, it is land in which the deceased has an interest.

Hon. Mr. FLEMING: In the case you are putting, was the deceased the mortgagee, or the mortgagor?

Senator MACDONALD: The mortgagee.

Hon. Mr. FLEMING: The mortgagee. Well, the lien of the tax is only the interest of the deceased in the property, and in that case if the deceased were a mortgagee then obviously there is a lien attached to his interest in the property in the mortgage.

Senator THORVALDSON: Speaking of the West, and anywhere else I know of, I know of no authority for the federal Government being allowed to file a lien in any registry office which would be given priority over a registered mortgage.

The CHAIRMAN: We were not suggesting it in relation to the western provinces.

Hon. Mr. FLEMING: I take it that the question that has been raised applies only under Quebec Law.

Senator BOUFFARD: That is right.

Hon. Mr. FLEMING: In the common law provinces there is no question of a lien attached.

Senator BOUFFARD: I do not think it is the intent of the department to put lien before mortgage.

Hon. Mr. FLEMING: We would be glad to look at that in relation to Quebec.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, in working out this principle, perhaps Mr. Thorson might consider a practical approach to it. As everyone knows, every specific asset that is reported in an estate must be released before it can be administered by the executor. Now, in the case of an asset such as a piece of land, a piece of real estate, if the release contained a discharge or a release from the lien created by the section, that might in a practical way clear out the claim for lien we have been discussing, and I think probably a document of that kind put upon the title would obviate any problem that might arise. I suggest that as a practical way.

The CHAIRMAN: The next item, while we are moving on to these things that seem to be unanimous, is the question of discharge of the trustee. The suggestion has been made, I think by Senator Leonard, who put it in tangible form, that there would be a certificate of discharge granted at the end of four

years, and subject to all the provisions which preserve the right of the Crown in relation to after-discovered assets in the event the trustee had not carried out his duty fully.

Hon. Mr. FLEMING: Well, the statute here creates a legal discharge at the end of four years. It is complete and absolute except in the case where there has been some fraud or some non-disclosure. Now, I am sure Senator Leonard has in mind the type of discharge that has been available to executors under the Dominion Succession Duty Act. That is not an absolute discharge, it is still open to qualification in the event of fraud or non-disclosure, and there is nothing absolute about that. The statute creates an absolute discharge at the end of four years anyway, subject to the same exceptions, and there is no final or peculiar value to the issuance of that type of discharge under the old act.

Senator ASELTINE: Would that mean, Mr. Fleming, that no executor could be discharged—could wind up an estate prior to a period of four years?

Hon. Mr. FLEMING: No, he can go ahead and wind it up. If he has paid his tax on the estate then the act will discharge him. We are talking about the issuance of a certificate. The act does not provide for issuance of a certificate in the way that has been practised hitherto under the Succession Duty Act, but it does give him an absolute discharge where he pays the tax, and an absolute discharge at the end of four years.

The CHAIRMAN: Where is the absolute discharge if he pays the tax?

Hon. Mr. FLEMING: That is his liability. There is no liability imposed on the executor in excess of the estate tax levied.

Senator MACDONALD: Where is the four years?

The CHAIRMAN: That is just a limitation in the absence of fraud or misrepresentation.

Senator LEONARD: Mr. Chairman, if I might put the proposition: it seems to me that it would be quite reasonable to have in the bill a provision to this effect that where there is no tax payable or where the tax has been paid to the satisfaction of the Minister, and where the Minister is satisfied that the executor has execised all due diligence and taken all reasonable precautions to insure that the amount payable by the executor was paid in full the Minister shall, at the request of the executor, give a certificate of discharge to that effect following the words of the present section, and then go on and say the Minister shall not be bound to grant such certificate during the period of four years if he does not desire to do so, and a further subsection to state that it will have no effect in the case of fraud or failure to disclose material facts. Presumably there are a good many cases where all these things would be quite satisfactory to the Minister within the period of four years in the case of simple estates where there is no difficulty whatsoever and it might be just as well for both the executor, who probably wants to clear it up in his lifetime before he dies to get a certificate of discharge and to know he can sleep easily at night, and there seems to be no reason that something like that could not be put in because the Minister can still withhold it if he likes until the four year period, and it is only if the duty is fully satisfied that a discharge will issue.

Hon. Mr. FLEMING: With respect, Mr. Chairman, I suggest that there is no great merit in a discharge under these qualifications. What good does it do? It gives somebody a piece of paper that says, under those conditions and subject of course still to the conditions, that there has been complete disclosure and no fraud; it certifies that he has paid the tax levied on the estate but he is going to have his receipt for the payment of taxes in any event. It is not something that he wants to register in a registry office or produce for

some particular purpose. It has no financial value in that sense in terms of registration as a public document or a document in a public office. I point out that while there has been this provision for issuance of a certificate of discharge under the Dominion Succession Duty Act there is no such provision under the Quebec Succession Duty Law.

Senator CONNOLLY (*Ottawa West*): It is a great comfort for individual executors though, and it might be an advantage in the department where a discharge has been issued the file could be then closed subject to be opened only for fraud.

The CHAIRMAN: I think we have pretty well covered that.

Senator MACDONALD: You give a similar discharge under the Income Tax Act in connection with estates when the income tax has been paid. You give a release under that act.

Hon. Mr. FLEMING: It is a clearance.

The CHAIRMAN: Call it what you will.

Hon. Mr. MACDONALD: The executor does get it though.

Hon. Mr. CROLL: Yes, but it is not any good to him.

Senator BOUFFARD: Mr. Chairman, before closing that point I think it would be a very good thing if the Minister were allowed to give a discharge. In the province of Quebec a lien can be registered on the property and nobody is in the position to give a discharge, and the registration will remain on the property as a lien and mortgage for 30 years and there is no possibility of getting the lien out of the registry unless you are allowed to give a discharge. So it seems to me, Mr. Chairman, under those circumstances the Minister of Finance or the Deputy Minister should be authorized when he is satisfied that all taxes have been paid, should be in a position to give the discharge and liberate the property against which the lien has been registered.

The CHAIRMAN: But we are discussing the discharge of an executor.

Senator BOUFFARD: Pardon me, that is not the same thing at all.

The CHAIRMAN: We will now deal with the case where documents and records are seized and copies made. We feel that the department should furnish a copy of every document to the people from whom the documents were seized.

Hon. Mr. FLEMING: That is the provision on page 36, section 45(4). As long as you do not propose to create an obligation on the part of the department to make copies of documents, certainly in any case where the department chooses to make copies there is no objection to giving copies to the taxpayer in that case. That is the current practice anyway, I am told.

The CHAIRMAN: The next item is section 9(1), the provincial credit. The provincial credit under this bill is based on the situs of property whereas under the present act it is based on provincial taxes paid, and the effect of the provincial credit in this form would be in some cases to reduce below 50 per cent the credit in respect of provincial taxes paid. Mr. Minister, this committee would like to have some statement from you as to why this change and reduction is being made in the extent of the credit.

Hon. Mr. FLEMING: Mr. Chairman, this problem obviously cannot apply in the first place to real estate. It can apply only to other forms of property. Now here we have a situation admittedly where by reason of this rule that is here reproduced the taxpayer in one of the so-called non-renting provinces can have less than half the estate tax cut because of having, we will say, property other than real estate located in a renting province. That is the situation.

Now, Mr. Chairman the effect is that the federal treasury is making payments to those renting provinces on the basis that the property is in the renting province and is taxable there and the federal treasury is going to be the loser here if this provision that we are offering now is changed. In other words the federal treasury will under the Federal-Provincial Tax Sharing Arrangements Act have paid let us say, the province of Manitoba, on the basis of the property being subject to taxation in that province and thereby being rented to the dominion. Having paid that money out of the federal treasury to the province of Manitoba we do not have the opportunity to reduce the portion of the deceased's federal tax that would be applicable to that part of the deceased's property where he was an Ontario resident but had property in Manitoba. There is the situation: we just have to look at the revenue problem.

Senator BRUNT: Mr. Chairman, there is no doubt that this section does discriminate against persons in Ontario and Quebec. They are going to pay more taxes. Now, I am not arguing for one minute that you are not entitled to it, but before you put this section into effect, I think your department should sit down with the taxing authorities of Ontario and Quebec and work out something that is fair and equitable. No doubt either the dominion or the province is entitled to the tax. If you feel you are justly entitled to the tax, surely the province should give it up. I don't think any testator or executor can do it: this is something that must be worked out by the dominion taxing authorities and the taxing authorities in the provinces of Ontario and Quebec.

I believe this section should be deferred so that the people in the provinces of Quebec and Ontario will be taxed in exactly the same way as in other provinces. I do not want you to get the opinion that I think you are not entitled to it; however, I do not think the people of the provinces of Ontario and Quebec should pay twice, and that is what it means.

Senator BOUFFARD: Mr. Minister, apart from that, the reason the people in the province of Ontario do not get their share is because of the change in the definition of "situs". On many of these properties the change would mean that the people of Quebec and Ontario would not get the benefit of the decrease. Had the situs not been changed in the act as at present, and we had the situs according to common law and jurisprudence, that would be a different matter for the provinces of Ontario and Quebec. Why should the act change the definition of "situs" and take away the benefit of the cut?

Hon. Mr. FLEMING: Mr. Chairman, I think it is fairly clear that the problem that has arisen in the minds of honourable senators in this committee is one that would apply to persons of ample means. There are not going to be very many persons of limited means who would be affected on this score. Such persons are going to get the benefit of a very considerable increase in exemption under this measure as compared with the Dominion Succession Duty Act.

With great respect, I say the benefits can't all go one way. We have in this bill gone a very long way in creating increased exemptions, in recognizing the ownership principle in connection with property jointly held, to an extent never recognized before, and in recognizing exemptions with respect to insurance held on the life of the deceased. There are many ways in which this means easing the tax burden. And when individual situations arise where somebody, by reason of having property in more than two provinces, incurs some measure of, let us say, neutralization of the benefit he is driving under this measure, I submit, with great respect, that is no reason for taking all the advantages away from the treasury, if we are going to meet these heavy concessions that have been made in the form of increased exemptions. With great respect I say, we can't always take the course that is going to cost the Treasury money. Already in this situation it is acknowledged that the federal treasury is out of pocket considerably because, as in the case I put, of the deceased testator resident in

Ontario, who owned property without being a resident in the province of Manitoba, the federal treasury already has treated that property as being located in Manitoba, with half of the estate tax being allowed to Manitoba as a rental. The federal treasury has made a payment to Manitoba in respect of it. Then, to say that we are making a concession again in respect of non-renting province, I must make a plea for the poor, battered treasury, because by the time we get through with this bill it is going to have suffered some substantial losses.

Senator BOUFFARD: But the advantages and great exemptions you talk of apply to all Canadians, whether they live in Manitoba or British Columbia. Why should wealthy persons of Quebec and Ontario have to pay part of it? That is a discrimination that we can't accept.

Hon. Mr. FLEMING: With respect, there is also a discrimination here against the federal treasury, if it is going to lose this money twice.

Senator CROLL: There are eight provinces as against two—I don't think there is any discrimination. They can join the other.

Senator BRUNT: I am not asking you to give it up definitely, but I am suggesting that you sit down with the provinces and work out something that is fair and equitable.

Senator LEONARD: In support of Senator Brunt's suggestion, I think what started a lot of this trouble was that before tax rental agreements there was no reciprocity between Ontario, British Columbia and Manitoba. Nearly all provinces of Canada were exercising their rights of double taxation: Ontario was taxing the B.C. asset of an Ontario resident; British Columbia was taxing an Ontario asset of a B.C. resident. In those circumstances the proper thing to do under a system of taxation by domicile, as Dr. Eaton has said, is for the two jurisdictions to sit down and work out a reciprocity or a tax credit system. When the tax rental agreements came into effect the Dominion took over from British Columbia not only its taxation of the B.C. residents in Ontario, but also the B.C. assets of Ontario residents. Up until now they have recognized the position that they had taken over the full domiciliary taxation rights of these B.C. residents by, in effect, yielding the reciprocity which should have been in effect between the provinces.

Now, by the application of this new provision no doubt a double tax is going to be imposed on the residents of these two provinces, and they will be caught between the tax jurisdictions. In those circumstances, as Dr. Eaton has said, the two taxing jurisdictions sit down together and work out a reciprocity. All Senator Brunt is suggesting is that perhaps this section could be suspended until the same type of thing is done that would ordinarily be done if it was between Canada and the United States, Canada and the United Kingdom, or Ontario and Quebec—that they work out a system of reciprocity.

Senator HAIG: It can't be done.

The CHAIRMAN: What you mean, Senator Leonard, is that the section should be left in the bill, but that the particular section be not proclaimed.

Senator CROLL: It must be operative if it is left in the bill.

Senator LEONARD: You need an amendment saying that this particular type of allowance as far as the two provinces are concerned will come into effect upon proclamation?

The CHAIRMAN: If you suspend the section, or do not bring it into force, you create a worse situation.

Senator LEONARD: The present arrangement would have to stand until that time.

Hon. Mr. FLEMING: May I ask you to hear Dr. Eaton? With great respect for the long experience of Senator Leonard, I think there is a mistake in one of his references to the situation that has existed heretofore. I say that with great respect.

Dr. EATON: I went through most of these things the other day, and I don't want to repeat them now. I was not quite sure whether one point Senator Leonard stated was quite correct.

The rental payments to British Columbia, for example, are confined to—or to put it the opposite way—we do not pay renting provinces a rental in respect of property they could tax if they were in the field, in respect of property situated in another province. By that I mean the rental payments are based on the presumption that the tax on property situated, say, in Ontario which British Columbia could tax, does not make British Columbia eligible for a rental on that. I don't know whether Senator Leonard had that point clear.

Senator LEONARD: I stand corrected. All I say is, when the rental agreements came into effect, British Columbia was taxed both ways, and Ontario was taxed both ways; neither was allowing any deduction to the other province.

The CHAIRMAN: I think we have made our point there. I see the practical difficulty: What to do, short of re-enacting the provision in the present act.

Senator EULER: "Fools rush in where angels fear to tread". The discussion has been carried on pretty much by lawyers, and I am not a lawyer, but I would like to ask a clarification of something. Two provinces, Ontario and Quebec, have not got a rental agreement. I understand that if you have property in another province—I understand it cannot be real property, we will say it will be stocks or bonds—the owner, say, is taxed in the province of Ontario to the full 100% of what he owns, and also of what he owns in Quebec. What he has in Quebec is taxable under Quebec law. On that he receives an abatement of 50%. Now to the extent of 50%—assuming I am the owner—I am paying double taxation: is that right? I do not get full abatement of the tax?

Hon. Mr. FLEMING: Under those circumstances you would, if all your property was in the particular provinces, because it is based on situs; therefore you would get your 50%.

Senator EULER: I get my 50%, but I don't get 100%.

The CHAIRMAN: No. You never would get 100%.

Senator EULER: Just one moment. I want to have my point made clear. Is it more to my benefit, from the point of view of taxation, to have all my investments in the province of Ontario, rather than some in Ontario and some in Quebec? In Ontario I will pay my 100% tax. I also pay 100% tax on all the property I have, whether in Ontario or Quebec. I still pay in the province of Quebec and get only 50% abatement. Am I not paying double taxation? If that is so it would be certainly important to me, or to somebody who has money to invest, not to invest in both provinces, but to invest only in one.

Hon. Mr. FLEMING: With respect, the problem does not arise in the case of a resident of one of the non-renting provinces having property at his death located in the other non-renting province—Ontario or Quebec.

Senator EULER: Am I paying double tax if, living in Ontario, I have property in another non-renting province?

Senator MACDONALD: You pay half the tax on that particular item, half to the province of Quebec and half to the province of Ontario. That is what it comes down to.

Senator CROLL: No, that is not quite right. Let us have Linton give us his view of that.

Mr. LINTON: You have got into some bad samples rather than a bad interpretation. Quebec and Ontario have a reciprocal arrangement whereby they relieve this double taxation. They have made a reciprocal arrangement that Dr. Eaton postulates would exist if these other provinces were still in the field. The sample that, I think, perhaps would illustrate what you mean, Senator Euler, is that if you are in Ontario, and you have all your property in Manitoba—

Senator EULER: No, I am not—

Mr. LINTON: Then you are at a tax disadvantage.

Senator EULER: No; I live in Ontario, and living in Ontario, I will pay taxes on property I have also in the province of Quebec.

The CHAIRMAN: No; there is reciprocity.

Senator EULER: We will say, here is a man who has all his investments in Ontario and Quebec. He pays the tax on all the property he owns in either province, 100% as I say, he also pays on the property he has in the province of Quebec.

Mr. LINTON: Yes, but he gets credit from Ontario for the tax he pays in Quebec.

Senator EULER: For the full amount?

Mr. LINTON: For either the tax that he pays in Ontario, or the Quebec tax, whichever is the lesser. He might pay a little more by differential rates.

Senator EULER: But he is not suffering by having property in both provinces?

Mr. LINTON: No.

Senator MACDONALD: I think the statement I made is correct—dealing just with Ontario and Quebec.

The CHAIRMAN: Can't we move on?

Dr. EATON: Just following up what has been said. Ontario will recognize the fact that Quebec will tax property situated in Quebec and give a credit for it. If they carried out exactly the same principle, and recognized the fact that the dominion, instead of British Columbia or Manitoba, is doing the taxing—if they did, they would recognize the tax and they would not net anything out of it. The remedy is in their hands. I am not saying they should do it, but once they have recognized the principle of the priority of "province of situs" over "province of domicile" in this case they would give an abatement with respect to the province of Quebec. The thing just flows that they should do the same as on any other property, only it is the Federal government that is doing the taxing right in the province. The thing is there for them to use if they want it.

The CHAIRMAN: The next clause is Section 7 (1). There have been a number of questions on that, Mr. Minister. One is that there is a feeling that the section has become too impersonal, in the sense that you provide exemptions because a man has a wife and it doesn't matter whether any of the property is left to the wife or not, and the husband, who is infirm, gets the exemption whether anything is left to him by the wife or not. The feeling expressed by Senators is that you should get a little more personal element in this, and tie in these exemptions to the gifts or the giving of the benefit to the wife, and reduce the amount of exemption in the case of strangers. That is one point that has developed here; and that is in line with your thinking, is it not, Senator White?

Senator WHITE: Yes.

The CHAIRMAN: Would you like to elaborate on it?

Senator WHITE: Well, Mr. Minister, as you are well aware, up to date both the provinces and the federal authority have recognized a degree of relationship and based their tax exemptions accordingly; where here you make no recognition of the family;—husband, wife and relatives, everybody is placed in the same class. Speaking personally, I think the wife and the children should have a much higher exemption than you have here, and that the disability of the infirm husband should be removed, and then the basic exemptions should be lowered as the relationship recedes, and should be decidedly lower when you get to strangers. If you do it that way you will benefit the people who should receive the greater benefit, and collect just as much, and probably more tax than you do under this category.

Hon. Mr. FLEMING: There are three answers, if not four, to that point. It has been raised before. In the first place, this section simply carries into the exemption aspects of the measure, the estate tax principle. In dealing with a matter which has been in effect seventeen years, based on a succession duty, and maybe in a particular case, a number of successions, you look at the individual successor and you say "What relationship was he to the deceased?" and that is the governing feature in determining the exemption. But, with respect, when we enter the estate tax principle there are some of these ideas that we have to leave behind. We are looking at the estate en masse, as an entity, and we are discussing that estate in terms of its aggregate value. When you come to determine what shall be subtracted from that total in respect of certain family relationships, with great respect, you cannot logically, and I think, fairly, import at this point the succession duty principle and start looking at the relationship of a number of successors. That is running entirely counter to the estate tax principle.

The second point is that we have sought in this measure to be punctilious in confining ourselves to matters clearly within federal jurisdiction. It is quite true that Parliament can legislate and pass tax measures with due regard to family relationships. But in this field, what I take is implicit in the point that has been raised, is that Parliament should use its taxing power to measure what a deceased person has provided for his family. In other words, according to the old expression, that he should be "just" with his dependants before he is "generous" with strangers.

In giving strict observance to the exclusive jurisdiction of provinces over property and civil rights, it seemed to us that that was a matter we ougt to leave to the provinces. As you know, the provinces have full authority over succession in all forms. Most of the provinces have provided with respect to the estates of persons who die intestate a provision that the legislature considers necessary for the widow or other dependants. And, similarly, where a testator has chosen to part with his property in favour of others, overlooking his dependants, I think most of the provincial legislatures have passed statutes to prevent the estate being parted with to the disadvantage of the dependants. In Ontario we have a Dependants' Relief Act to govern such situations, and I think most of the other provinces have similar legislation.

But there is a third point. This idea of trying to marry the estate tax principle with the succession principle: how are you going to do it? We say here that if there is a widow, all right, take off $60,000. If the deceased is a woman who is survived by her husband who is infirm and unable to earn a living, and there is a dependant child, all right, take off $60,000. In any other kind of estate it is $40,000 off. In the case of children who are dependant on the deceased, it is $10,000 for every dependent child in accordance with these terms. If the child is an orphan, it is $15,000.

Try to wed the two principles together and let us see what happens. You say "in a case of a man dying who leaves his estate to his wife to the exclusion of the children, there is no provision for the children at all." Let us say the estate is worth $70,000. In that case the estate is going to be the loser if you introduce the succession principle because with the dependent child the estate under this measure would have a $70,000 exemption, but on the basis of giving recognition to the succession principle there would only be a $60,000 provision if you allow up to $60,000 to go to the widow. But let us take a less simple case. Let us take a case where there are four dependent children. Under this provision there is a total $40,000 off for these children where their mother survives with them. But suppose the testator doesn't treat his children equally and says that John will have $12,000, William $15,000, Mary will have nothing and Henry $2,000.

How are you going to work out these together? Are you going to say that in the case of Henry he will have 2/10ths of the permissible exemption? In that case what are you going to do with the $15,000 that went to William? Are you going to give him exemption for $10,000 and apply the tax with respect to the remaining $5,000? These are still simple cases. You could go on and multiply and get much more difficult cases. What are you going to do, for instance, where the deceased leaves $23,000 to his widow? Are you going to allow 23/60ths there? How are you going to work out all these fractions?

Mr. Chairman, I think fundamentally we have to face up to this. If we are going to have an estate tax with all the benefits that an estate tax creates for the taxpayer—and there are many benefits—then we have got to be prepared to carry the estate tax principle all the way through. This is the estate tax principle that is recognized in the United Kingdom. There is nothing new or novel or extraordinary about it.

Senator WHITE: How do you arrive at the figure of $60,000 the deceased leaves to his wife presuming it goes to the wife, and then $40,000 for a total stranger?

Hon. Mr. FLEMING: In the bill introduced at the last session we went up to $60,000 where there is a wife surviving because the wife, according to the common conception, is going to look to her husband for support. In that bill only $30,000 was provided for the other case, the general case. There were many representations urging that we should create a blanket exemption in all cases of $50,000, and frankly we had to reject them on two grounds. First of all, it would have created too big a dip in our revenue, and in the second place we thought that was reducing to too fine a point the consideration that ought to be given in the case where the deceased dies leaving a widow.

Now, this measure increases the basic exemption to $40,000. That is a pretty generous exemption. It provides an additional $20,000 in the case where a widow normally dependent survives the male deceased.

You ask where the figures come from? These figures were arrived at with a desire to increase the exemptions created now by this Succession Duty Act. Originally the basic exclusion under this act from 1941, in the first 10 years of its existence, was $5,000. There was a special exemption for a widow or child. Then I believe in 1948 a provision was made whereby no estate under $50,000 should be subject to tax. We have preserved that exemption in this bill. No estate under $50,000 is subject to any tax, but regardless of the size of the estate we have provided for this basic deduction of $40,000. If there is a widow of a deceased husband it is $60,000, with these other benefits that exist in the case of children. This is done on the quite recognized theory that in this case the deceased is leaving dependants, and for that reason the law should within the estate tax principle take account of the effect of dependency.

Senator WHITE: You have put sons and daughters over the age of 21 years in the same class as strangers. If an estate went to children all over the age of 21 years their exemption would be $40,000. How would you justify that if it all went to a stranger?

Hon. Mr. FLEMING: We are not creating exemptions for strangers, we are not creating exemptions for persons, but we are creating exemptions applicable to the mass of the estate in the simple circumstances where those stand in a normal dependent relationship to the deceased surviving him.

Senator WHITE: The sons and daughters over 21 and the stranger all would come in under the $40,000 exemption, would they not?

Hon. Mr. FLEMING: We have to go a little further than that. Is this a case where the deceased is not survived by a widow?

Senator WHITE: He is a widower with an estate of $100,000, and leaves $40,000 to the sons and daughters over 21 years of age, and $40,000 to a stranger. Have both an exemption of $40,000?

The CHAIRMAN: That is right.

Hon. Mr. FLEMING: Could I just add this: Now, there are two alternatives to what is written in this bill. The one is to scrap the estate principle entirely and go back to the succession duty. We have no thought of rejecting the estate tax principle here, it is a good principle and it is going to bring benefits.

Senator BOUFFARD: I do not think it is necessary to do so.

Hon. Mr. FLEMING: And we have gone so far in this measure in creating exemptions, that when this measure comes into effect it is going to cost the treasury about $7 million a year according to our best calculation. That is now something over ten per cent of the yield on death taxes, and we frankly cannot go any farther in creating any more exemptions in the act.

Senator BRUNT: What is the reasoning behind this, that where there is an infirm widower left, a husband left completely paralyzed, who cannot possibly earn anything, in order to get that $60,000 exemption there must be a dependent child? Surely it takes more money to keep an infirm widower than a healthy widow?

Hon. Mr. FLEMING: Mr. Chairman, the situation simply is that the law proceeds on the assumption, which I think is a normal, valid assumption as between husband and wife, that the wife is dependent upon the husband, and in that case the law must be generous; the law assumes that the husband is not dependent upon the wife.

Senator LAMBERT: Supposing there is a joint estate, and either the husband or the wife dies before the other; the estate is left to the surviving spouse, and at death the residue was divisible equally among the children, whether they were dependent children or not? Why should not the exemption be equal? In the one case if the husband dies first and the wife is left there is an exemption of $60,000. If the wife dies first, then I assume that according to this the exemption is only $40,000, if there are no dependent children. If that is so, the estate is being impoverished to the extent of $20,000, is it not?

Hon. Mr. FLEMING: Yes; the bill does not treat the two cases on the same footing, and it does not treat them so for the reason that there is, I think, a very dependable presumption that the wife is dependent upon her husband, and therefore the law must be more generous in that case than in the other case where it is the wife who dies. In that case the law presumes, I think fairly, that the husband is not dependent upon the wife.

Senator LAMBERT: But supposing the wife is not dependent upon the husband and is equally interested in the estate with the husband, and the one predeceases the other, where is the equity there?

Hon. Mr. FLEMING: I do not think we can write a measure taking into account every such circumstance. Here we have been very generous even on the basis of the $40,000. I do not think one should approach this on the assumption that $40,000 looks very small alongside the $60,000. The $40,000 is a new kind of exemption, and a very considerable one, if I may say so with respect.

Senator BOUFFARD: I think you are right, Mr. Minister, when you say the exemptions are more advantageous than they were, but it seems to me that there are two reasons for a man to economize: first of all, to fulfill the obligations which are imposed upon him by law all over Canada—not only in the province of Quebec; secondly, that he is attached to his children, and generally speaking he does not work for strangers, but for his wife and children, unless he is a man who has no heart, or has something wrong with him. I do not see anything wrong about the amount of the exemptions allowed. The amount of $60,000 seems to be reasonable in the circumstances, and $50,000 seems to be reasonable in the circumstances, but I would say it is only reasonable if it goes to the wife and children. I cannot see why a man who has $100,000, is married and has four children, should enjoy an exemption of $100,000. I do not see why, if he is a proper man, and allows that money to go outside the family, that the person who enjoys that exemption should get it and the family get nothing. That is why I say the principle is wrong; you are giving to outsiders the same privilege as the wife and children should get. I would favour a law which would not give any exemption outside of the family, and when I say "family" I mean the wife and the children. It seems to me that the exemption of $60,000 should be given to the wife and the children, up to $10,000. If they do inherit the amount, that will not be taxable, but if they don't, I do not see why an exemption should be given.

Another point I want to make is that I do not think the interests of the family should be sacrificed for the purpose of simplicity. I think Canadian families are more important than simplicity.

Another thing, in the calculation of the rates, I think it is much more advantageous to have an estate tax than it is to have a succession duty. You calculate the full amount, and you calculate the tax, and the same tax goes for both. But I say that if the inheritance goes to the wife and the children it seems to me that the state should cut the tax in order to recognize the bond existing between the man and his wife, and not be in favour of the inheritance going to a stranger. The estate is calculated in the same way, the amount is exactly the sale, and the only calculation that has to be done is to cut by one-third or by one-half up to a certain amount of money.

Let us say for instance that there is a taxable estate of $200,000. The tax is $44,000. If the estate goes to the wife and to the family or to the children, and that is the only thing you have to consider, cut the tax in two and make it $22,000, and then do not give any exemption to any stranger, not one cent, and that is what has been given in all the provinces that have imposed taxation outside of the fact that they have imposed a tax on the succession they do not give a cent or if they do it is almost nothing up to $5,000, if it does not go to the family. If it goes to the family they raise the exemption and the tax is lower. Here you want to have an estate tax, all right, but give a chance to the family, give more money to the family and cut the tax in two up to a certain amount of assets, if it goes to the wife and family. That is what I am thinking the estate tax should do.

Senator HAIG: Mr. Chairman, I probably practised law as long if not longer than any man at this table. I have been a member of the Manitoba Bar for 54 years and during that time I have drawn as many wills as any senator here, and I must say that I never drew a will in those 54 years by which a man gave any money away. First he gave it to his wife and his children and he then

probably gave some bequests here and there, perhaps to someone in his employ or people connected with him, but the bulk of the money went to the wife first and then to the children and I have never seen a case in my whole 54 years of practice that has been otherwise. I have never seen a case in our courts that was different to that, and we in Manitoba, Saskatchewan and Alberta have answered our friend from Quebec by passing two laws in our province, one is that when a man dies there can be no wife left out because one-third of the estate goes to her automatically, with or without a will or anything else—one-third of it. Now, secondly, she can apply to the court after that on behalf of herself and her children for money out of the estate ahead of anybody else and if the courts of our province feel that she has not got sufficient to carry on and there is money in the estate to do it the court can direct how much will be paid to her in our province. It seems that the provinces in which my friends live should be the ones to pass these laws along similar lines to the ones we have in Manitoba and not to try to have the same results from this bill. That is my experience and I doubt if anybody has had any better or worse experience than I have had.

There is one more question I want to raise. The honourable senators from Toronto and Quebec said something about the tax rental agreement. The truth is that these agreements were made after a long investigation and a long political wrangle in which the Parliament of Canada agreed to pay so much to each province on this basis, that we claimed that the manufacturing companies made their money in Manitoba, Saskatchewan and Alberta and paid it out in Toronto, and we say that is wrong, and these agreements have settled the problem between the different provinces, and I for one do not want to see this brought up again.

Hon. Mr. FLEMING: Mr. Chairman, the experience of the department in passing on wills over the past 17 years completely bears out what Senator Haig has said about his own experience.

The CHAIRMAN: Now we have three items left and it is up to the committee to settle the order in which we will take them up. One is the inclusion of foreign real estate, another one is the question of an optional date of value, and the third one is the question of special valuation sections in relation to controlled companies.

Senator BRUNT: There is one more, the question of solicitors fees.

The CHAIRMAN: I assumed that Mr. Linton was going to look into that and give us some formula.

Mr. LINTON: The suggestion made of prescribing a table to do it I think is possible.

Hon. Mr. FLEMING: Mr. Chairman, let me enter a word here. Not quite so fast.

This matter of allowing fees to solicitors or even to executors was considered.

Senator LEONARD: Just solicitors.

Senator WHITE: I want executors. Put them both in.

Hon. Mr. FLEMING: Where do you draw the line? Are you going to include only cases of solicitors' fees where the probate or letters of administration were issued on simple procedures or are you going to include cases where there have been contests over the testamentary capacity of the deceased? There is no such thing as a flat rule to follow or a table that is going to accomplish anything.

Senator BRUNT: In Ontario there is a tariff.

The CHAIRMAN: In Ontario there is a flat sum of $100 allowed.

Senator BRUNT: No, there is a tariff.

The CHAIRMAN: That is not allowed.

Senator BRUNT: I am not saying it is allowed, but it is there and it is available.

Hon. Mr. FLEMING: Of course you have got a surrogate court tariff but the law of the province permits a deduction of $100 for this purpose but the Dominion Succession Duty Act has not allowed anything. We considered this very carefully and we are up against a very great difficulty of trying to work out a rule to apply to these cases and we came o the conclusion that there is not any equitable rule that you can write that will apply to all cases. That is the practical difficulty you are up against. And the same thing applies to any payment to executors.

Senator MACDONALD: We thought that you might establish a tariff where there would be so much in the province of Ontario for executors fees fixed by the court, so much for preparing an application for probate, so much for preparing succession duty papers and so much for passing the accounts and have a schedule depending on the value of the estate and allow that amount.

Hon. Mr. FLEMING: I would urge we should not be put in the position of passing a complicated provision of that kind. We have taken the better course here by increasing the general exemptions in clear and simple terms, and I would urge that that is the sounder course to follow instead of putting in various ways of increasing exemptions by complicated rules.

Senator WHITE: Does that mean that you do not want to allow it?

Hon. Mr. FLEMING: Beyond that you can include dozens more of these individual easements of taxes that are being proposed and not come up to the increase in the general exemptions that we are offering in this bill. I simply ask that account be taken of the large increase in the general exemptions as an offset to the various suggestions of writing in individual reductions of the tax by complicated rules.

The CHAIRMAN: Which item shall we take up now?

Senator LEONARD: As far as taxing foreign real estate is concerned, I am quite content to let that stand. While I do not agree with it in a principle I hope that when it comes to the negotiation of treaties with other countries, particularly with the United Kingdom that the Minister will have in mind the effect of taxation on foreign real estate, so I hope that we will still continue to get capital particularly from Britain invested in real estate in Canada.

Hon. Mr. FLEMING: I can assure honourable senators, in any negotiation we have with the United Kingdom we will certainly encourage them to send capital to this country.

Senator LEONARD: I am happy about that.

The CHAIRMAN: The next item is optional expiration date.

Senator BRUNT: I think everyone here feels it is a bit unfair to value the assets as of the date of death; it is just fixing an arbitrary date at a time at which no executor can deal with the assets. I think all of us feel—

Senator THORVALDSON: You are going too far.

Senator BRUNT: A lot of us feel that a reasonable period should be allowed to let the executor get into a position to deal with the assets.

The CHAIRMAN: The suggestion I made—and some may have approved of it—was that the valuation be taken at the date of death, three months after date of death, or at any sale in the interim. The object in mentioning three months was that it would not interfere with the collection of revenue, because you have to get your return in and pay your tax in six months. Have you any comment on that, Mr. Minister?

Hon. Mr. FLEMING: Thank you, I have.

The purpose of such a provision is—and let us be frank about it—to give the taxpayer an opportunity to make a choice between two dates; if that is done he will certainly choose the date on which the assets had their lower value. It has nothing to do with putting him in a position to administer quickly or to part with the assets quickly. That does not come into the picture at all, so far as quick realization is concerned.

Those of you who have practised law have had experiences in which it was necessary to ask for the release of a particular asset in order to complete a quick sale for the purpose of providing a further payment of duty or payment of deposit on account of duty. But what this is intended to accomplish is to give the estate the benefit of any decline in value. We may be very sure that if the assets should rise in value in three months, the date selected by the executor would be the date of death. There again, it is one more provision designed to give the benefit to the taxpayer at the expense of the treasury by reducing the tax.

Again I must say—and I am sorry to keep repeating this—that we have taken a better way: we have provided these large exemptions which can outweigh any number of individual proposals of this kind for the benefit of estates, as against the treasury. May I add, the United Kingdom makes no such provision.

Senator BRUNT: The assets might increase in value, not necessarily decrease. If the assets were sold in three months' time at a higher price than they were worth at the time of death, then of course the taxing authority would benefit. It is not a one-way street we are suggesting.

Hon. Mr. FLEMING: May I ask the committee to bear in mind the complications such an arrangement would introduce, the additional work that would be placed upon those charged with the administration of this legislation.

Senator MACDONALD: It would hold up all estates for three months.

The CHAIRMAN: No.

Senator MACDONALD: Yes. If the assets were going up in value, or the executor knows they are going up, he is not going to wait the full three months, but on the last day before three months he decides to take the value at date of death.

The CHAIRMAN: That is the purpose of suggesting it. The safety valve, however, is that if he sells anything in that period, he takes that sale price; so, if he is in a rising market he will be stuck with that sale price.

Senator MACDONALD: In that case you would be holding estates up for three months.

Senator ASELTINE: If the assets were going up, he would not sell until after the three months were up.

Hon. Mr. FLEMING: I think it is unchallengeable that such provision would have the effect of delaying assessments and payment of taxes.

The CHAIRMAN: The last item I have on the list is the question of controlled companies, section 27 in part, sections 28 and 29. May I state the position briefly, Mr. Minister?

If a controlled company was limited to a personal corporation I could understand it much better than in the broader field with the definition of "controlled company" in the bill. Under this definition you could conceivably have a manufacturing operation in a family where 51 per cent of the stock was held by various members of the family, and 49 per cent held by outside interests. They would be stuck under these controlled company sections. The two things that are objectionable are these: first, if a deceased person, who is a member of a group who hold a majority interest in stock, his minority

interest is valued as though it were a majority interest. Secondly, if such a company owes me money, and I die, and the debt was a time loan not due for two or three years, it is to be valued as though it were due at the time of death.

Those two things, frankly, are quite incomprehensible to me, and I would like to have a word from you—I was almost going to say, in justification of it.

Hon. Mr. FLEMING: Mr. Chairman, I submit that the provisions here are fair. An amendment was made in section 28 which I think does assure equity and fair treatment in these cases. In subsection 1 of that section, which deals with the shares of a minority shareholder in a controlled company, a provision was introduced at lines 19-21, so that the shareholdings that belonged to the deceased shall—and I read the words: "unless it is established that the deceased and such one or more other persons"—that is the other members of the family who together make up the control of the corporation—"were persons dealing with each other at arm's length . . ." It is left here to the taxpayer to establish that these persons, although associated in a family relationship, were actually dealing with each other at arm's length; and that what would otherwise appear to be a family control was not in effect a united form of ownership that guaranteed control of the company.

The CHAIRMAN: May I interrupt you? That was not the point I was making. It was this: when a man who has the largest minority interest dies, those shares may well come on the market. Now, in fact the shares are a minority interest, and the only way they can become a majority interest would be if the other members of the family came along and contributed their shares so as to make them the majority. But the other members of the family are too smart to do that; they realize they are the ones in the bargaining position—not the man who may have 40 per cent—because they can cause the control to flow one way or the other, and they are going to get a better price than the estate. But you are going to value the shares on a majority holding of shares.

Hon. Mr. FLEMING: If you do not value them as proposed in this bill, I think you are closing the door to ever having fair value in respect of control which did exist in practically every such case; and in so far as the case where the parties have been dealing at arm's length, we have left the door open to them to so prove.

Senator POWER: May I draw your attention to the fact that "at arm's length" is fully defined in the Income Tax Act? I don't know that it is here, but if it is not, I think it should be.

The CHAIRMAN: I don't know that you can necessarily import an income tax definition.

Hon. Mr. FLEMING: It is not defined in this act. I think there would be no doubt about the interpretation. In this particular case it may be that the definition in the Income Tax Act is a bit too rigid to be imported here.

The CHAIRMAN: The other point I raised,—would you address yourself to that—is that the time debt in those circumstances, owing to the deceased, is to be valued as though it were immediately due.

Mr. FLEMING: Will you hear Mr. Linton on that?

Mr. LINTON: What this is designed to reach is a situation where a family company is set up and the members of it lend money to it and get back debentures or something of that kind from it which are redeemable at the will of the company but which, without prior redemption, are made due at some fantastic date in the future, with no interest, or very little interest. It could be so set up that it is understood by all that when the tax is out of the way the thing can be redeemed by the company at full value.

The CHAIRMAN: That is the kind of situation that should be covered.

Mr. LINTON: It is covered.

The CHAIRMAN: But what I am complaining about is that there are a lot more—genuine—situations where there may be a real advance and real debt, and you are putting them in the same category. I say there should be some discretion of the Minister to determine as between a plan which is a scheme to defeat the revenues, and where there is an honest bona fide loan. You put them all in the same basket.

Mr. LINTON: A case where there is a family loan which runs a long time with no interest is very suspicious to me. That is one that will be hit here. But take a loan which bears a proper rate of interest, no matter what the term, the term will not tend to reduce its value anyway.

The CHAIRMAN: There is a present value of a debt due in a few years.

Mr. LINTON: The proper value now would be its fair market value now without discount if it bears proper interest.

The CHAIRMAN: I dont' think so.

Mr. LINTON: In the opposite case, in allowing a debt claimed I think we would be forced to agree that it was.

The CHAIRMAN: I can show you some bonds that are sold on the market for anywhere from 95 to 98, due in six months, and carry an interest of 5½ to 6 per cent.

Mr. LINTON: That is not very much of a reduction. I don't think in a private company we could maintain any such reduction as that for a debt.

The CHAIRMAN: At any rate we have your viewpoint on it. And speaking on behalf of the committee, we want to thank the Minister very much for the time he has given on the explanations he has given; and I want to thank again the members of his staff. I hope you have enjoyed it as much as we have being informed. But now we have to deal with it.

Hon. Mr. FLEMING: Mr. Chairman and honourable senators, I thank you for the privilege extended to me of allowing me to come before you, and for your patience in putting up with some of these, perhaps, altogether too lengthy attempted explanations.

The CHAIRMAN: There is no suggestion that anything was too lengthy.

Hon. SENATORS: Hear, hear.

The CHAIRMAN: When shall we meet again? The full transcript will not be available until Monday or Tuesday. My suggestion is that we meet Wednesday morning at 10:30.

Hon. SENATORS: Agreed.

Whereupon the committee adjourned.

1958

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

To whom was referred the Bill (C-37), intituled:
An Act respecting the Taxation of Estates.

The Honourable SALTER A. HAYDEN, *Chairman*

No. 5

Report of Committee

WEDNESDAY, AUGUST 27, 1958

WITNESSES:

Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance; Mr. D. S. Thorson, Solicitor, Department of Justice; Mr. W. I. Linton, Administrator, Succession Duties, Department of National Revenue.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1958

62331-4—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

*Aseltine	Gershaw	McLean
Baird	Golding	Monette
Beaubien	Gouin	Paterson
Bouffard	Haig	Pouliot
Brunt	Hardy	Power
Burchill	Hayden	Pratt
Campbell	Horner	Quinn
Connolly	Howard	Reid
(*Ottawa West*)	Howden	Robertson
Crerar	Hugessen	Roebuck
Croll	Isnor	Taylor (*Norfolk*)
Davies	Kinley	Turgeon
Dessureault	Lambert	Vaillancourt
Emerson	Leonard	Vien
Euler	*Macdonald (*Brantford*)	White
Farquhar	McDonald	Wilson
Farris	McKeen	Wood
		Woodrow—49.

(Quorum 9)

**ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, August 14th, 1958.

"The Senate resumed the debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Emerson, for the Second reading of the Bill C-37, intituled: 'An Act respecting the Taxation of Estates.'

After further debate, and—

The question being put on the motion for the second reading of the Bill, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

62331-4—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, August 27th, 1958.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 A.M.

Present: The Honourable Senators:—Hayden, *Chairman;* Aseltine, Baird, Brunt, Burchill, Connolly (*Ottawa-West*), Croll, Euler, Golding, Gouin, Haig, Isnor, Lambert, Leonard, Macdonald, McDonald, Pouliot, Power, Taylor (*Norfolk*), Turgeon, Vaillancourt, White and Woodrow—23.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel, the Senate, and the official reporters of the Senate.

Bill C-37, An Act respecting the Taxation of Estates, was further considered.

The following witnesses were heard and questioned:—

Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance.

Mr. D. S. Thorson, Solicitor, Department of Justice.

Mr. W. I. Linton, Administrator, Succession Duties, Department of National Revenue.

On Motion of the Honourable Senator McDonald, seconded by the Honourable Senator Power, the following amendments were adopted:—

Page 5 line 31:—Strike out "and"

Page 5 line 34:—Strike out the period and substitute therefor:—"; and"

Page 5:—Immediately after paragraph (*d*) of subclause (2) of clause 3, add the following paragraph (*e*):—

"(*e*) notwithstanding anything in this section, the expression in paragraph (*a*) of subsection (1) property of which the deceased was, immediately prior to his death, competent to dispose does not include the share of the spouse of the deceased in any community of property that existed between the deceased and such spouse immediately prior to his death."

On Motion of the Honourable Senator Croll, seconded by the Honourable Senator Leonard, the following amendment was adopted:—

Page 28, Lines 1 and 2:—Strike out lines 1 and 2 and substitute therefor:—

"the value of the debt shall, unless it is established that at the time of the creation of the debt the deceased and such debtor were persons dealing with each other at arm's length, be determined for the purposes of this Part as though the amount thereof outstanding"

On Motion of the Honourable Senator Power, seconded by the Honourable Senator Croll, the following amendments were adopted:—

Page 35, lines 6 to 13: Strike out lines 6 to 13, both inclusive, and substitute therefor:—

"43. (1) Any amount payable as tax, interest or penalties under this Act by a person as the successor to any property passing on the death of a deceased shall, where the property to which that person is the successor includes any estate or interest in land situated in Canada, be and continue to be for as long as that amount or any part thereof remains unpaid a lien upon such estate or interest; and"

Page 35:—Immediately after subclause (1) of clause 43, add the following as subclause (2):—

"(2) Notwithstanding subsection (1), the consent of the Minister under section 47 to the transfer of any land or any estate or interest therein upon which a lien under subsection (1) exists shall be deemed to discharge such lien, and the Minister shall, upon application therefor made to him in any case where subsequent to the registration of any caution of lien as provided in subsection (1), any such lien is discharged, whether by payment in full of the amount thereof or in any other manner; issue to the person by whom the application is made a certificate of such discharge."

At 12.45 P.M. the Committee adjourned.

At 8.30 P.M. the Committee resumed.

Present: The Honourable Senators:—Hayden, *Chairman;* Aseltine, Baird, Brunt, Burchill, Connolly (*Ottawa West*), Croll, Euler, Golding, Haig, Leonard, Macdonald, McLean, Pouliot, Power, Taylor (*Norfolk*), Vaillancourt, White and Woodrow—19.

The consideration of Bill C-37, An Act respecting the Taxation of Estates, was resumed.

Dr. A. K. Eaton, Mr. D. S. Thornson and Mr. W. I. Linton, were further heard and questioned.

On Motion of the Honourable Senator Croll, seconded by the Honourable Senator Haig, the following amendment was adopted:—

Page 36, Line 22:—Strike out line 22 and substitute therefor:—

"to be made one or more copies thereof and shall upon request by the person from whom the original document was seized or by whom it was produced, in any case where a copy thereof has been made pursuant to this section, send a copy thereof to such person or, if no copy thereof has been made pursuant to this section, allow such person at any reasonable time to have access to the document so seized or produced, and a document"

The Honourable Senator Leonard moved that the Bill be amended as follows:

Page 26, line 21:—Strike out line 21 and substitute therefor:—

"made for or on account of income tax, except where a superannuation or pension benefit is taxable under the Income Tax Act."

The question being put on the said motion, the Committee divided as follows:—

YEAS:—10 NAYS:—7

So it was declared carried in the affirmative.

The Honourable Senator Croll moved that clause 9 of the Bill be carried.

The question being put on the said motion the Committee divided as follows:—

YEAS:—7 NAYS:—8

There being some confusion as to the intent of the motion the question was again put and the Committee then divided as follows:—

YEAS:—11 NAYS:—2

So it was declared carried in the affirmative.

The Honourable Senator Power, for the Honourable Senator Bouffard, moved that clause 9 of the Bill be amended by adding thereto the following as subclause 9:—

"(9) Notwithstanding anything in this Act, there may be deducted from the tax otherwise payable under this Part upon the aggregate taxable value of the property taxable on the death of a person, if the property passes to a surviving spouse or to children of the deceased, one half of such tax: provided that no such deduction shall be made in respect of the excess over $200,000.00 when the aggregate taxable value property is $200,000.00 or more."

The question being put on the said motion it was declared passed in the negative.

The Honourable Senator Power moved that the Bill be amended as follows:—

Page 9, line 27:—After the word "spouse" add "who inherits"

The Chairman ruled the motion out of order.

The Honourable Senator Power appealed the ruling of the Chairman.

The question being put on the ruling of the Chairman the said ruling was sustained.

The Honourable Senator Brunt moved that the Bill be amended by adding the following as Clause 33A:—

33A. Notwithstanding any other provision in this Act for determination of value of property passing on the death of a person the value of any property disposed of within a period of three months from the date of the death of a deceased for the purpose of providing for payment of estate taxes that may be or become payable under this Act in respect of such property, shall be the amount realized in such disposition and in the circumstances aforesaid that value shall be substituted for the value at which such property has been included in the aggregate net value of the property passing on the death of a deceased and the estate tax shall be revised accordingly.

The question being but on the said motion the committee divided as follows:—

YEAS:—9 NAYS:—9

So it was declared passed in the negative.

The question being put as to whether the Chairman should report the Bill, as amended, the Committee divided as follows:—

YEAS:—12 NAYS:—3

So it was RESOLVED to report the Bill as follows:—

1. *Page 5, line 31.* Strike out "and".
2. *Page 5, line 34.* Strike out the period and substitute therefor:—"; and".
3. *Page 5.* Immediately after paragraph (d) of subclause (2) of clause 3, add the following as paragraph (e):—

   "(e) notwithstanding anything in this section, the expression in paragraph (a) of subsection (1) 'property of which the deceased was, immediately prior to his death, competent to dispose' does not include the share of the spouse of the deceased in any community of property that existed between the deceased and such spouse immediately prior to his death."

4. *Page 26, line 21.* Strike out line 21 and substitute therefor:—"made for or on account of income tax, except where a superannuation or pension benefit is taxable under the *Income Tax Act.*"
5. *Page 28, lines 1 and 2.* Strike out lines 1 and 2 and substitute therefor:—"The value of the debt shall, unless it is established that at the time of the creation of the debt the deceased and such debtor were persons dealing with each other at arm's length, be determined for the purposes of this Part as though the amount thereof outstanding".
6. *Page 35, lines 6 to 13.* Strike out lines 6 to 13, both inclusive, and substitute therefor:—"43. (1) Any amount payable as tax, interest or penalties under this Act by a person as the successor to any property passing on the death of a deceased shall, where the property to which that person is the successor includes any estate or interest in land situated in Canada, be and continue to be for as long as that amount or any part thereof remains unpaid a lien upon such estate or interest; and".
7. *Page 35.* Immediately after subclause (1) of clause 43, add the following as subclause (2):—"(2) Notwithstanding subsection (1), the consent of the Minister under section 47 to the transfer of any land or any estate or interest therein upon which a lien under subsection (1) exists shall be deemed to discharge such lien, and the Minister shall, upon application therefor made to him in any case where subsequent to the registration of any caution of lien as provided in subsection (1), any such lien is discharged, whether by payment in full of the amount thereof or in any other manner, issue to the person by whom the application is made a certificate of such discharge."
8. *Page 36, line 22.*—Strike out line 22 and substitute therefor:—"to be made one or more copies thereof and shall, upon request by the person from whom the original document was seized or by whom it was produced, in any case where a copy thereof has been made pursuant to this section, send a copy thereof to such person or, if no copy thereof has been made pursuant to this section, allow such person at any reasonable time to have access to the document so seized or produced, and a document".

Your Committee recommend that the Minister take the necessary steps to ensure that the public generally, and all interested organizations (such as the Trust Companies Association of Canada and the Canadian Bar Association) are made acquainted, as far in advance as possible before proclamation of the Bill, with the meaning and intent of Clause 18 thereof.

At 10.30 p.m. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald.
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

WEDNESDAY, August 27, 1958.

The Standing Committee on Banking and Commerce, to which was referred Bill C-37, an act respecting the taxation of estates, met this day at 11.30 a.m.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: We have before us Bill C-37. The purpose of the meeting this morning is to consider what disposition the committee is going to make of the sections which we stood at the previous hearings.

Senator BRUNT: Give us the numbers of those sections.

Senator MCDONALD: These are the sections dealt with at the last meeting.

The CHAIRMAN: Yes, dealt with at the meeting with the minister.

They are: section 3(2)(a); section 7; section 9; section 13; section 15; section 16.

Senator MACDONALD: I wanted to deal with sections 14 (3) and 15.

Senator LEONARD: We may have to consider sections 14, 15 and 16 together.

The CHAIRMAN: Part of section 27, section 28 and section 29.

Senator BRUNT: We passed section 26?

The CHAIRMAN: No, there was an amendment proposed to section 26. A question was raised about an optional value date, and if anything is going to be done in that connection, the place to insert it is after section 33.

Senator BRUNT: Do we pass section 38?

The CHAIRMAN: Yes. We have to deal with section 43 together with section 47, having to do with liens and discharge of liens.

Senator MACDONALD: Section 45 (4) stood.

The CHAIRMAN: Yes. Those are the sections we have to deal with. I would suggest that we go directly into the more important sections...

Senator POWER: I have a note from Senator Bouffard who is unable to attend until this afternoon, in which he refers to the question of privileges respecting liens on immovable property.

The CHAIRMAN: We have noted section 7. We have dealt with the question of the income tax content in pensions and superannuations; that would affect section 26 of the bill which, if I may express my own opinion, seems to be the most important section, judging by the interest shown by members of the committee. Therefore, I suggest we deal with section 26 first.

Senator BRUNT: Perhaps that should be left to the last, when some of the senators now absent will be present.

The CHAIRMAN: Senator Bouffard is not here, but the matter is in Senator Power's hands.

Senator POWER: I suggest we deal with those sections which we can get rid of quickly. I understood the minister to agree to ask his officials to draft an amendment dealing with proposals made by the amendment of Senator Monette, seconded by Senator Bouffard.

The CHAIRMAN: That has to do with section 3(2)(a).

Senator POWER: I understood there was substantial agreement there.

The CHAIRMAN: Yes, on community of property. Mr. Thorson, would you speak to that?

Mr. THORSON: I have a proposed amendment, which perhaps should be read into the official record. But I think Dr. Eaton has something to say first.

Dr. EATON: Mr. Chairman, may I say I am acting as an emissary, or perhaps I should say a messenger boy. Following the discussion with the minister the other evening, at which some five points were raised, he has drafted certain amendments, and Mr. Thorson has them to be placed before the committee for consideration.

The CHAIRMAN: Tell us what the points are.

Dr. EATON: I am merely passing them to you. Mr. Thorson can go into the amendments one by one.

The CHAIRMAN: Will you tell us what the amendments are, Mr. Thorson?

Mr. THORSON: The first proposed amendment is in clarification of a point raised by Senator Monette dealing with community of property. That would be an amendment of Section 3, subsection 2.

The CHAIRMAN: The first amendment is in the following language:

"That Bill C-37, an Act respecting the Taxation of Estates, be amended by striking out the word 'and' at the end of line 31 on page 5 thereof, by adding the word 'and' at the end of line 34 on page 5 thereof and by adding thereto, immediately after line 34 on page 5 thereof, the following:

> '(*e*) notwithstanding anything in this section, the expression in paragraph (*a*) of subsection (1) "property of which the deceased was, immediately prior to his death, competent to dispose" does not include the share of the spouse of the 'deceased in any community of property that existed between the deceased and such spouse immediately prior to his death.' "

Senator POWER: How does that meet with the amendment proposed by Senator Monette?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Senator McDonald moved, seconded by Senator Power. Those in favour? Contrary, if any? Carried.

Mr. THORSON: The second proposed amendment is one relating to clause 29.

The CHAIRMAN: On page 27, at the bottom of the page. This is the section which deals with a situation where a deceased dies having money owed to him by a controlled company of which he and members of his family may have control, and it may be a time debt. In these circumstances it is valued as though it were immediately payable. Without reading it, I imagine it adds the "arm's length" provision to section 29.

The amendment reads:

"That Bill C-37, An Act respecting the Taxation of Estates, be amended by striking out lines 1 and 2 on page 28 thereof and substituting the following:

> 'the value of the debt shall, unless it is established that at the time of the creation of the debt the deceased and such debtor were persons dealing with each other at arm's length, be determined for the purposes of this Part as though the amount thereof outstanding.' "

In other words it is adding the arm's length provision, as a matter of the onus being on the estate to establish that it was a bona fide debt and the period of time was a bona fide period. I assume there the influencing factor would, if it carried the going rate of interest. Is that agreeable?

Some Hon. SENATORS: Carried.

The CHAIRMAN: It is settling for a very little bit. What is the view of the committee?

Senator BRUNT: Who were the people who wanted this particular amendment?

The CHAIRMAN: If you remember I thought that this control company provision in the bill was a horrible thing. I thought possibly, with all due respect to you, Mr. Thorson, that the person who drafted the control company provisions had been scared by a control company once upon a time and hated them all.

Senator CROLL: I will move the adoption of this amendment.

The CHAIRMAN: It is at least giving an opportunity in connection with a time and date in these circumstances for the estate to attempt to establish that it was bona fide, and therefore it should not be valued as though it were immediately payable.

Senator LEONARD: I second the motion.

The CHAIRMAN: It has been moved by Senator Croll, seconded by Senator Leonard, that this amendment be adopted. Those in favour? Contrary?

Amendment agreed to.

The CHAIRMAN: Would you deal with the next one, Mr. Thorson?

Mr. THORSON: It is an amendment to clause 43. This is the clause that imposes the lien on the interest of a successor for the amount of unpaid taxes. The proposed amendment really has two parts. First of all, there is a clarification of what is presently in the bill to meet the point raised by Senator Bouffard. In this connection we considered a number of alternatives including a provision which would stipulate that the lien was subject to existing charges and encumbrances. However, rather than do that, in view of the difficulties of determining priorities under the various provincial statutes, we thought it more desirable and less likely to produce confusion if a clarification was made in the section as to the nature of the lien itself.

The first part, then, of the amendment stipulates that the lien attaches only to the estate or interest of the successor and not to the whole of the land where the successor merely has an interest in the land. It is then clear, I think, that what the lien attaches to is merely the interest of the successor at the time the lien is created; that is to say, where there is any existing encumbrance on the title the lien will rank after that encumbrance.

Senator MCDONALD: When you are speaking of a lien or encumbrance do you mean something like a first mortgage?

Mr. THORSON: Yes.

Senator POWER: That meets the objection raised by Senator Bouffard that in the province of Quebec this lien is a privilege and always takes priority over all other encumbrances?

The CHAIRMAN: That's right.

Mr. THORSON: Yes. We have made a study of it and I think that is a correct statement of the law, although there is some doubt about it, as I understand, under the provisions of article 2009 of the Civil Code.

Senator MACDONALD: Will your amendment then read that the lien will be subsequent to prior encumbrances?

Mr. THORSON: That is correct, sir.

The CHAIRMAN: Yes.

Mr. THORSON: The second branch of the amendment provides for an additional subsection to section 43 dealing with discharges of liens. This was a problem raised by a number of senators. Perhaps, Mr. Chairman, you would like me to read the provision.

The CHAIRMAN: I will read this now:

"That Bill C-37, An Act respecting the Taxation of Estates, be amended

(*a*) by striking out lines 6 to 13 on page 35 thereof and substituting the following:

'43. (1) Any amount payable as tax, interest or penalties under this Act by a person as the successor to any property passing on the death of a deceased shall, where the property to which that person is the successor includes any estate or interest in land situated in Canada, be and continue to be for as long as that amount or any part thereof remains unpaid a lien upon such estate or interest'; and

(*b*) by adding thereto, immediately after line 20 on page 35 thereof, the following:

Discharge of lien.

'(2) Notwithstanding subsection (1), the consent of the Minister under section 47 to the transfer of any land or any estate or interest therein upon which a lien under subsection (1) exists shall be deemed to discharge such lien, and the Minister shall, upon application therefor made to him in any case where subsequent to the registration of any caution of lien as provided in subsection (1), any such lien is discharged, whether by payment in full of the amount thereof or in any other manner, issue to the person by whom the application is made a certificate of such discharge.' "

So it provides for the status of such a lien.

Senator MACDONALD: Provides for the establishment of such a lien. How is it established?

The CHAIRMAN: It shall be a lien upon such estate or a lien on such land as was present at that time.

Senator MACDONALD: Does the lien have to be filed?

The CHAIRMAN: No, the statute only says the Minister may.

Mr. THORSON: There is, however, provision for registration of the lien. It is not mandatory, and it is not necessary to the creation of the lien. The lien itself arises by virtue of the statute itself.

Senator MACDONALD: So that if this land is subject to the lien, it is subject to the lien whether the lien is filed or not?

Mr. THORSON: That is correct, but it is the interest of the successor upon which the lien attaches.

Senator MACDONALD: So that if the successor is entitled to the land a purchaser does not know if it is free from the lien unless he makes inquiries from the department?

Mr. THORSON: That is correct, sir, unless the lien has been registered.

Senator MACDONALD: But if you do not register?

Mr. THORSON: Not necessarily, no.

Senator MACDONALD: Would it not be the practice of the department to register?

Mr. THORSON: No, sir, I don't believe it is.

The CHAIRMAN: I would think the intending purchaser would require production of consent to the registration of the property.

Mr. THORSON: That extinguishes the lien, and the second branch of subsection 2 goes on to provide that the Minister must, where there has been registration of the lien, issue a certificate of discharge where the lien has been discharged, whether by the giving of the consent or by payment of the amount of the lien then claimed.

Senator BRUNT: I am primarily interested in protecting a purchaser. I am not worried about registered liens. Let there be no misunderstanding. The giving of the consent, that extinguishes any right the Minister has to file the lien against the property?

Senator WHITE: Would it not be a good thing to word it accordingly, with regard to consent referring to anything affecting land?

Mr. LINTON: That is the intention, Mr. Chairman, in the consent.

The CHAIRMAN: You will notice the language of the proposed amendment is that the consent shall be deemed to discharge such lien. So they will have to work in appropriate language to do that very thing.

Mr. THORSON: It may not be possible in all cases to have exact language because of provincial differences in regard to the registration of discharges.

Senator MACDONALD: Coming down to a definite case: under this bill the tax is chargeable against the whole estate. Suppose that in the estate there is a piece of property which, under the will, goes to a successor and that successor wants to sell that piece of property before the tax on the whole estate is paid. Is there any provision for obtaining a consent to the sale of that particular piece of property?

Mr. THORSON: Oh yes, a consent to transfer may be given in circumstances where the whole tax has not been paid. That is dealt with in section 47.

Senator MACDONALD: That is provided for under the Ontario Succession Duty Act and under the Dominion Act you can sell it any time?

Senator BRUNT: Oh yes, because there is no lien under the present act. I am not referring to this bill, but under the present act there is no lien.

Senator GOUIN: Mr. Chairman, in the province of Quebec we always have a certificate from the Provincial Collector of Revenue which I understand is not given until the whole matter has been settled with the federal authority. But what I want to try to bring out here is that all our liens in the province of Quebec are registered, and there is no such thing as what I would call an occult privilege or lien. With that lien on the property in order to sell it we have to communicate with the department in Ottawa.

Mr. THORSON: There is no doubt the lien exists, whether it is registered or not. In the province of Quebec that would apply also. It is a lien by statute and would constitute a charge on the land to the extent indicated.

Senator MACDONALD: It is a great improvement to that section.

Motion agreed to.

The CHAIRMAN: We will now take up the next number.

Mr. THORSON: The next amendment is to clause 45, it relates to subsection 4 of section 45, copies of records. It provides for the giving of a copy to a person requesting it where copies have in fact been made.

The CHAIRMAN: The amendment reads as follows:

That Bill C-37, an act respecting the taxation of estates, be amended by striking out line 22 on page 36 thereof and substituting the following:

> "to be made one or more copies thereof and shall, upon request by the person from whom the original document was seized or by whom it was produced, in any case where a copy thereof has been made pursuant to this section, send a copy thereof to such person, and a document."

This does what we suggested to the Minister the section should do.

Senator WHITE: Suppose that you were to seize the office records of a doctor. Would copies of all his accounts be made and handed back to him under this amendment?

Mr. THORSON: Not necessarily. It does not follow that copies would be made of every document seized.

Senator WHITE: But suppose that you did seize two big ledgers of his accounts. Would the doctor, under this amendment, be entitled to have copies made of all his accounts?

Mr. THORSON: Only if copies were made by the department. This provides that where copies have been made the department must send a copy to the taxpayer.

Senator WHITE: So there will still be the loophole in a case where a doctor's books are seized and no copies have been made by the department.

Senator CROLL: He can make copies for himself.

Senator BRUNT: He won't be around in any event.

The CHAIRMAN: There is nothing in this section that provides that the records in charge of the department will be made available to the person whose records they are.

Senator WHITE: Under section 45 (*b*), the documents are kept until the prosecution, and the doctor would have no access to them.

Mr. THORSON: There are a great many documents subject to seizure where it would not be necessary to make copies. I am thinking of cases where a seizure takes place, the documents are examined, and there is a certain amount of sorting out to be done; some of the documents are found not to be material to the case in point, and they are returned.

The CHAIRMAN: But there should be some provision for access to the documents where copies are not furnished.

Senator WHITE: Under section 45 (*b*), where you have the right to seize them, you also have the right to retain them until they are produced in court. There is no chance there for the doctor to see his accounts.

The CHAIRMAN: There should be access.

Senator BRUNT: Is this provision similar to that in the income tax with respect to seizure of documents?

Mr. THORSON: As it existed previously, it is similar; this goes beyond the provision in the Income Tax Act, in this particular.

The CHAIRMAN: Under income tax, there are provisions which we do not have here, with respect to search warrants. I think the person whose records have been seized is entitled to see them.

Senator BRUNT: There never has been any trouble about inspecting documents that have been seized; there has been 100 per cent co-operation.

Mr. THORSON: May I clarify that last statement? I may have confused you when I said this provision went beyond the provision in the Income Tax Act. The section does not go beyond that, except to the extent that this amendment provides for the sending of copies.

The CHAIRMAN: The person who has had his documents seized should have a right to inspect them, if he is not getting copies.

Senator BRUNT: Or the right to make copies.

The CHAIRMAN: To make copies if he wishes.

Senator HAIG: Why not add those words to the section?

Mr. THORSON: I understand there are practical objections to it. Very often the person concerned is dead; the documents frequently are those of the deceased himself.

The CHAIRMAN: But they may be accounting records, in the hands of an accountant.

Mr. LINTON: In most cases these are records of the deceased person, so that it would not interfere as much with the collection of accounts and so on as it would in the Income Tax Act.

The CHAIRMAN: The question might arise in the administration of the estate.

Mr. LINTON: It might. We would anticipate this section being used very seldom. We have not had it in the Succession Duty Act up to the present time, and in the past 17 years I don't suppose we have had six cases where we would have liked to have had it.

Senator EULER: Then why put it in?

Mr. LINTON: It is for those six cases, where we really need the right to seize records, where we are getting no co-operation or help and everything is being done to defeat the Revenue.

The CHAIRMAN: What is the objection to providing for access to the records and the making of copies?

Mr. LINTON: The making of copies might involve all our staff for months.

The CHAIRMAN: You could send a man in with a photostating machine.

Mr. LINTON: But the documents might be very voluminous.

The CHAIRMAN: Even so?

Senator BRUNT: The representative of the estate should have the right to inspect the documents and make copies.

Mr. THORSON: There is nothing in the law that would prevent the executor or other representative from making copies.

Senator EULER: As a matter of practice, would you let him do it?

Mr. LINTON: Generally speaking, I would say so.

Senator BRUNT: Then why not add a clause, so that there would be no doubt that a representative of the estate could inspect the records and make copies?

Mr. THORSON: I would think it would follow from the whole structure of the bill that, in as much as there is no prohibition, the department would not deny access.

Senator HAIG: I know of an instance in my city where there are two partners in a business, but their individual investments are kept separate. If a seizure was made of the books it would tie up the business. Somebody might come in and deny the accuracy of a statement. The department might say they would let the partnership have access to the documents when the investigation was completed, and until that time they could not let the

documents out. That would be a perfectly good reason. I think that we should have the right to examine. I think that should be added to the section. It is only fair. I know cases in my city where a good many people would be affected, and very badly.

Senator CROLL: Let it stand for a while.

Senator BRUNT: Let it stand. We can take it up with the minister, and maybe come up with an amendment.

The CHAIRMAN: Amendment stands.

(The Departmental officials then withdrew).

The CHAIRMAN: We come now to the section on which I opened the meeting of the committee, that is section 26, on the question of the income tax contained in the pension. I said in opening that there had been a great deal of discussion and there seemed to be something approaching unanimity in views on that section. It struck me as being one of the most important ones left. Would the committee care to deal with that section now?

Senator LEONARD: As I moved an amendment to this section perhaps I might speak to it.

The CHAIRMAN: Yes.

Senator LEONARD: I think that the principle is still a sound one, that we should not tax the superannuation for pension benefit on the amount that is included in the valuation of it that would represent a tax liability still to be paid. In the amendment I suggested to this committee and to the minister I had drafted a rather broad provision that would enable the minister to prescribe by regulation for the estimation of the allowance of such tax. In the evidence given before us I think that the income tax officials themselves, by inference, admitted that this double line, or putting it another way, the tax on the liability, does exist, because Mr. Smith of the Finance Department gave two cases, for example, which showed that there was an estate tax on an annuity, on a pension benefit, and that there also would be then an income tax still to be paid on that benefit. But their difficulty seems to be to establish any table or to establish any rule whereby the allowance can be made for that tax liability, because it involves not only the age of the annuitant but it also involves the amount of tax that that annuitant may have to pay in the future on his or her income. Consequently I am going to suggest a different amendment than the one that I suggested before, because it was dependent upon the minister prescribing some sort of regulation or estimation; and I suggest that we add, after the words at the end of section 26, which now reads: "for the purposes of this Part, in determining the value of any property no allowance or deduction shall be made for or on account of income tax", these words: "except where a superannuation or pension benefit is taxable under the Income Tax Act." The effect of that is that you are thrown back on the fair market valuation of such a pension, benefit or superannuation. We are back in the position where we were before this particular section was put in the act. That particular section was put in, I think properly, to cover other cases where it would be quite proper that no allowance or deduction should be made for or on account of income tax; but that gathered up this particular type of case, which is going to be of increasing importance in the future, because the superannuation and pension plans are growing, a great many more people are becoming dependent on them, and because also they have come to a point where they represent a much more substantial portion of a person's estate for capital value purposes than they used to do. So, if we adopt the amendment I have mentioned that simply puts the value of the superannuation or pension to that which is taxable in the Income Tax Act, and these are words in the Income Tax Act

that are used to describe this particular type of benefit, a fair market valuation, and that is within the scope of any person valuing an annuity, to say this particular annuity is not worth the full amount it otherwise would be because there is the tax liability.

Senator BRUNT: Would you repeat that amendment?

Senator LEONARD: To add these words: "except where a superannuation or pension benefit is taxable under the Income Tax Act". In order to put it into discussion I would be glad to move that amendment.

The CHAIRMAN: It is open for discussion. The committee understand the effect of that? The effect of the amendment proposed is that in valuing a superannuation benefit or pension benefit you must value it on the basis of fair market value, and in appraising fair market value one does look at liabilities as well as benefits, and therefore there would be some reflection of the income tax content in establishing a lower fair market value than you otherwise would have.

Senator MACDONALD (*Brantford*): Would this affect the revenue to any extent?

Senator ASELTINE: It is a question of balance of ways and means.

Senator CROLL: Severely.

Senator LEONARD: I would say, not severely, myself.

Senator MACDONALD (*Brantford*): I am in favour of the principle, but I hesitate to make an amendment to a bill which affects the tax structure which has been established by the Minister of Finance. Included in that, of course, is the question of the balance of ways and means, as has been mentioned. If it were a minor reduction I think we would be on sound ground to make a-minor-change. But if this does go to the root of the financial set-up I think you should give it careful consideration.

The CHAIRMAN: I find it difficult to accept the definition that my duty as a senator is to be limited to making minor changes in a bill that comes before us. I say this because a bill may require a substantial change.

Senator MACDONALD: I am talking about a change which affects the receipt by the Government of a substantial sum of money. I think this should be looked at very carefully by the Senate. I know it has been said that the Senate can reduce taxation but at the same time we cannot disturb the balance of ways and means.

The CHAIRMAN: We can. We have the power to.

Senator MACDONALD: I don't think we should.

Senator GOUIN: We have the power but is it advisable?

The CHAIRMAN: The point is we should not do things that unduly disturb the balance of ways and means.

Senator POULIOT: I would like very much to ask a question I have asked with respect to other legislation. What is the revenue that the Government expects from this bill? Is there anybody from the department here who can give us an idea on that?

The CHAIRMAN: We were given a figure the other day that when this bill becomes law, in the terms of the bill, the revenues from taxation would be in the order of $7 million a year less than they are now.

Senator POULIOT: And if the changes suggested by some of our colleagues are made, what would be the return then?

The CHAIRMAN: We have no information.

Senator POULIOT: It was not calculated?

The CHAIRMAN: No.

Senator HAIG: Perhaps I don't understand all this, so I would like to ask a question. These pensions you refer to are pensions that have been built up by the deceased in his lifetime on which he did not have to pay income tax?

The CHAIRMAN: That's right.

Senator HAIG: Then that pension is payable at so much a year maybe to the deceased's widow as long as she should live. When the pensioner dies the pension value is estimated on the amount of the pension and on the widow's life expectancy. In the meantime she pays the regular income tax on the amount she gets?

The CHAIRMAN: That's right.

Senator HAIG: The reduction you are proposing to make is—

Hon. SENATORS: No.

The CHAIRMAN: No.

Senator HAIG: Wait a minute. You are proposing that that money must not be taxed against the estate only as to the capital value and not the increased value?

The CHAIRMAN: No.

Senator LEONARD: There are two types of annuities. I can buy a Government annuity and leave it to my wife. I have paid income tax on that money that came in during my lifetime. Say it is $1,200 a year. That is valued at my death at a certain amount of money. There is another type—

Senator HAIG: Stop there. What happens there? Your amendment doesn't affect that at all, does it?

The CHAIRMAN: No.

Senator HAIG: All right, go on.

Senator LEONARD: The other one, of exactly the same amount, I did not pay any tax on but my widow is going to after I die. But they value that annuity, which is subject to this tax, at exactly the same amount as the one that is not subject to tax. If I paid the tax on this other one I would have had that much less money. In other words, I would have been taxed on that much less money, so the tax paid by my wife is only a deferred liability.

Senator ASELTINE: Why shouldn't it be paid?

Senator LEONARD: It should be paid but not included in the valuation for estate tax.

Senator BRUNT: You should take the income tax payable off the capital value of the annuity.

Senator LEONARD: That is right. That annuity is not worth as much as the other one.

Senator HAIG: Why shouldn't they both be the same? You either pay it at one time or another. The man can make a choice.

Senator CONNOLLY (*Ottawa West*): When the annuity or pension is paid to the widow as she gets it year by year it will be subject to income tax.

Senator HAIG: On the amount of itself. That is income she gets. With respect to both illustrations that Senator Leonard gave me, income tax is paid in both cases. In one case the deceased person had already paid income tax on the money during his lifetime.

Senator BRUNT: That's right.

Senator HAIG: And with respect to the other one there was no income tax paid during his lifetime.

Senator BRUNT: But the one who paid income tax during his life has that much less money in his estate. It boils down simply to that.

The CHAIRMAN: Is there any other discussion?

Senator LEONARD: With respect to one he has paid the debt, and with repsect to the other it has been left to the wife to pay.

Senator MACDONALD: If I may continue, what troubles me is that according to the British North America Act, if I remember the wording correctly, any bill appropriating any part of public revenue or imposing any taxes or impost must originate in the House of Commons. Therefore we cannot impose taxation.

The CHAIRMAN: This amendment does not impose taxation.

Senator MACDONALD: No, but what have we done? The Government proposes certain expenditures. The Supply Bill proposes certain expenditures, and the Government has to raise sufficient money to meet those expenditures.

Senator POWER: Or there may be a deficit.

Senator MACDONALD: Well, if there is a deficit it has to raise the money. Now, at the end of the session we will approve that supply and therefore we have to approve all the amount of money to be raised to meet the supply. If we amend a bill which will reduce taxes it will reduce the amount of money which the Government will receive. Therefore, in order to balance the books, we will have to require the Government to increase taxation in some other respect in order to bring about the balance.

Senator EULER: It won't balance anyway.

Senator BRUNT: I understand there is going to be an amendment whereby the Government would collect more in certain circumstances.

Senator MACDONALD: If we make an amendment, what bothers me is that we may indirectly be taxing, and under the B.N.A. Act we are not empowered to tax.

Senator HAIG: Correct.

Senator MACDONALD: Under the B.N.A. Act we are not empowered to tax.

The CHAIRMAN: My friend is suggesting that if we reduce, for instance, the number of allowable deductions, we are taxing.

Senator MACDONALD: Which means that the Government will have to increase taxes somewhere.

The CHAIRMAN: If you reduce the amount of deductions you are making subject to tax a larger volume of the estate, but certainly that is not increasing tax as such. We are not dealing with the rates at all.

Senator POULIOT: I submit, Mr. Chairman, that although the Senate has not the right to impose taxation, it has the right to reduce taxation. It is for the Government to look after their business to try to make both ends meet. That is not for us to do, that is the business of the Government.

Senator MACDONALD: But when the Government has looked after its own business and made both ends meet, they submit that proposal to Parliament, including the Senate, and we have to deal with the passing of it?

Senator POULIOT: Senator Macdonald, we cannot impose any taxation, but we can make suggestions to the Government. We can suggest to them to tax the big bears and bulls on the stock market, and it would be a very popular move. We cannot pass legislation to that effect, but we can make that suggestion, and I would make it at the proper place.

Senator MACDONALD: I will agree that we could suggest to the Government they increase the tax on these people you refer to, but that is a suggestion; but it is not within the power of the Senate under the constitution to do so.

Senator POULIOT: I agree with you on that, but my contention is that the Senate has the right to decrease any taxation bill that comes from the Commons.

The CHAIRMAN: May I refer you to the report of a special committee of the Senate, in 1918, of which the Honourable W. B. Ross was chairman, on that very subject, and I think this is still a sound position:

> That the Senate of Canada has and always had since it was created, the powers to amend bills originating in the Commons appropriating any part of the revenue or imposing a tax by reducing the amounts therein, but has not the right to increase the same without the consent of the Crown.

Senator POULIOT: Exactly.

Senator MACDONALD: I think we all agree on that, but have to go a little farther.

Senator POULIOT: Oh, no.

Senator MACDONALD: If we stop there and reduce taxation to such an extent that the balance of ways and means is disturbed, I think we are going beyond our powers.

Senator POULIOT: No, Senator Macdonald, because we are not the Government, we are one of the houses of Parliament, and that is very different from the powers of the Government; it is not the same thing at all.

Senator LEONARD: Mr. Chairman, if I might say with respect, I think we are all agreed that we should not disturb unduly the ways and means. I agree with the honourable leader in that respect. But the Minister did not when he was before us, nor did the officials, raise any question other than it was a matter of difficult calculation. From my own general knowledge I would say that the amount involved here in gross could not be a substantial amount, but in the individual case it may be something of quite importance to some particular beneficiary. The Minister and the officials pointed out, though, that it was a putative calculation, and the Minister said, "How are you going to determine it?", and he found it difficult to do that. One must admit it is difficult. I do not think you can set up a rule of thumb, or if you did it would only be a rule of thumb. But the principle is there, and I think the principle is a proper one and is generally accepted. It is only a question whether we should not now adopt that principle and it can be worked out in the individual case, although it may involve some greater application to the problem that it has given us up till now, because they never had to do it until now.

Senator ASELTINE: Your amendment does not suggest any way in which that could be worked out.

Senator LEONARD: No, but if you took the two particular cases Mr. Smith gave us in his evidence the other day it would not be a difficult matter for anyone either to value those pensions or to set an allowance for the proper deduction for the value of them.

Senator ASELTINE: I do not think we should deal with that amendment finally without taking it up with the Minister again.

Senator MACDONALD: In connection with the report which was made by the Honourable W. B. Ross, I also recall that in that report he said—and I refer to this because the Government proposes certain expenditures, which are set forth in the supply bill, and we should be consistent in providing the money for that supply—that a supply bill should be passed as a matter of course by the Senate in almost all conceivable circumstances if it contains nothing but supply. So I come back to what I previously said, that doubtless we shall approve of the expenditures which the Government proposes. I cannot see how we can approve of those proposals and then tell the Government we are not going to give them the money to pay for it.

The CHAIRMAN: As I see it, we are not telling the Government we are not giving them the money. This statute will produce the revenues, if people are accommodating enough to die.

Senator EULER: The Senate has to approve a fall supply. Well, we cannot increase taxes, that is for certain, and if we cannot increase taxes what in the world is the use of a supply bill coming to the Senate at all?

The CHAIRMAN: No purpose at all.

Senator MACDONALD: I do not think that answers the question.

Senator HAIG: I think this is a pretty good bill, and I do not like to see the bill wrecked on apparently a point upon which some of us are disputing it. I am one who does not think this is a fair deal, where one pays the taxes and gets so much, and the other doesn't, and we want to let the widow off.

The CHAIRMAN: No, we are not letting the widow off.

Senator HAIG: We want to let the widow off.

Senator BRUNT: Are you referring to income tax or estate tax?

Senator HAIG: When she comes to pay she has to pay a certain amount of these back taxes.

Senator BRUNT: Well, are you referring to income tax or estate tax?

Senator HAIG: Well, she pays the estate tax, and I am against that, because in the other case the fellow paid for it direct. Now in the case where two policies are taken out, in the one case a man puts the income from it into an annuity or pension. On that one there is no income tax paid by the widow, only on the money she gets personally. In the other case the fellow didn't pay any income tax originally, and put it into the investment, and then the widow has to pay income tax or a part of it and then also pay tax on it. Now, you are trying to cut out that succession duty tax against that second widow. That man should have paid it on the first widow. That is the issue. You are not letting a widow off, that is not really the question. In the case of the one widow, the man was smart and he didn't pay any taxes on her, he put it all in the amount, because at the end of the road he knew that when she got the pension she wouldn't have any tax to pay. But the second woman got the money free. Now, I think that is unfair. Now, if the Government gets that legislation, I would not want to know what the Government would do, but I know what I would do if I were the Government, I would say, "Let the Senate kill the bill if you want to, but we won't accept your bill."

Senator CROLL: I am satisfied, after hearing everything that has been said, that we have authority to reduce taxation. There is not the slightest doubt about that in my mind at all.

Senator HAIG: I don't question that.

Senator CROLL: Now, this section is not new, it has been in the act since 1952. I think it is an unfair section and discriminatory, and I think all the points have been made. That is all I am going to say on that subject. On the other hand I am not prepared to support the amendment that has just been proposed for entirely different reasons. At page 171 of the evidence, when Mr. Fleming was here, he did not say he rejected the idea of the proposed amendment, he used the term, he "recoils". That is the term he used. He was opposed to our doing anything on it because they had given consideration to it, they knew it had some unfairness to it but on the other hand there was in his mind the balance of ways and means, and we have to keep that in our mind too, but he had set his mind against it. But what are we doing here? Here we have a new act, a good act, and in my opinion an improvement over the old act, and in attempting to correct all of the

omissions we try to make a perfect act out of it. We did not make a perfect act out of the Income Tax Act, we have been at it, I think, for years and years and years, and amendments come up before us every year. There will be times when we will have amendments to this. This is the beginning of an act, we cannot correct it all. I do not know what it can mean. Pensions in the last 15 to 25 years have become pretty common amongst working people, the normal pension of $900 or whatever it is. They have an element of taxation in them, it is a small element of taxation. Pensions of considerable size have always been the style amongst people of greater means and in more recent years they have become more than the style, it has been a method of paying top executives for continuing in their positions with corporations, that is one of the methods of paying their salaries. These things have become pretty much in use.

The CHAIRMAN: Senator Croll I do not want to interrupt you but you must realize when you are talking about large pensions the problem ceases to be important when the pensions go above $1,500 a year contributed by the person. After that it gets into a category of things that are not touched by this amendment at all.

Senator CROLL: You are quite right there. But let me say this. We asked Mr. Fleming what this would possibly mean in that category and he was not able to say, he did not know. Give him a little time to get some experience in this line, give his department an opportunity to come back here on another occasion and say to us this is what it means in dollars and cents, and then we will know. At the moment it is a stab in the dark. If you were to ask me what this bill would bring I would give you a curbstone opinion. He said it would lose $7 million and my own guess is that it would make $7 million. It is just a guess, though. All I have is a hunch. We are attempting to deal now with something about which we do not know everything that is to be known about it. We know only one side of the case. I think it is a mistake to do it at this time. If we waited six years to correct it we can wait seven years to correct it. We have had a discussion on it and we know some of the arguments on both sides. The department knows our concern and our interest in this.

Senator THORVALDSON: I think, Mr. Chairman, there is one point about this that should not be forgotten. I never felt that there was a really important discussion on this by the officials in regard to this at all. The reason the Minister said he recoiled from accepting our amendment is that he says it prefers one type of property to another and that is why he recoiled against it. That is his decision and I believe the decision of all the officials, namely, that it prefers one type of property, that is, this type of pensions whereas there are other types of pensions prejudiced as a result. That is the real objection of the department to this amendment. For that reason I do not think that the Government will accept any interference. And then of course this section is practically identical word for word with section 33(2) which was added to the act in 195—.

Senator CROLL: Mr. Chairman, may I make this suggestion. You cannot complete this bill this morning because we are waiting on another amendment. Allow it to stand until our next meeting whenever you call it.

The CHAIRMAN: I agree with that. In the meantime we will stand this item. And at this hour there is no use going on with any other item. There is an amendment to be proposed to section 7, and Senator Leonard has amendments to propose to sections 14, 15 and 16, and Senator Brunt may have something to say in relation to section 9.

Senator WHITE: What will be the amendment to section 7?

Senator POWER: This is an amendment that affects the principle of the estate tax as against the principle contained in the Succession Duty Act.

Senator Bouffard will be here this evening, and he will urge energetically that consideration be given to the family at all levels of Government. The family should be recognized, because it is not only the basis of the state, but is the basis of our society. I would prefer that Senator Bouffard argued this question himself.

The CHAIRMAN: If we adjourn until 8 o'clock, I take it Senator Bouffard will be here to speak to that point.

One further matter still outstanding is that of an optional value date. What the committee may choose to do in that respect, I do not know.

—Whereupon the committee adjourned until 8 p.m.

At 8 p.m. the meeting was resumed.

The CHAIRMAN: Will the meeting come to order? The first item is an item that we stood this morning for redrafting: that is the amendment to section 45, subsection (4) dealing with the copy of records, etcetera, and the question that we wanted included this morning was to ensure that if no copies were being made by the department of the records that had been seized, the persons from whom they had been seized would have access to the records and the right to inspect them. The amendment now prepared reads as follows:

"That Bill C-37, an Act respecting the Taxation of Estates, be amended by striking out line 22 on page 36 thereof and substituting the following:

> 'to be made one or more copies thereof and shall, upon request by the person from whom the original document was seized or by whom it was produced, in any case where a copy thereof has been made pursuant to this section, send a copy thereof to such person or, if no copy thereof has been made pursuant to this section, allow such person at any reasonable time to have access to the document so seized or produced, and a document' . . . "

Senator HAIG: That is O.K.

The CHAIRMAN: Then this amendment is moved by Senator Croll, seconded by Senator Haig. Those in favour? Contrary, if any? Carried.

We are gradually reducing the number that we have to look at. But we have several sections left. There is one that we got almost to the stage of voting on this morning; that was the amendment proposed by Senator Leonard to section 26 of the bill. Section 26 is the section that says that in determining value of any property no allowance or deduction shall be made for or on account of income tax. The suggested words of the amendment were: "Except where a superannuation or pension benefit is taxable under the Income Tax Act." The effect of that amendment would be that, in valuing a pension benefit or superannuation benefit that is subject to income tax on the person receiving it from year to year, the valuation would proceed on the basis of fair market value, and presumably, in making fair market value, if something is what Senator Croll called the other night a "built-in tax liability", I would assume that "fair market value" would be a lesser value than if it did not have that built-in tax liability. That is the problem. Is there any further discussion on this proposed amendment?

Senator ASELTINE: The Minister said the other night words to the effect that he could not accept that amendment because of the fact that it was not

workable, in the first instance, and in the second instance that it was discriminatory, and also, I understand, that it interferes with the balance of ways and means.

The CHAIRMAN: Just to refresh you on what the Minister said, the Minister was not dealing with this amendment; the Minister was dealing with an amendment which required him to prepare a table or a formula for the determination of the income tax deductions that would be arrived at.

Senator ASELTINE: And he said that was not workable.

The CHAIRMAN: He said that was not workable. Now, under the amendment that he considered, and to which he was addressing his remarks, the proposal was that you capitalize the value of such a pension right, and having arrived at that, you make a determination of what is the income tax liability that is inherent in that. You arrive at an amount, and you deduct the second from the first. The virtue of this amendment is its greater simplicity—rather, I should say, its simplicity—as against the Minister setting up tables and trying to make calculations. The simplicity in this is that you are thrown on fair market value. In other words, you are not precluded from looking at the effect of possible income tax liability in arriving at the valuation. But the Minister does not have to set up a table. You arrive at the fair market value the best way you can. Having arrived at it, why, then, it would have to be on such a basis that it could reasonably be supported afterwards if it were challenged. So it has the virtue of simplicity in dealing with a problem which could otherwise be a very complex one.

Senator BRUNT: With the consent of the committee I would like to read this illustration. I have shown this to Mr. Linton. This is something that arose recently right in my own office and I have the exact figures. It will only take a minute to give this illustration to the committee.

The CHAIRMAN: Yes.

Senator BRUNT: John Doe died on August 1, 1958, and amongst the assets in his estate was a pension insurance policy issued by the Manufacturers Life Insurance Company in the amount of $34,282.72. The policy was purchased entirely with funds upon which no income tax was paid. It is the present intention of the Succession Duty Department to treat the entire amount payable, namely, $34,282.72, as income into the estate, and income tax will have to be paid on it. Furthermore, the Succession Duty Office proposes charging succession duty on the entire amount, namely, $34,282.72, making no allowance for the income tax which has to be paid.

This appears to be unfair since, had the deceased withdrawn the entire amount, $34,282.72, from the insurance company on the first day of July, 1958, one year prior to his death, as he was entitled to do, he would have an income tax liability in connection with that withdrawal which could be taken as a debt in the estate. In this case the effective rate for income tax is 32.172 per cent. So roughly, out of the $34,000 there is an income tax liability of something over $11,000, and nothing is taken off the pension for it.

Senator THORVALDSON: What is the total value of that estate?

Senator BRUNT: Just over $100,000.

Senator CONNOLLY (*Ottawa West*): Is that taxable all in one year?

Senator BRUNT: Yes.

Senator THORVALDSON: Was the whole tax liability on that pension alone or on the whole estate?

The CHAIRMAN: Which one, the succession duty or the income tax?

Senator THORVALDSON: I mean the succession duty liability. Was that on the whole estate?

Senator BRUNT: Oh, yes.

Senator THORVALDSON: So it wasn't only on this pension?

Senator BRUNT: No, but the income tax they are paying on this particular pension is figured at the rate of 32.172 per cent, roughly one-third. If he had taken it out a month earlier it would have been a debt against the estate.

The CHAIRMAN: No, but Senator Thorvaldson's question, as I understand it, has to do with this. The whole proceeds of the insurance were treated as being 100 per cent the value of that policy.

Senator LEONARD: What my amendment proposes in a case like this is that the true value of the pension is $23,000, approximately, instead of $34,000, as it would have been had he withdrawn the $34,000 three days before, or one month before. Thus the value of that would only have been $23,000 as the income tax liability would have come off. Income tax liability is a debt of the estate just as much as it was before his death, even though it has to be paid after his death.

Senator THORVALDSON: Of course, in some situation like that there might not be any liability at all.

Senator LEONARD: Oh, yes, there would be.

Senator CONNOLLY (*Ottawa West*): You cannot escape liability in that situation.

Senator BRUNT: If this was the only asset in the estate would there be any income tax liability? Perhaps Mr. Linton could tell us.

Mr. LINTON: There would not be a succession duty.

Senator BRUNT: No, but income tax liability?

Senator MACDONALD: No, the person would only be liable for income tax from year to year.

The CHAIRMAN: No, this was payable in a lump sum.

Senator MACDONALD: That is under the estate tax.

The CHAIRMAN: No, the proceeds of this policy were payable at once in full.

Senator LEONARD: This case happens to point up very strikingly the same situation, should it be paid in installments for a period of time or for life. This happens to be paid in one year and points the case up very blatantly.

Senator THORVALDSON: This is not a pension case at all.

Senator LEONARD: It is exactly the same situation.

Senator CONNOLLY (*Ottawa West*): It is a little better for the tax department because the income tax is collected at a very high rate. If it was distributed over the years then the rate presumably would be much less.

Senator LEONARD: If you are thrown back on the fair market value and don't have to allow for section 26, then the $11,000 would be deductible from the value.

The CHAIRMAN: Not necessarily $11,000, but some figure.

Now, if we have exhausted the discussion on this point, the idea of the adjournment was to permit the Minister to come and express his view, particularly on this point, but he was not able to attend this evening.

Senator ASELTINE: He told me that it was impossible for him to be here, but that he had fully explained the principle of this at the time he was here before. I cannot approve the amendment from a scrapbook.

The CHAIRMAN: I was saying that the Minister had indicated that while he could not be present this evening he would ask Dr. Eaton to explain the position on his behalf. Dr. Eaton is here for that purpose, and I think we should hear from him.

Dr. EATON: Well, Mr. Chairman, this is probably my last assignment here, and I am inclined to think this is the toughest one I have run into since I started in the Government service. I am supposed in effect to give you the Minister's position after his having heard, and I assure you he has heard from us, all the various objections that have come up while he was not here. We retailed this to him pretty thoroughly. I expect I am bound to say too much in some directions and too little in others. He would have said it much better, I think, but I will do my best.

There are several important clauses here that have been held over, and clauses to which objection has been taken. One is mentioned now. Generally, as I recall there are four that have come up; there is just one, section 26, where he wanted an amendment to that clause struck out.

I assure you we spent a great deal of time with this item with the Minister today. I should say bluntly he did not feel he could accept it. Perhaps later if you like we could discuss these various pros and cons, but I thought I might as well say at the outset that he has had the words before him, he has considered them and feels he could not accept them, and has authorized me to say so.

Senator Bouffard made another point the other day about the provisions here not giving sufficient recognition to the family, and he had a proposal that an estate up to $200,000 should be taxed at half rate if all was left to the immediate family. Well, that again is a question of very broad principle and, I might say, this is one of the first decisions that had to be made in preparing the new estate tax. That is one of the things we were not going to look at, what the children or what the wife got. That is where all the problems under an inheritance tax arise, and one of the main objects of this kind of tax was to get rid of that terrible problem in valuing life interest, contingencies and so on. If you are going to get back into that kind of thing you are back right into the old problems of the inheritance tax.

The women also had the suggestion that in order for the $60,000 to be deducted, that deduction should be contingent upon the wife's receiving a substantial amount of the estate. That again led right back into all the problems of the inheritance tax as distinct from the relative simplicity of an estate tax.

One of the third problems is in connection with section 15. Senator Leonard raised this. He was concerned with the potential hardship on a widow in the case of a pensioner who might not have too many other assets where she had six instalments to meet the tax liability. Again I do not want to argue that, but we have moved from four years up to six years. Also under the old law there was only an exemption of $20,000 for the wife, and now there is a $60,000 exemption. Whether this case can be argued as being generous I do not know, but that is one of the problems.

Senator Leonard suggested the 15 per cent amendment here; we had a good look at that, we mulled it over and looked at the angles in it, and again the minister was not satisfied he could handle that. Now I merely record that decision after telling you quite frankly we went into it pretty thoroughly.

The fourth point that has been raised is about optional valuation dates. Now, all of us realize there are problems here of valuation. There can be a hardship there but we have not found the answer to that, and we have worked over it a good deal. We do not pretend to have all the answers.

I mention these as four fairly important problems that you are still not satisfied with; the specific ones that we have taken to the Minister and which he says he cannot accept. And there it is.

Well now, I might perhaps add to this—and I think this is what the Minister would say if he were here—that this estate tax has received more attention, more study, more work than any other piece of legislation in the 25 years I have been here. It is not secret that this bill was in print three years ago. We had been working on it before that time. The previous Government had this bill printed in draft form. We went through it with the Honourable Walter Harris, and he intended to bring it in. It was argued pro and con; we spent hours and days, in fact weeks on it.

Then the new Government came in, and we did the same thing. I don't know that I have ever spent as much time with one minister on a bill as I have spent with the Honourable Mr. Fleming on this piece of legislation. He took two weeks, every afternoon and every evening, with a group of 12 of us who sat around with him and went over the legislation with a fine-tooth comb. He wasn't satisfied with it, as you are not satisfied. We tried to get solutions. What I am trying to say is that we have put an awful lot of time on this measure; we are not perfectionists, and we haven't got the answers to all these things.

One other point: I do not think there has been a new point brought up in any of the discussions here that was not brought up years ago. Practically all of the points raised have been in briefs; the national briefs have all been tabled in the House of Commons, but those were only part of it. We received briefs and letters from individuals; there was an enormous flow of correspondence, because this kind of legislation has been in the mill for quite a long time. We examined all these points very carefully before submitting the bill in January. So, I think I can assure you that not one point has been raised here that was not raised before the original bill was tabled. The public had looked at the bill; the minister went through all the representations that were received following the introduction of the bill in January. We did our best with it, and have made a lot of improvements and changes in it since that time.

Now these points come up again. On certain of these specific points I have to report to you that the minister has looked at them again and—I may as well be blunt about it—he has turned them down. We are scared of this last-minute improvising of legislation. We do our best; we are pretty good, but we are not that good to be able to improvise on these things at the last minute.

The CHAIRMAN: Dr. Eaton, would you call this last-minute improvising . . .?

Dr. EATON: I will take that back.

The CHAIRMAN: If these points were raised in briefs and representations through the last four years, you have had a lot of time to think about them.

Dr. EATON: Yes, a lot of time to think about them. I am referring to specific instances put to us now. Very well, I will take that all back.

The CHAIRMAN: That is rhetoric.

Dr. EATON: Nevertheless, we are afraid of improvisation; we have got into a lot of trouble at times taking things that were given to us without sufficient study. It would surprise you some of the angles that come up that we have not seen when specific proposals were put up to us.

Let me give you an example. We brought in what was a simple amendment to clause 29 this morning, by which changes were introduced regarding arm's length. We were worried about that provision. We spent a lot of time over that on the week-end; we had a lot of alternatives that we were going to try to put in, but we could not be satisfied with any of them. A lot of us were no too happy about the amendment that was brought in by the

minister; however, there it is. I merely record that as an instance where a specific proposal came in, and we had to work on it. Perhaps enough has been said on that.

I think the minister would say, and I say it on behalf of those of us who are here in his absence, that we all think this is a pretty good bill, but we don't think it is a perfect bill. From our point of view, I know the minister is not satisfied with it, and I think he told you so the other evening. There isn't such a thing as a perfect tax bill.

But certainly, there never is any finality in tax legislation. Let me take the Income Tax Act as an example. Back in 1949 we got a new act, and every year since that time there has been an amending bill with 30 to 40 sections in it. Right now you have before you an income tax bill with 43 sections amending an act that we thought was pretty good to start with. My point is, there is no finality to these laws. If there is anything wrong with them, we will go to work on them now; these things you are objecting to will be in the mail and in briefs in the coming year. Starting within a month or two from now these things will start to come in. My point is that this isn't a closed operation of any kind. But we have now what we think is a good bill, much better than the previous one. I think everyone is agreed on that. We have been working on the changes, and we tend to regard this as a starting point for building up a better law; and if we can find a good answer to some of these problems—and if the minister were here he would assure you with great sincerity, that we will take all these points under consideration for further study. He will have to do it, because they will be coming in from the public from here on. This sounds as if I were pleading with you.

Senator POULIOT: Is the tax legislation drafted by the Department of Justice?

Dr. EATON: Yes sir.

Senator POULIOT: I thought so.

Dr. EATON: I do not like to be in a false position. I am not pleading with you here; I am trying to give you as near as I can what I think the minister would say if he were here; and I think I have said enough. Thank you.

Senator MACDONALD: This morning I raised a question as to whether this was the type of amendment which the Senate should make, and I started then that it bothered me, because I felt that we might be interfering in some way with the balance of ways and means. Now, we all agree, because it is set forth definitely in the British North America Act, that we cannot impose taxation. A bill imposing taxation must be introduced in the House of Commons. We are not directly proposing to impose taxation, we are not increasing taxation, and the committee which sat, I think, in 1918, decided that the Senate did have power to decrease taxation. But that committee did not decide that we had power to decrease taxation to the extent that it would interfere with the balance of ways and means. I have made a search, as far as it was within my power to do during the time that I was free—and of course I have not had too much time in the last couple of days—and I have not been able to find one case where the Senate has made an amendment in a bill which would substantially reduce the taxes which the Government would receive.

Senator POULIOT: If the Senate has not used the right it does not mean that it was deprived of it.

Senator MACDONALD: No, it does not necessarily mean that; I agree with you. I was just mentioning the fact that the Senate had never assumed the right which some of us might think we have. I think it was Sir Robert Borden

who said that if we all exercised all the right we have to the fullest extent, there would be a lot of confusion. Those were not his words, but they were something to that effect. From the remarks that were made here tonight there is no doubt this will make a substantial reduction in the moneys which the Government will receive from this taxation measure.

The CHAIRMAN: I don't think that appears from the evidence, Senator Macdonald.

Senator MACDONALD: Well, the illustration given by Senator Brunt tonight showed that it would. In that one instance alone there would be a considerable reduction.

Senator BRUNT: $11,000.

The CHAIRMAN: It would be the rate of debt on $11,000.

Senator POULIOT: When we have a conversion loan of $6½ million, what is $7 million?

Senator MACDONALD: That's right, but I should point out that if we were going to have a surplus the balance of ways and means would not be disturbed because there would be money over and above the amount we are going to receive.

The CHAIRMAN: Surely it would be just as much disturbed.

Senator MACDONALD: But in this instance we are budgeting for a deficit, and I would like to make this statement and have it on record, that I would personally take a more serious view of the actions on the part of the Senate which might disturb the balance of ways and means when a budgetary deficit is in contemplation. At the present time the Government has budgeted for a very considerable deficit. I would not be surprised if it is even larger than predicted.

The CHAIRMAN: The deficit to the taxpaying estate is important too.

Senator MACDONALD: That's right. When as under the former administration, a budgetary surplus is contemplated, a slight reduction in taxation or the conceding of a measure of relief from taxation, which would merely have the effect of reducing the surplus, would not in my view be beyond the competence of the Senate or necessarily undesirable. However, when what is budgeted for is a substantial deficit, then the reduction of taxation by this body must inevitably mean an increase in that deficit. This in turn would mean that the Government would have to borrow money at the public expense or impose additional taxes to account for the addition to the deficit. In such circumstances, it seems to me that substantial reductions in the public revenues by the Senate would mean that the Government would have to find the lost money some other way, either by borrowing it or by raising taxes. This, it seems to me, and this is my own personal opinion, is contrary to the spirit of the proposition that the balance of ways and means should not be unduly disturbed at the instance of this body.

Senator POULIOT: What author are you quoting?

Senator MACDONALD: That is my own statement.

Senator BAIRD: What would you have the Senate be, a rubber stamp?

Senator MACDONALD: Certainly not.

Senator BAIRD: I can't see what else you are making it.

Senator MACDONALD: You have not followed my argument, if that is what you say.

Senator BAIRD: Well, I can't see anything else to it.

Senator MACDONALD: Taxation legislation must be introduced in the House of Commons, but in the House of Commons no one except a member of the Government can reduce taxation if it is to disturb the balance of ways and means.

The CHAIRMAN: No, they can't in any event.

Senator EULER: They themselves disturb it almost every year and that is covered by supplementary estimates.

Senator MACDONALD: The Government does that, and that is my point. The Government must take the responsibility for it. The Government is responsible for the financing of this country. As I said the other day, we approve all Government expenditures and now they are coming along and saying they cannot have the money and we will not provide them with the money. Now we come along and say we won't provide them with the money. Well, if we don't, the only way to get it is by taxes, and the B.N.A. says the Senate cannot tax. I want to make it perfectly clear that I am expressing my own view after having given the subject very considerable study.

Senator BRUNT: On your argument, then, any change that we make to this act if the Government is doing deficit financing, cuts down on the revenue of the Government, and then we are interfering?

Senator MACDONALD: If it cuts down to a substantial extent.

Senator BAIRD: What do you mean by a substantial extent?

Senator MACDONALD: I am not prepared to say, but if it were a minor reduction.

Senator BRUNT: Well, when there is a deficit financing, even if it were a minor reduction, they would have to get that money either by imposing additional tax or by borrowing.

Senator MACDONALD: For a minor reduction it would go over to another year.

The CHAIRMAN: May I just say this, that if the question has been raised that this amendment should not be received because it has the effect of increasing taxes, I think if that were the situation the Chair would have to rule, subject to what the committee might do, that the amendment should not be received; but in my view the amendment does not provide for any increase in taxes, and therefore it is in order on that point. Now, on the second point, as to whether it unduly interferes with the balance of ways and means, I can only go on the material before the committee, as chairman, and in coming to a decision I refuse to speculate, and I say there is no evidence before this committee that would show that (1) reduction would be likely to occur overall in the revenues that this bill would produce even if this change were accepted, and therefore I am not in a position where I can say that the amendment should not be received because it will unduly interfere with the balance of ways and means. It is up to the members of the committee to decide.

Senator ASELTINE: I don't agree with that.

Senator POULIOT: Mr. Chairman, will you permit me to give an example and express my personal views?

The CHAIRMAN: Yes.

Senator POULIOT: We will have to go back to the time when there was no Parliament and the kings were supreme and pressured the people who had to pay what he asked for; it was an order. Finally there was progress and we had a certain degree of democracy, and little by little the barons succeeded in obtaining rights. Then they made a compromise and decided to impose taxation, but with the consent of the King. But they could always reduce that

taxation, and there is nothing in the B.N.A. Act that prevents any member of the House of Commons or any member of the Senate from moving a reduction in a taxation bill.

Senator MACDONALD: If it would affect the balance of ways and means, Senator Pouliot?

Senator POULIOT: What about the Governor General's warrants? Are you a member of the present Government?

Senator MACDONALD: Oh, no.

Senator POULIOT: No, I am not either.

Senator MACDONALD: Thank goodness I am not.

Senator POULIOT: And we are discussing it in an academic way. The practical point of view is that we have the right and we are not to abandon it; we have the right to reduce the taxation; it is clear as clear water.

The CHAIRMAN: Gentlemen, are you ready for the question? The question is this—

Senator THORVALDSON: Before you take that vote, Mr. Chairman, I will not vote because I am not a member of this committee.

The CHAIRMAN: Those in favour of Senator Leonard's amendment please raise your hand—(10).

Those opposed—(7).

The amendment is carried.

The next item we have was another amendment which Senator Leonard prepared.

Senator HAIG: I would suggest that you do not need to go any further, Mr. Chairman. I think you are wasting time from now on.

The CHAIRMAN: That may be your view, Senator Haig, but I have a job to do here and I have to do it.

Senator HAIG: I do not want to be misunderstood, Mr. Chairman.

The CHAIRMAN: Has anybody suggested we have been misunderstanding you?

Senator HAIG: I want to say quite candidly what is happening here tonight, that when we say to the Government you cannot collect as much money out of this as you thought you could, the Government is going to reply, we cannot accept the legislation.

The CHAIRMAN: Well, that is something we will face in the future.

Senator MACDONALD: I think we must go on. This is only one clause.

The CHAIRMAN: The next clause that stood was clause No. 15.

Senator LEONARD: This was the question of instalment payments, and Dr. Eaton has explained they have given this a good deal of study and they have not been able to find any practical way of meeting or agreeing with the amendment that I suggested. Since I have been studying this bill, and as a result of a conversation with the leader of the opposition in the Senate, there was a question that I wanted to ask Dr. Eaton, and that is whether this six year instalment payment provision is available in the case where there is a benefit passing to a successor under an estate so that the executor is liable for payment of the tax thereon. In other words is section 15 confined only to those cases where there is no benefit going to the successor through an estate?

Mr. LINTON: It is confined to cases where the successor has to pay some duty himself. He can take advantage of it in respect of the duty he has to pay himself and not in respect of any duty the executor has to pay either from the residue or on his behalf.

Senator LEONARD: That is if the tax is $5,000 on the succession under section 15, and there is a benefit going to the successor of $5,000 through the estate for which the executor is primarily liable, then the executor must pay the $5,000 and there is no right to the successor to elect to pay over a period of six years.

Mr. LINTON: That is right.

Senator LEONARD: And if the benefit is only $1,000 under the estate and the tax liability is $5,000, what happens?

Mr. LINTON: He has the right to pay on $4,000 in instalments.

Senator LEONARD: But there is no right of the executor to pay in instalments?

Mr. LINTON: That is right.

Senator LEONARD: That seems to me to create an additional hardship over and above the ones I had suggested before where the tax itself might be so heavy as to constitute an undue proportion of the annual annuity; and my previous amendment had dealt purely with the question of extending instalments of such payment. What I am going to suggest, but I am not prepared to move this myself, is that I think there ought to be some provision in section 16, which now gives the right of extension only in the case of hardship or excessive sacrifice, by adding some words that would indicate that apart from hardship and excessive sacrifice the minister in his own discretion could defer the time for payment where there is a tax on an income right or life annuity. Perhaps the department would give some consideration to that? That is the way I think any amendment, if it is to be made, should be made.

Senator MACDONALD: In this instance I am supporting the amendment of Senator Leonard. I believe it might work a great hardship to require a person in receipt of an annuity to pay the full tax from other property.

Honourable senators will notice the wording of subsection (3) at the top of page 20:

> (3) Where, in the case of any successor to any property passing on the death of a deceased, the property so passing to which he is the successor includes both
>
> (*a*) included property, and
>
> (*b*) other property,
>
> the executor of the estate of the deceased, as and when required by or pursuant to this Act to pay the part of the tax payable under this Part in respect of the death of the deceased that is applicable to the property under his control, shall, on behalf of the successor, pay the amount payable as tax under this Part pursuant to this section by the successor in respect of the property mentioned in paragraph (*b*), except that in no case shall the amount so payable by the executor on behalf of any person as the successor to any property passing on the death of the deceased exceed the value of any included property so passing to which that person is the successor.

Then, section 15(1)(*a*) reads:

> 15. (1) Notwithstanding the provisions of this Part respecting the time within which payment shall be made of any amount as tax under this Part by a person as the successor to any property passing on the death of a deceased,
>
> (*a*) where the property so passing to which that person is the successor that is not included in the property under the control of the executor of the estate of the deceased and in respect of which no amount is payable as tax under this Part pursuant to section 14 by the executor on his behalf . . .

That means, as Senator Leonard has pointed out that if there is certain property not under the control of the executor, but there is in the hands of the executor other property from which the estate tax can be paid, he is required to pay that tax from that other property.

Senator LEONARD: At once.

Senator MACDONALD: At once. It may happen that a man dies and leaves his widow a property and other assets which are not easily convertible into cash, a small sum of money and an annuity. The executor must take all the money in his hands and pay the tax on the annuity; or, if there is not enough money in the other property in the hands of the executor, the executor must have that property sold or put a charge on it to pay the tax. There is no provision under the clause which allows, in case of hardship, instalment payments, because there is other property in the hands of the executor. It seems to me that the minister should be prepared—and this won't cost the Government any money, so I am not arguing against myself—

Senator BAIRD: It won't affect the ways and means at all?

Senator MACDONALD: It won't affect the ways and means whatsoever.

I think an amendment could be made whereby in all cases of annuity the tax on it could be paid over a period of six years, instead of applying it only to cases where there are no other assets. If this clause is not amended, the result will be that in probably 99 per cent of the estates where there is an annuity the tax will have to be paid forthwith, and the clause granting the six annual payments would not amount to anything.

The CHAIRMAN: Mr. Linton, there is one question I wanted you to clarify. Section 15, which deals with instalment payments for six years, is limited to the case where a successor receives a benefit that is payable in a term of years, and he is not otherwise a beneficiary of the state. Is that right?

Mr. LINTON: Not quite, sir. He might be a beneficiary of the other part of the estate to an amount not sufficient to pay the tax, in which case he would have the benefit of instalment payments on the balance.

Senator LEONARD: Is that clear?

The CHAIRMAN: In section 15 it says—

Senator LEONARD: And in respect of which no amount is payable as tax.

Mr. LINTON: Yes. In respect of part of his annuity, tax is payable by the executor; in respect of the other part, it is not.

Senator CONNOLLY (*Ottawa West*): Because there aren't funds?

Senator LEONARD: You are dividing the property into fractions?

Mr. LINTON: Yes.

The CHAIRMAN: There is a very distinct limitation on the instalment payments provided for in section 15.

Mr. LINTON: A limitation along the lines we have just stated, yes.

The CHAIRMAN: Then in section 16 the discretion the minister has to defer is in cases of hardship, and that right to defer would apply as much in the case of an executor who has to pay estate tax as it would to a successor.

Mr. LINTON: Yes.

The CHAIRMAN: So the hardship decision and the deferment in the discretion of the minister, under section 16, has general application.

Mr. LINTON: Yes.

The CHAIRMAN: Whereas in section 16 the instalment payment has very little application.

Mr. LINTON: Yes.

Senator MACDONALD: I do not see where the hardship provision has general application. If I read the section correctly, it only has application if the payment is made by the successor.

The CHAIRMAN: No, by the executor of the estate of a deceased or by a person as the successor. You see that in the third and fourth line.

Senator MACDONALD: Yes, but there cannot be any instalment payment where it is paid by an executor.

The CHAIRMAN: I did not talk about instalment payment. I said that the right to defer payment and pay interest on a deferment, that would be on the basis that the minister has set up, exists in cases of hardship both in relation to the executor and to the successor. It is not spelled out as being an instalment, but the minister can define the method of payment.

Mr. LINTON: Under section 16.

The CHAIRMAN: Under section 16, yes.

Senator CONNOLLY *(Ottawa West)*: Even beyond the six-year period.

The CHAIRMAN: Yes, it could be beyond the six-year period. And you pay interest on it. But I was wondering, Senator Leonard, if you feel that these two sections go far enough.

Senator LEONARD: Well, unless it is the wish of the committee I am not proposing to press an amendment. I think that there is a proper case for making provision for instalment payments in the case of tax applicable to income rights in annuities. That is recognized in the one instance where the income right goes to a successor apart from an estate. But in the case of an estate there is an absolute necessity for immediate payment; and I would like to see some words in there that would give the minister and the department power to make provision for a payment of the tax over a period of time by instalments.

The CHAIRMAN: Of course there is a right of discretion in the minister to defer in the other situations.

Senator LEONARD: Only in case of hardship.

The CHAIRMAN: Yes.

Senator LEONARD: Or excessive sacrifice.

The CHAIRMAN: Yes.

Senator CONNOLLY *(Ottawa West)*: May I ask a question of the officials. Suppose you have a case where you have an executor with money or assets available for the payment of duty, and subsequent to the payment of duty he should be the recipient of an annuity and will get the annuity quite apart from any interference by the executor, under those sections, might the annuitant, successor make an arrangement to assume the payment, or must the executor pay?

Mr. LINTON: Oh, no, Mr. Chairman. If the annuitant chooses to pay to keep intact what he receives from the executor, it is quite in order. They both have the liability. If he discharges the liability then the executor is free to pass the property that the successor gets.

Senator CONNOLLY *(Ottawa West)*: In practice how would you work that with the department? Would you take security? Suppose I were the annuitant and my father left it to me, and that is all I got as a result of his death.

Mr. LINTON: If that is all you got, then the executor—

Senator CONNOLLY *(Ottawa West)*: I am sorry, that is not all I got I also got a house.

Mr. LINTON: The executor will be bound to pay the tax from the house or to borrow on the house or use the house in some way to pay the tax, unless you choose to pay the tax on the annuity yourself.

Senator CONNOLLY *(Ottawa West)*: Suppose I choose to pay it in instalments. How does the department satisfy itself that I will not squander the proceeds of the house.

Senator LEONARD: I think Mr. Linton, in an answer to me, said that he didn't have the right of election.

Mr. LINTON: I should think not. I think the right of election would not there arise because the executor has the liability to pay that.

Senator LEONARD: It has to be paid out of the house.

Senator CONNOLLY *(Ottawa West)*: Regardless of any arrangement I might care to make?

Mr. LINTON: No, you could pay the tax but I don't think you could pay it in instalments.

Senator CONNOLLY *(Ottawa West)*: So the instalment provision really means nothing.

Mr. LINTON: Not in these circumstances.

The CHAIRMAN: Isn't is right that the instalment provision is limited to cases where successors are taking one of the types of benefits you have here, and doesn't otherwise take from the estate?

Mr. LINTON: Yes, or takes from the estate an inadequate amount to pay the tax.

Senator MACDONALD: So it comes down to this. If there is enough money in the estate to pay the tax, it must be paid?

The CHAIRMAN: Yes.

Senator MACDONALD: Is there any provision there for hardship?

Mr. LINTON: Well, the hardship in section 16 will apply to these cases, as to any other, no matter what the benefit was.

The CHAIRMAN: I have no amendment before me, gentlemen. Does section 15 carry?

Senator MACDONALD: We have no amendment before us but I do hope the Government will take notice of our representations. Someone has said this is a new bill and that we cannot expect everything to be in it. Well, I hope we can expect this change in the second bill.

Section 15 agreed to.

The CHAIRMAN: The next item we had was with respect to section 9. I think Senator Brunt raised this.

Senator BRUNT: Yes. This relates entirely to situs, and the rules of situs have been changed by this section and I think it is unfair to all of the residents of the provinces of Ontario and Quebec. My feeling is that the section should be deleted. I expressed it before and I express it again, the section should be delected until the tax authorities of the three governing bodies sit down and work out an arrangement whereby the citizens of Ontario and Quebec, the two prescribed provinces, will be treated in the same manner as the citizens of all other provinces.

I am not saying for one minute that the dominion Government is not entitled to receive the tax which they get by virtue of section 9, but what I am saying is that no estate should be compelled to pay the extra tax which does arise by virtue of section 9.

The CHAIRMAN: Is there a motion before the Chair?

Senator POWER: Is there an amendment?

Senator BRUNT: Has anybody any idea how much money is involved?

Senator ASELTINE: There would be a considerable amount of money in a case of this kind.

Senator CROLL: I will move that section 9 be adopted.

The CHAIRMAN: We have a motion to approve section 9 as it stands in the bill. That is the section which establishes a provincial credit in relation to federal taxes paid on estates in Quebec and Ontario. Those in favour, please signify in the usual way.

Senator POULIOT: I am in favour of Senator Brunt's suggestion.

The CHAIRMAN: We have a motion from Senator Croll to approve the section. Now, Senator Pouliot, if you are in favour of Senator Brunt's suggestion—and he has not moved a motion yet—then you vote against the motion. I was asking if those in favour carrying section 9 would please indicate by raising their hands.

Senator WHITE: Mr. Chairman, with regard to what Senator Brunt says, if he takes away our 50 per cent in Ontario by taking it out, what are you going to have in the meantime?

The CHAIRMAN: Senator Brunt was proposing only that the subsection which deals with situs rules be taken out. Now, if you take those situs rules out you are back on the common law rules which are in force now in the province.

Senator CONNOLLY (*Ottawa West*): If Senator Croll's motion carries, then—

The CHAIRMAN: Then that is the end of section 9. I invited a motion by Senator Brunt, which he did not give me; he did not move. So Senator Croll makes a motion, it is the only motion before the chair, and I am putting it to the meeting.

Senator CONNOLLY (*Ottawa West*): But can't we have a discussion about it?

The CHAIRMAN: Oh, yes, unlimited, but I thought we had talked about it quite a lot.

Senator BRUNT: I have said all I am going to say about it very simply, and I am just trying to see that the taxpayers of the two prescribed provinces are treated in the same manner as those of all the other provinces.

Senator CONNOLLY (*Ottawa West*): If you strike out subsection 9, what will be the effect?

The CHAIRMAN: The effect will be that you are thrown back on the common law rules of situs.

Senator CONNOLLY (*Ottawa West*): Can anyone tell us if there is any substantial disturbance of the balance of ways and means?

Senator BRUNT: That is what I would like to know.

The CHAIRMAN: Can you express any views on that, Mr. Linton?

Mr. LINTON: Yes, as I understood Senator Brunt's problem the other night, it was that people who die in a taxing province with assets in a non-taxing province are likely to be cut out of their credit. The removal of subsection 8 won't change that. All that would do, as the chairman said, is to bring us back to the common law rules, but that situation would still exist. There might be a few whose credit would be a little less and some few whose credit would be a little more; but the big problem is that the credit problem is based on situs and not on the taxation imposed by the provinces. So cutting out subsection 8 would not cure that.

Senator BRUNT: What about subsection 1?

Mr. LINTON: It comes in subsection 1, yes, but if you cut out subsection 1 you cut out the credits entirely.

The CHAIRMAN: I think the simple way of dealing with this is to deal with Senator Croll's motion first. When we get that out of the way, and depending how it goes, we may have another question to discuss, but if the majority wish to support section 9 as it is, that is the end of it. Those in favour of section 9, please raise their hands, and those opposed, please raise their hands.

—Those in favour—(7)

—Those opposed—(8)

I declare section 9 carried.

Senator MACDONALD: I do not think it carried. It seems to me that those who voted against it wanted it to carry.

Senator ASELTINE: You voted for section 9 did you not Mr. Chairman?

The CHAIRMAN: I did not vote. There was a majority opposed to section 9 in the form in which it is. Is there some confusion in those who voted as to what they were voting for?

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, I do not know how the arithmetic was but there may be a good deal in what Senator Brunt says about confusion arising from new rules with reference to situs. Like any of a good many other rules there has been a good deal of representation about this section but I think that the position is that while there may be confusion, and there may be continued confusion afterwards and perhaps some injustice done, yet it is hard to say at the moment. Apparently there is no possible amendment available and perhaps in that circumstances we better have a vote again.

Senator POULIOT: Mr. Chairman, Senator Croll moved the adoption and we voted against it.

The CHAIRMAN: There has been some confusion here with regard to it, and we will take the vote over.

Senator EULER: Before you do that, Mr. Chairman, if the amendment carries, if the section carries, or if the subsection carries, does that mean a discrimination against those who live in the two prescribed provinces?

The CHAIRMAN: It depends on what you define as discrimination.

Senator BRUNT: It would penalize them.

Senator CONNOLLY (*Ottawa West*): There may be some.

The CHAIRMAN: It may work out that way. If a person dies with assets in Ontario and assets in British Columbia and those assets in British Columbia are of a character that they could not be said to have their situs in Ontario, they are taxable in Ontario because the transmission of those assets is to a person in Ontario.

Senator EULER: How about the two provinces though?

The CHAIRMAN: Under this bill, if it becomes law, the 50 per cent credit on federal taxes paid would only apply in relation to property having its situs in Ontario and would not apply in relation to property outside of Ontario.

Senator EULER: Well, there is Quebec.

The CHAIRMAN: Quebec would be in the same position as Ontario. If all your assets were in the province of Quebec and Ontario the problem would not arise.

Senator MACDONALD: Mr. Chairman, we took a vote on this and the vote was that the section do not carry. I think Senator Brunt who introduced it should now produce his amendment or withdraw it.

Senator CROLL: Senator Brunt merely set forth an argument, he did not suggest an amendment, and I do not think one can be drawn, it is not his responsibility, it is the responsibility of the committee. There is a section here, and I move that the section be adopted. If the committee wants to throw out the whole section, well that is what they voted for. The Chairman suggests the committee may not have understood, and that we should have another vote.

Senator BRUNT: May I ask Mr. Thorson a question that may help to clear this up? Mr. Thorson, would it be possible to delete any part of section 9 to bring about what I would like to have done?

Mr. THORSON: Your question really is as to these various individual rules set forth in subsection 8 dealing with situs?

Senator BRUNT: That is right.

Mr. THORSON: You have suggested that in the circumstances there may be some instances where, because of the fact that provincial rules may differ, an unfair result may ensue?

Senator BRUNT: That is right.

Mr. THORSON: This would involve an examination of each of the individual situs rules. These are rules which we think in the majority of cases, applied to the country as a whole, are most fair. Unless we have particular instances of this discrimination—

Senator BRUNT: For instance, take the case of estate of $100,000 in province of Manitoba bonds, fully registered.

Mr. THORSON: That is not a question of the situs rules at all; it is a question of the principle involved in subsection 1.

Senator BRUNT: That is a question of principle?

Mr. THORSON: Yes; it is not based on the situs rules.

Senator BRUNT: I come back to my question: is it possible to delete any part of section 9 to get rid of this unfairness?

Mr. THORSON: Without committing myself as to whether there is any unfairness, I would say no.

Senator BRUNT: That disposes of it for my part.

The CHAIRMAN: In view of what several senators have said, I think we should vote again on Senator Croll's amendment.

Those in favour of section 9, please indicate—(11).

Those opposed to section 9, please indicate—(2).

The section is carried.

We have two other items, one of which is section 7 (1). Senator Power had indicated this morning some amendment he wished to propose.

Senator POWER: I have two amendments, one of them an alternative amendment. One amendment is that which I am commissioned to move by Senator Bouffard. Neither he or I are entirely satisfied with the reason given by the minister for disregarding the question of relationship in this bill. I understand from Mr. Eaton, as I understood from the minister, that in estate taxation, as a matter of principle, relationship should be set aside. The minister said:

> The second point is that we have sought in this measure to be punctilious in confining ourselves to matters clearly within federal jurisdiction. It is quite true that Parliament can legislate and pass tax measures with due regard to family relationships. But in this field, what I take is implicit in the point that has been raised, is that Parliament should use its taxing power to measure what a deceased person

has provided for his family. In other words, according to the old expression, that he should be "just" with his dependants before he is "generous" with strangers.

In giving strict observance to the exclusive jurisdiction of provinces over property and civil rights, it seemed to us that that was a matter we ought to leave to the provinces.

I am sure I speak for Senator Bouffard, as I do for myself, when I say this age-old relationship of the family is something that should be respected at all levels of Government, whether federal, provincial or any other level; and I am not prepared to acquiesce in abandoning what I think is the natural law.

Senator Bouffard's amendment—which I am sure runs contrary to the views of Senator Macdonald—is as follows:

Senator MACDONALD: Not necessarily through his "feeling" in this respect.

Senator POWER: I would propose one of my own, if this one of Senator Bouffard's does not meet with general acceptance. Senator Bouffard's is that clause 9 of this Bill be amended by adding thereto the following as subclause 9:

(9) Notwithstanding anything in this Act, there may be deducted from the tax otherwise payable under this Part upon the aggregate taxable value of the property taxable on the death of a person, if the property passes to a surviving spouse or to children of the deceased, one-half of such tax: provided that no deduction shall be made in respect of the excess over $200,000 when the aggregate taxable value of the property is $200,000 or more.

This clearly upsets the "balance of ways and means".

The CHAIRMAN: Let us deal with this. This is an amendment which it is proposed to add as subsection 9 of the present section 9, which is a deduction section, and you understand the nature and the scope, and admittedly, as Senator Power has said, it would appear to disturb the balance of ways and means.

Senator POWER: Substantially.

The CHAIRMAN: However, I think the best way to deal with it would be to take a vote.

Senator MACDONALD: Just one minute. Is this in accordance with the representations that have been made by the Canadian Federation of University Women?

The CHAIRMAN: No.

Senator MACDONALD: I understood that they wanted a partnership in connection with the whole estate of either spouse.

Senator HAIG: As to the husband, as to the wife.

Senator MACDONALD: No, if I understood their brief correctly they felt that the wife and husband should be considered in equal partnership on all property, and I think there is a lot to their representation.

The CHAIRMAN: Here is the representation, senator. The Canadian Federation of University Women say this:

One-half of a deceased married partner's estate should, if it passes to the surviving partner, be considered for tax purposes as earned by the surviving partner, and not, therefore, subject to estate taxation.

Senator Power's motion on behalf of Senator Bouffard is limited. It recognizes the 50-50 division, but it puts a ceiling on it in estates of $200,000,

so that the allocation could not exceed $100,000 that would be recognized as the wife's portion on the death of the husband, not forming part of his estate for tax purposes.

Senator MACDONALD: I can't see why they should stop at $200,000.

Senator HAIG: Make it a million!

Senator MACDONALD: I would amend it by striking out the "$200,000" if it were not that I feel it is beyond the powers of the Senate to do so. I hope some day it will be brought into effect but I feel it is the Government only that can do this, and if it isn't done it is the responsibility of the Government.

The CHAIRMAN: Are you ready for the question? Those in favour of Senator Power's amendment on behalf of Senator Bouffard, which would introduce this new allocation of the estate as between wife and husband, raise your hand. Those against? I declare the motion lost.

I understand that you have another amendment to offer, Senator Power?

Senator POWER: In order to establish in this legislation the recognition of family relationship I would move that section 7(a)(i) be amended as follows:

> After the word 'spouse' in the 27th line, add the following words, "who inherits".

That would mean the exemption of $60,000 would be given in the case of the wife inheriting but it would not be given in the case of somebody else inheriting. They would get the $40,000 exemption. This, I take it, is increasing taxation and so it does not meet with the objections raised by Senator Macdonald.

Senator MACDONALD: It increases the tax on those not included, and if we pass this we would be doing the very thing we said we could not do.

Senator POWER: The Government might save a lot of money.

Senator MACDONALD: We would be taxing to the extent of $20,000 those not included in this category.

Senator POWER: It would decrease the exemption to the extent of $20,000 with respect to all those not the spouse of the deceased.

The CHAIRMAN: Frankly, if this were an issue we could vote on freely there is no question that I would vote to support this amendment, for I spoke along these lines in the Senate. But whether I am right or wrong in my interpretation of this, it appears to me that the effect would be to increase taxation. I could be wrong and I am in the hands of the committee if I make such a ruling, but for the moment I feel impelled to make the ruling, and on that ground, refuse to accept the amendment.

Senator POWER: You would have done a darn sight better job had you refused the amendment that Senator Bouffard made.

The CHAIRMAN: Except I think it is perfectly consistent. In dealing with this amendment you are affecting the tax situation of other people whereas in dealing with the first amendment that was proposed you were just dealing with the relationship as between husband and wife. I am not so firmly set in my views that I feel that I have expressed a perfect opinion. It is just my view and the ruling is based on that.

Senator POWER: I respectfully appeal from your decision.

The CHAIRMAN: It is in the hands of the committee. Those who support the ruling of the Chair please indicate by raising their hands.

—Those in favour—14

The CHAIRMAN: The ruling is sustained.

Senator FERGUSSON: Mr. Chairman, although I am not a member of the committee, may I be heard?

The CHAIRMAN: Yes.

Senator FERGUSSON: I was not present at other meetings of this committee, and therefore was not able to express myself, although I would like the committee to know that I very strongly support the brief of the Canadian Federation of University Women. I would like to ask one or two questions of the officers. I have great admiration for the Minister and for his advisors. In the field of taxation, certainly, I am sure they know more than I could possibly ever hope to do. But I am not so sure they know quite so much about the status of women in Canada and in the rest of the world at the present time. I do not think they have quite taken that into consideration. I cannot see why they absolutely disregard all the recommendations made through the years, that a woman's estate should not be considered as joint property, when a husband and wife have worked for it, and I do not see why they refuse to give any consideration to allowing one-half of the estate to be tax free of estate tax and succession duty on the death of one of the spouses. Although I have very carefully read every bit of evidence that has been taken in this committee, I am still not convinced, and I want to say that one reason I am not is that great emphasis has been placed on the fact that this is a new principle and you cannot deviate from the principle at all, and that if you have a new principle that we are going to tax on the mass of the estate we cannot break away from that principle. I should like to point out that in the United States, under their Federal State Act, they have the provision that on the death of one of the spouses, one-half of the estate is tax free, and I do not see why we cannot adopt that principle here.

The CHAIRMAN: Mr. Linton, do you care to deal with this?

Mr. LINTON: I think this is a matter of Government policy rather than administration. I hardly think I am competent to touch on it.

The CHAIRMAN: Dr. Eaton, do you feel your instructions will perform that?

Dr. EATON: No, sir, I am afraid not. I think I can only refer a question of that sort to the minister. It is a question of very broad policy, and I do not think that I would like to argue it. I think it is entirely a question for the minister to answer; it is his responsibility for having made that decision, or if you like for not having acted on the representations sent in, and I would appreciate it if I might be excused from attempting to answer it.

Senator FERGUSSON: May I ask another question, which has to do with policy?

Dr. EATON: Yes.

Senator FERGUSSON: Is the United States Federal Estate Act based on the same principle as the present bill in Canada?

Dr. EATON: There are certain features—correct me, Mr. Linton, if I am wrong—in the U.S. law which were not part of the representations that were received from women's organizations. As I recall the representations in Canada from the organizations, half the estate—

Senator FERGUSSON: I don't think you understand my question, Dr. Eaton.

Dr. EATON: I am just working up to the point that the representations in Canada contain no reference at all to what in effect is left to the wife by the husband. This rule as I understand it in the United States only applies to the extent that the husband does in fact leave property to the wife and if he leaves up to one-half his estate to his wife then one-half may be exempt. That is correct is it not Mr. Linton?

Mr. LINTON: Yes.

Dr. EATON: And that was not a feature in Canadian representations. I do not know any special point but it was quite an important difference I think in the two types of situation.

Senator FERGUSSON: But my point I think is different. I would like to know if the United States Federal Estates Tax Act is based on collecting the money on the mass of the estate in the same way, under the same principle as you now have in the present bill before us.

Dr. EATON: That is correct; it is.

Senator FERGUSSON: That is what I wanted to know.

The CHAIRMAN: There is one item left and that is the item of an optional valuation date. The proposal was that if there was any amendment the proper place would be following section 33, which is the valuation part.

Senator BRUNT: Mr. Chairman, I have an amendment to suggest, and the reason I am suggesting it is this, that I recall an estate that devolved in the city of Toronto which had a probate value of around $4 million. The death occurred in 1929, and the realization value of that estate was under $1 million. The amendment that I am proposing will have the effect of preventing any estate from ever getting into the position of not being able to pay the amount of estate taxes because of a tremendous fall in the value of securities that are in the estate that might take place between the date of death and before they can be realized on.

The amendment reads as follows:

> "Notwithstanding any other provision in this Act for determination of value of property passing on the death of a person the value of any property disposed of within a period of three months from the date of the death of a deceased for the purpose of providing for payment of estate taxes that may be or become payable under this Act in respect of such property, shall be the amount realized in such disposition and in the circumstances aforesaid that value shall be substituted for the value at which such property has been included in the aggregate net value of the property passing on the death of a deceased and the estate tax shall be revised accordingly."

The CHAIRMAN: The effect of that Senator Brunt is that if the property in question which is disposed of within three months after date either increases in price or decreases in price—

Senator BRUNT: It works both ways.

The CHAIRMAN: —it is the sale price that is the value for estate tax purposes.

Senator BRUNT: Only if the sale takes place for the purpose of paying the tax.

The CHAIRMAN: Are you moving this as a new clause 33?

Senator MCLEAN: The way the act reads now makes it an impossible situation, because if you take the listed price of a great many stocks and bonds at the time the deceased died they cannot be sold at that price because the executor or nobody else can do anything about selling them. It means that if you wanted to dispose of them you would have to sell them short. For instance, in the province of New Brunswick it would take at least two months to get through Probate Court, to get the approval of the judges to sell the assets, to give the power to the executor to act.

Senator BRUNT: I am not asking for this change in valuation if the executor is always in the position that he can pay the tax without realizing on

the securities; it is just where he has to go out and realize on securities to pay the estate tax. That is something that has to be paid, and I think there should be some protection for the estate.

The CHAIRMAN: Any comment on that, Dr. Eaton?

Dr. EATON: I don't know anything about valuation.

Mr. LINTON: You have the difficulty of establishing what his motives were. Suppose he sold twice as much property as was required for the estate tax, which was for that purpose and which was for some other purpose? If he held, say, 1,000 shares of a stock and sold 200 of it at 2 or 3 points below the market at death, then you would be valuing the same stock at two prices. It seems to me the matter has practical difficulty on those terms.

Senator BRUNT: You see the other point of view, the difficulty the executor may be placed in?

Mr. LINTON: Yes.

Senator BRUNT: He might get to the point where the assets in the estate would not be sufficient to pay the duty.

Senator HAIG: But Mr. Chairman, take the case of the man who died on the first of November, 1929, and who owned a stock in the Winnipeg Electric Company. That stock on that date was selling at $2 a share, but on the first of July, 1929, he could have sold it for $100 a share. But his mortgages on real estate in Winnipeg were worth 100 cents on the dollar on the first of July, and they were still worth that on the first of November. The tendency would be for the executor to dispose of those things which had gone wrong and hold on to the things that are doing all right. You would be in that difficulty all through.

The CHAIRMAN: You would be cutting your losses.

Senator HAIG: Another illustration is that of Trans-Mountain Pipe Line, which six months ago was $147 a share, and is today $57. A lot of jackasses—and I was one of them—did not know enough to sell it at $147. If I were to die tomorrow my beneficiaries would ask, "Why didn't Dad sell that stock when it was $145?"

Senator BRUNT: I would like to ask the honourable senator how the duty would ever be paid on an estate which consisted of 10,000 shares of Westcoast Transmission or Trans-Mountain, on which the value dropped, how would the estate tax ever be paid on it?

The CHAIRMAN: You couldn't pay it.

Senator BRUNT: You would turn the entire assets over to the authorities and it still wouldn't satisfy the duty.

Senator CROLL: But why talk in the abstract? There isn't a case in history of that—

The CHAIRMAN: Yes, there is.

Senator CROLL: Someone will correct me if I am wrong. They have rumoured that there was such a case where the estate was not able to pay the tax, but there isn't one.

Senator BRUNT: There would have been hundreds of estates, had there been a dominion succession duty in 1929.

Senator CROLL: But I am living in 1958. We have been paying succession duty for some years, and somehow or other they have been able to work it out. I can't bring any tears to my eyes for the estate with $4 million; when you get into that class, somehow they have been able to pay their share.

But the little fellow—

The CHAIRMAN: You have your own point of view on discrimination.

Senator CROLL: It is not discrimination, it is common sense.

Senator BRUNT: Would it be possible to include in this act a clause that the estate tax would never exceed the realizable value of the estate?

Senator POULIOT: May I ask a question of Mr. Eaton? What is the minimum and what is the maximum expected from this bill?

Dr. EATON: It appears, that this legislation will not be in effect and therefore will not give any revenue at all probably in the current year. So it has not been a subject of estimates of revenues per se as a current measure. What the minister did calculate and give an estimate for, was that when this legislation got in full swing, was proclaimed and had been in force long enough for the yield of this new tax to start flowing, the yield on an annual basis would be about $7 million less than the yield of the law currently in force.

Senator MACDONALD: How much was that?

Mr. SMITH: $65 million to $70 million.

Dr. EATON: The forecast for this year was $65 million, which would be the yield from the current succession duty law.

Senator POULIOT: This would apply only to the estates of those who would die after it becomes law?

Dr. EATON: That is right. And then there is a period before the money starts flowing in after the death; and I think it was anticipated that there would be no revenue from the estate tax bill in the the current fiscal year.

Senator POULIOT: People will have to die before the department gets money.

The CHAIRMAN: Are you ready for the question?

Senator MACDONALD: I want to get the statement that was made by Dr. Eaton. Did he say it is not expected there would be any money during the current fiscal year from this estates tax bill?

Dr. EATON: Yes.

The CHAIRMAN: So there will be no balance of ways and means.

Senator MACDONALD: Anything we do in this bill could not affect balance of ways and means.

The CHAIRMAN: That is right. Are you ready for the question?

Senator CONNOLLY (*Ottawa West*): I would like to say this about the matter Senator Brunt has raised. I think the problem he has posed is a real problem for some people. I don't know if the amendment he suggests is going to really solve the problem. But I do say this, that we have discussed earlier alternative dates for valuation—three months, six months, a year. Apparently the Americans do it a year after death, as well as at the date of death; from which I understand from some of the material I have read they do not find that in the long run they lose very much in the way of revenue. I think myself it would be a better way to meet the problem that Senator Brunt raised.

The CHAIRMAN: Except that in the American system there is the additional provision that, if there is any sale in the year, the valuation is the realization on the sale.

Senator CONNOLLY (*Ottawa West*): Quite so. What I would suggest is this. I would not think this amendment would carry—I may be wrong—but I would hope that within a year the department might give study particularly to the American experience and what the effect on the revenue would be, of establishing alternate dates for valuation, considering also that other suggestion that was made by the chairman.

The CHAIRMAN: Are you ready for the motion? Senator Brunt has moved that a section be added as section 33-A dealing with this question of the value for estate tax purposes in the event of the sale of any assets within three months from the date of death, for the purpose of or to provide the estate tax money—that the value shall be what is realized rather than the value at the date of death. That works both ways, you understand. It may be up or down. Those in favour of Senator Brunt's amendment please indicate. Those opposed? I declare the motion lost.

We have disposed of all the sections which have been stood. Is it the pleasure of the committee that I report the bill with the amendments that have been made? Those in favour? Those opposed? I declare the motion carried and I will report the bill as amended.

The committee thereupon adjourned.

SENATE OF CANADA

Standing Committee on Banking and Commerce
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