POST WAR TAX IMPACT *

The stupendous effort of the United Nations during the past five years in our titanic struggle will soon be crowned with victory. The realities of post-war conditions are at hand. The employment of hundreds of thousands of members of our armed forces and workers of war industries will, in my opinion, be dependent to a considerable extent on vital changes in the Income War Tax Act and the Excess Profits Tax Act — not particularly changes in respect of rates although that is important but more especially in the elimination of the wide discretionary powers vested in officials of the Income Tax Division in the name of the Minister. It is industry that provides most employment and it is industry that will be asked to continue business and re-engage our men and women passing from war to peacetime activities. The business man will be confronted with uncertain economic and world conditions. All his skill, judgment and foresight will be of no avail unless at the time he lays his plans and enters into any new venture he is able to ascertain, approximately, what his liability for income taxes will be one, two or three years after he has started his post-war business. Today that is impossible and in my opinion it is one of the most serious deterring factors in bringing about post-war employment.

Canada has a new world position, her debt is greater, her industrial capacity vastly increased and her financial position still one of the best amongst the nations of the world.

Until the later nineties the growth of the manufacturing industries in Canada was slow. The gross value of manufactured commodities in 1890 was less than $500 million. By 1915 it was $1400 million and in 1943 $8800 million. We are a great industrial nation — one of the largest in the world and today the third greatest trading nation. Industry is the chief source of revenue from taxation.

The influence of the Great War (1914–1918) was profound and far-reaching. It promoted diversification of products and the production in Canada of many commodities previously imported. There was practically a suspension of importation of many commodities. The same influence has resulted in this war but on a vaster scale.

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Students of history picking from the past all vital and pertinent facts must say without doubt to the present generation "Prepare for important changes in our economic, financial and social systems." The far-sighted statesman of today looks with dismay upon the world after a possible five or six years war. He is staggered at the immensity of the problems. He is confounded by the thousands of ideas for solution of those problems. But youth, the hope of every nation, moves serenely on, with little thought of the past, with some apathy to the fundamentals of present day problems and with both supreme confidence and hope for the future. It is for the coming generations that statesmen must now plan.

British history shows conclusively that from 1688 to 1944:

(a) The costs of wars have progressively increased;

(b) After each war all expenses of the state have risen to a new level;

(c) There is little disposition to reduce debt during the intervals of peace;

(d) The growth of the nation in material resources has reduced in each historical period the burden of debt;

(e) Governments have always derived a substantial portion of the cost of each war period from taxation.

All through history wars have been the overwhelming cause of national debts. Great Britain's experience is instructive to Canadians. Britain's debt by 1775 was £650 million. The Napoleonic Wars left 17 million British people with a debt of only £850 million. By 1914 her debt was a mere £711 million with a population of 46 million to pay it off. During the period of nearly 100 years following 1817, Britain's national wealth had increased nearly 5½ times, her national income over 5½ times, and her population 2¾ times. By 1920 her net debt was £8200 million. Consider carefully the significance of the following astounding figures in respect of the costs of the first great war to Britain. For the six years following March 31st, 1914, and ending March 31st, 1920, that amazing little island spent more money ($11,268,00 million) than she expended during the period of 226 years preceding 1914.

During the same six years the cost of the war to Canada was $1,670,000,000 of which only $7,973,000 was raised by individual income taxes and $1,377,000 from corporation income taxes or a total of $9,350,000. In other words, income taxes provided 8% of the total cost of the last war — the Income Tax

Act only came into effect in 1917 and the 8% was calculated over the total main period.

Most people realize the impact of taxation upon their individual incomes and businesses but few appreciate the magnitude of income taxes on our national economy and the vital and urgent need of certainty in our tax laws if business is to fully assume its responsibility in respect of employment and general activity after the war.

The following table discloses the huge but proper burden in war time (Budget Speech 1944):

Fiscal Year 31st March	Individual Income Tax	Corporation Income Tax	Excess Profits Tax	Total
	(Thousands of Dollars)			
1943–1944	813,000	311,000	469,000	1,593,000
1942–1943	534,000	348,000	455,000	1,337,000
1941–1942	296,000	186,000	135,000	617,000
1940–1941	104,000	132,000	24,000	260,000
1939–1940	45,000	78,000	Nil.	123,000
Total revenue from income taxes in this war....				3,930,000

During that same period our total war expenditures were $10,559,000,000. In other words, the people of Canada have paid 37% of the total cost of the war to date from income taxes as against 8% in the last war, but this war to date compared with the last is just sixteen times more expensive. However, to grasp the full significance of the present burden of income taxation in relation to total revenue the statement of the Minister of Finance in his very comprehensive and able speech on the budget delivered June 26, 1944 is interesting: "In 1943–44 the proportion of total revenue derived from direct taxes on income and taxes was 56.7% compared with 28.3% in last pre-war year 1938–39."

A large public debt means added taxation for interest.

As at the 31st of March in each of the years following the gross funded debt of Canada was as follows:

1914	544,000,000
1919	2,676,000,000
1938	3,540,000,000
1944	10,689,000,000

(1944—Net debt—$8,842,000,000)

Of great importance is the fact that 97% of our present debt is held in Canada. The debt is increasing now at the rate of about $2,600,000,000 per year due, of course, to the vastly increased cost of war. The estimated expenditures for the present fiscal year are thirteen times the highest cost year in the last Great War. It is interesting to note that we are spending this year alone about two and one-half times of the total cost of the whole of the last war including interest, pensions and soldiers' civil re-establishment.

We must not forget that in addition to our federal debt the people of this nation carry total provincial debts of about $1,800 million and total municipal debts of about $1200 million. This country therefore carries a total Dominion, Provincial and Municipal gross debt of approximately $13500 million — a tremendous burden for a population of 11½ millions.

The federal government's total average annual expenditure before the present war covering civil administration and interest on public debt was approximately $550 million, but for the year 1943–1944 ending 31st of March, our total budget was $5360 million, or nearly ten times as much. 86% of this huge sum went for war purposes.

Our revenues for the 1943–1944 period were $2856 million including a small refundable portion of $155 million. Of this amount $2592 million came from taxes of which the Income War Tax Act and the Excess Profits Tax Act provided $1593 million. The actual figures for 1943–1944 taken from the budget of the Minister of Finance are as follows:

Personal Income Tax.....	813,000,000
Corporation Taxes	311,000,000
Excess Profits Tax Act.....	469,000,000
Total.....	1,593,000,000

One may wonder how it is possible for the 11½ million Canadians to supply that enormous revenue. Of course the simple answer is that the tremendous demand for war goods has vastly increased our national income — meaning the aggregate net value of commodities produced and services rendered. Our National Income in 1939 was about $4500 but by 1944 it had reached the remarkable figure of nearly $9,000 million.

It is from industry and commerce that Canada derives most of her revenue. It is industry and commerce that provides by far the largest proportion of gainful employment. In January,

1943, Canada's working force (including the armed forces) was approximately 5¼ million persons or about one-third increase over the corresponding pre-war figure of 3,900,000. During the 23 year period of 1919–1942 employees (2,163,000 average) constituted 62% of the total number of full-time gainfully occupied workers in Canada and these employees received through wages and salaries 58.8% of national income payments. In January, 1943 more than 1,000,000 persons were engaged in war industries and 636,000 in the armed forces. Agriculture in January, 1943 had slightly over 1,000,000 workers. The number of course increases during spring and summer by nearly 40%.

To simplify my submission and relate it to the legal aspect of the problems involved, let us consider the manufacturing industry, producers of most of Canada's income taxes, $8,800 million in gross value of production in 1943 of four times that of agriculture ($2,100 million) and nearly ten times that of mining including smelting. Manufacturing is used here as distinguished from agriculture, forestry, fisheries, mining and construction, constituting the major industries of Canada. It is well to remember that the average Canadian manufacturer must risk by investment $5,540 on plant and equipment for every worker he hires.

Post-war tax impact—that is what the manufacturer and every businessman must think about if he is to do his part in maintaining employment. The tremendous output of war goods will suddenly cease. World trade on which our economy so much depends will be abnormal and under the control of a group of nations. Our excess of $1700 million of exports over imports must be balanced in the face of Canada's position as a creditor nation of Great Britain and many others except the United States. The future prospects of the average manufacturer will be uncertain except in some cases during two or three years following cessation of war.

He will be asked by the Government to provide employment and many encouragements of a financial nature will be extended as an inducement. The recent amendments to the Income War Tax Act and Excess Profits Tax Act (Bill No. 180) already indicate such a policy. In his budget speech of June 26th last Mr. Ilsley states the Government's policy in these words:

"I am concerned only with clearing away some of the uncertainties of fiscal policy—opening the way for business firms, both large and small, to proceed on as definite as possible a basis with the drawing up of plans for the post-war conversion and expansion

of industry and trade on which employment after the war will depend. If the planning and designing can be done, the execution of the plans will come in good time.

"These are the considerations which we have had in mind in framing the financial proposals for this budget."

For example expenditures on scientific research are extended as allowable expenses by widening the definition. There is now provision for a one-year carry backward and three year carry forward of losses. In this connection Mr. Ilsley stated:

"This recommendation will bring our taxation of business profits nearer to the principle of taxing only what is actually realized in income over a period of years and should be of substantial assistance to business enterprise in the post-war years."

Of some considerable importance is that relating to deferred maintenance and repairs, whereby in a period to be fixed by the Governor in Council the taxpayer carrying on a business is permitted to spend money on repairs and maintenance and instead of charging the whole of such expense in the year of expenditure he may re-open the returns of previous years (back to the year or fiscal period ending since December 31st, 1942) and charge against the profits of those years, either in any one of those years or in varying proportions over the previous years, up to 50% of such maintenance and repair expenditures.

Section 5 of the new amendments deals with section 6(n)—of the Income War Tax Act—depreciation. This has been a source of much uncertainty for all business concerns. The amendment adds the right to take depreciation at double the rates normally allowed in respect of plant or equipment built or acquired in a period to be fixed by the Governor in Council if the taxpayer is, in the opinion of the Minister, making a new investment by building or acquiring the plant or equipment.

Under the new amendments refundable tax under the Excess Profits Tax Act may be assigned as security for loans where funds are used in connection with conversion of plants and employment providing that the approval of the Governor in Council has first been obtained.

The Excess Profits Tax Act amendments of 1944 also contain provisions alleviating the burdens of taxation in order to encourage post-war development and employment.

Of importance is the third proviso of sec. 3(1) of the amending act of 1944. The maximum excess profits is fixed at 22% for corporations and 15% for individuals and partnerships during their first year if business was commenced after the 26th of June,

1944. In other words, the 100% rate is eliminated. The same principle applies to the old businesses that have changed in character and made new investments for physical assets after the 26th of June, 1944. This creates an incentive for war plants to convert to peacetime operations. It gives the taxpayer a year's operations before he applies to the Board of References for a standard profit. Applications are heard by the Board only after one year's operations.

There are also encouraging amendments under sub. par. iii to s.4(1) (b) whereby corporations may increase their standard profits by 5% of the uncapitalized surplus accumulated between the beginning of their 1939 period or their first taxation year and the beginning of the 1944 period. This is an alternative to obtaining a 7½% increase if the surplus is capitalized. Similarly, deduction will be made on the same principle if surplus is decreased.

Of considerable importance is the enactment in the statute of the regulations issued on November 11th, 1943 respecting consolidation of companies and the standard profits of the various companies. If a new consolidation occurs since 1939 then the taxpayer must take as its standard profits the standard profits of its largest component company if it carried on substantially the same class of business continuously since before January 1st, 1940 and if it had the largest standard profit of all the companies concerned, plus a standard profit of $5,000.00 for each of the other component companies. An old consolidation, that is prior to the 1940 fiscal period, is entitled to retain its consolidated pre-war standard profits, but may add to it only $5,000.00 for each new component company only if such new company was in existence and carrying on the same class of business before the war. The same principle in the amendments to the Income Tax Act respecting business losses, amounts expended on scientific research and deferred maintenance and repairs are carried into effect in the Excess Profits Tax Act.

My reference to the 1944 amendments is not for the purpose of giving an analysis in precise form of the effect of the amendments but rather to indicate by selecting certain amendments the fact that there has been a recognition on the part of the Government of the need for making concessions to business in order that business and employment may be maintained or increased in the immediate post-war period.

It is to be noted that in many of these amendments discretionary authority is given to the Minister in some form or another. That principle of wide discretionary authority is a

predominant feature of our income tax law and it has been continued in the 1944 amendments. The question which many careful students of our tax structure are asking is whether such discretionary authority will be maintained under post-war conditions. It is a question which is vital to the success of all new ventures and which is equally vital to existing businesses, whether they contemplate expansion or not.

Wide use of discretionary power in wartime is justifiable because the Government of Canada must collect fully, effectively and on its due date all taxes for which the taxpayer is liable. Without such a policy Canada's war effort might be impaired. We are fortunate in this country in having a Deputy Minister of wide experience, unusual capability, a high sense of justice and sound principles in administration. We all know that while a Minister is technically at the head of the Department, he is too busy in wartime on national policies and many other important matters of his department to determine detailed matters of administration. As a Deputy Minister, Mr. Fraser Elliott, C.M.G., K.C., has discharged his duties in a brilliant manner, supported as he is by a group of able officials, both in the head office and in the different districts of Canada. Under both Acts all discretions are given to the Minister in whose name his officials act. In actual practice this discretionary authority is in the first instance carried out and often largely determined by junior assessors who go out to the premises of the taxpayer. Their reports, passing through the senior officers of the district offices, find their way to the head office and are there either confirmed or overruled. It is reasonable for the head office, as a matter of policy, to conclude that the officials of the District Office are better able to reach a conclusion on the facts than the officials of the head office. The result is that a taxpayer has considerable difficulty in having decisions of the District Office reversed by Head Office. The officials of the head office in Ottawa are properly reluctant to interfere with decisions based upon facts which are more fully known to the officials of the District Office. Thus it sometimes happens that an unsound principle is confirmed in a ruling under the discretionary powers vested in the administration.

There was little discretionary authority in the Act of 1917. Gradually and particularly during the war the Minister has been given by succeeding enactments very wide discretionary authority.

I have read over both the Income War Tax Act and the Excess Profits Tax Act twice, segregated the various expressions

giving discretionary powers to the Minister and noted the number of times that such expressions have been used in both Acts. I have also prepared a chart which is attached to my written notes referring specifically to each section and subsection in which each of the expressions are used. It will, no doubt, amaze you as it surprised me to find that discretionary authority is given to the Minister sixty-nine times under the Income War Tax Act and thirty-one times under the Excess Profits Tax Act, making a total of an even 100 times in both Acts. My address should really be entitled "Those 100 Question Marks". The above is apart from an increased number which I have not calculated referred to in the 1944 amendments.

The expressions, employed a number of times in each of the two Acts, are as follows with the total number put in brackets after each expression:

"In the opinion of the Minister"(11); "Shall be final and conclusive" (14); "In his discretion to determine or allow" (22); "Power to Determine or shall or may determine or apportion" (19); "Approved by the Minister" (not referring to forms or regulations) (1); "The Minister shall be the Judge" (1); "May or may give effect to" (2); "If the Minister is satisfied" (18); "The Minister may allow" (3); "The Minister may prescribe or direct" (2); "May be adjusted" (1); and then as if some authority may have been omitted the Treasury Board under s. 32 (a) is given the widest possible discretionary authority "notwithstanding any of the provisions of this Act." The expressions "opinion", "may determine", "may be made" are found four times in the two Acts. The net result of s. 32A and the 100 discretionary authorities is in my opinion to make it absolutely impossible for any lawyer or chartered accountant to advise a taxpayer what his bill for taxes is or may be in the future. In other words, under the existing law it is impossible, for a business man planning an investment, with some risk attached, to know what the results of the investment will be. I have spoken to hundreds of businessmen in connection with this matter and it is my considered opinion that if these discretionary powers are maintained after the war they will be the greatest detriment not only to the expansion and development of business and employment but to the maintenance of business and employment on a normal scale. The best, most experienced and shrewdest business men can have their calculations on the results of a venture completely thwarted by tax officials exercising one or another of these 100 discretions. The business man simply says "Why take a chance—why make any investment?"

I submit that it is of the utmost importance to the future of business and the creation of employment to correct this situation. The act should be revamped at the earliest opportunity to eliminate such discretionary authority, except, of course, in respect of forms and minor administrative matters. The provisions of the Act should be based upon accepted principles of income tax law. The rights of the taxpayer should be protected by an independent Board of Tax Commissioners or tribunal standing between the Crown and the taxpayer. This Board or tribunal should hear appeals from the assessments of the administrative officials rather than having the appeal go in the first instance to the Minister (as it now does) which means that the officials who prepared the assessment pass upon the appeal.

At this juncture I wish to quote an extract from that famous work, "Wealth of Nations" by Adam Smith published in 1776.

"The taxes which, it is intended, should fall indifferently upon every different species of revenue, are capitation taxes, and taxes upon consumable commodities. These must be paid indifferently from whatever revenue the contributors may possess; from the rent of their land, from the profits of their stock, or from the wages of their labour.

"Capitation taxes, if it is attempted to proportion them to the fortune of revenue of each contributor, become altogether arbitrary. The state of a man's fortune varies from day to day, and without an inquisition more intolerable than any tax, and received at least once every year, can only be guessed at. His assessment, therefore, must in most cases depend upon the good or bad humour of his assessors, and must, therefore, be altogether arbitrary and uncertain."

The first income tax laws were brought into effect in Great Britain in 1435 and again in 1450. This was a graduated tax on income from certain fixed sources. Income tax laws in Great Britain are the oldest temporary and emergency laws known.

The present basis of the British Income Tax Act dates from 1799. An Income Tax Act was introduced by William Pitt in that year "granting to His Majesty an aid and contribution for the prosecution of the war." This Act merely increased the duties of certain assessed taxes.

In 1917 the present Income War Tax Act was passed in Canada. It was enacted as a war measure and the words of Sir Thomas White, then Minister of Finance, indicate the Act as being temporary and for war purposes only, just as William Pitt

stated in 1799. As pointed out, the Act of 1917 is vastly different to that presently existing.

The basic principles of income tax law are similar in Great Britain and Canada. The general charge is a tax in respect of income. In the words of Lord Macnaghten (*London County Council* v. *A. G.* [1901] A.C. 26 at page 35), "The tax is a tax upon income and not upon anything else, e.g. capital."

As stated in *Konstam's, "The Law of Income Tax"*, 7th edition, page 6: "Many of the cardinal principles on which the liability to income tax is based and by which the amount of that liability is measured are left unexpressed in the Income Tax Acts and are to be found only in the decisions of the Courts and of the House of Lords, which are based upon inference drawn from the 'general scheme' of the Acts." For instance, there is no provision or direction in the British nor in our Act that a capital gain is not taxable.

The 100 discretionary authorities in our two Acts render the application of many judicial decisions and some of the vital principles of income tax law for the protection of the taxpayer completely ineffective.

Haper's Magazine of August contains a review of what seems to be an interesting book by John N. Crider, well known correspondent for the New York Times. It might appear that Mr. Crider's book was written with the 1944 presidental campaign in mind for it is entitled "The Bureaucrat". He spent a year at Harvard University doing research work. Mr. Crider studied the history and governments of Ancient Rome, Great Britain, the United States and other countries. Some of his conclusions are instructive, one of which I quote from the review:

> He learned that British citizens no less than American colonials had revolted in 1773 against the "administrative law" of George III; indeed, the freeholders of Middlesex had protested to King George as early as 1769 against the "evil-minded" persons who had "introduced into every part of the administration of our happy, legal Constitution a certain unlimited and indefinite discretionary power." "Where discretion begins," said the Middlesex rebels, "law, liberty, and safety end."

Then again, while admitting the necessity during war of discretionary authority, Mr. Crider notes "That the philosophy of regulation, of control, of administrative 'discretion', defeats its own ends when it becomes the reigning philosophy of a people, a government, or a political party."

Fortunately, under a fair minded administration by the Income Tax Division, Canada has not suffered from the abuses to which Mr. Crider refers.

While income tax is a tax on income from various sources, of vast importance are the exemptions and deductions, the persons liable to tax, matters affecting the distribution of undistributed income, all of which leaves the taxpayer largely in the hands of the Minister and his officials.

Let us consider the general policy and theory of law relating to the recognition and exercises of discretionary authority amd to administrative tribunals and the courts. Historically, uncontrolled discretion has moved gradually to controlled discretion founded on rules of law, which the courts have applied on the theory that a rule of law is more uniform and equitable even though some individual cases may suffer.

D. M. Gordon, in *The Law Quarterly Review*, Vol. XLIX, pages 94 and 419, has written two excellent papers on "Administrative Tribunals and the Courts." He states at page 96: "It is quite apparent that the courts have confined the term 'administrative' to powers exercised by a tribunal as a tribunal. The characteristic powers of a tribunal, whether 'administrative or judicial', are to investigate, to deliberate, and to make a pronouncement. 'Administrative' powers are thus exercised by making orders, in the sense of pronouncements or decisions, and as opposed to the issuing of precepts to servants or agents of the tribunal, the issuing of which will be a mere ministerial act . . . . . When ministerial powers are given to a judicial tribunal, ordinarily the implication is that they are not exercisable until the state of facts justifying their exercises has been judicially found and declared to exist."

Thus an assessment tribunal acts judicially when its duty is to assess land at its "net annual value" for it is governed by a fixed objective standard, a standard ascertainable by evidence. But a tribunal acts "administratively" when empowered by statute to assess a taxpayer, whose income is unascertainable, upon such percentage of his total receipts as the tribunal "in its judgment thinks proper" (*Shell Co. of Australia* v. *Federal Commissioner of Taxation*, [1931] A.C. 275—"most tribunals that assess income tax assess according to fixed statutory scales, and so act judicially").

Licensing justices hearing an application for a beer license exercise both judicial and administrative functions; for they have to consider, first, whether the applicant is qualified to have a

license (a judicial act); secondly, whether (if so) they will grant it (an administrative act).

But whenever the question has arisen the Courts have decided that they have no power to interfere with the exercise of discretion by an administrative tribunal because to interfere would be to substitute the discretion of some Court for the discretion of another body that parliament has said shall rule.

"It was by their opinion, not by any judicial opinion, that the matter was to be determined." (per Lord Watson, page 364 in *Institute of Patent Agents* v. *Lockwood* [1894] A.C. 347).

The distinguishing mark of an 'administrative' tribunal is that it possesses a 'complete', 'absolute' or 'unfettered' discretion.

According to Mr. Gordon, "the characteristic of 'administrative' tribunals is that they have no ascertainable standards. They follow only policy and expediency, which, being subjective considerations, are what the tribunals make them."

In *Sharp* v. *Wakefield*, [1891] A.C. 173 at page 182, Lord Bramwell pointed out that 'administrative' tribunals need give no reasons for their decisions, which makes our probing of subjective factors doubly difficult.

There is of course a field for discretion and both law and equity recognize it. Where imponderable factors such as conduct and good faith are considerations, then a discretion exercisable in a judicial manner is recognized, e.g. divorce and many instances in equity such as specific performance, laches and so forth. In recent years statutes have conferred discretionary authority and decision on a given individual or body. In general these are not cases where a rule of law enforceable by the courts is practicable. They are cases where some element of variable flexible policy enters into the decision and relate to some future action to be taken, e.g. the approval of a housing project to be constructed—location, design, standards of construction, etc. They deal with future, not existing or past, relations between parties. They are not matters for which rules, to be applied by a court, can be made. The powers conferred verge on delegated legislation rather than judicial power, as the decision is based, in part at least, on policy which is a legislative and not a legal factor.

Therefore, where policy is involved, the decision must be by the responsible executive government or its administrative bodies. As already pointed out, it is not for the courts to decide on policy by reviewing the act of an administrative body.

Having in mind the matters under discussion, let us examine the discretionary powers of decision conferred on the Minister

by the Income War Tax Act and the Excess Profits Tax Act—about one hundred times. I submit that the considerations just mentioned—such as those relating to matters of policy to be carried out—are not within the nature of a taxing statute. The policy of these two taxing acts is clear and has been fixed by parliament. It has been suggested that discretion is conferred not because policy considerations will enter into decisions to be made but because of the fear that if a rule is stated there will be inevitable omissions, and accordingly a business may so order its affairs as to reduce its tax liability in a manner contrary to the general scheme and intention of the act through technically correct resulting in a loss of revenue to the Crown. It is contended that this would also result in inequity of the burden of taxation because of the advantages arising from expert advice to wealthy corporations.

It appears that one of the main reasons for the very wide discretionary authority in favour of the Minister under these two acts is purely technical because it may have been feared that no adequate uniform rule can be stated. The justification is that the proper exercise of discretion results in uniformity of application of the Acts.

But, are these considerations a justification for the departure from the long established policy of our law. Cannot rules be stated or definations adopted which would be sufficiently general in wording and specific in application to carry out to a greater extent than now exists the policy of the acts? It is true that the question of quantum in respect of salaries, depreciation, obsolescence, etc., must be left in the first instance with the officials of the department acting in the name of the minister, but in this connection the decision of the minister should not be final and conclusive. A dissatisfied taxpayer should have the right of appealing such decisions to an independent tribunal standing between the Crown and the taxpayer. Such tribunal should also have jurisdiction to hear appeals from assessments on any matter including discretionary authority of the Minister.

Rules relating to discretion could, of course, be formulated in the acts. There could be no objection to power in the act to amplify by regulation in certain cases if the regulations were to operate for the future . Such regulations should be published. In many such cases where a rule or regulation could be made, the interpretation of the act would properly come within the province of the courts.

Where discretionary authority is required in the act then a guiding principle embodying the policy of the act can be set out

and a special tribunal already referred to could have authority to decide, thereby tending to uniformity throughout Canada, a uniformity genuinely sought and largely achieved by the officials of the department but difficult in many cases where the facts reaching the head office originate at some distant point from the reports of inexperienced or over zealous officials.

Section 2 of the Income War Tax Act contains twenty definitions. In case of a dispute on the meaning of any word or phrase therein, excepting (i) and (s) (ii), the taxpayer has the right to refer the matter to the courts for determination on legal principles. Counsel is able to advise his client with a reasonable degree of certainty.

Similarily the definition of income in sec. 3, would, in the case of dispute, be settled judicially. A court would say with respect to certain revenue that it was or was not income within the meaning of the Act.

But in the case of sec. 6(n) respecting depreciation "a deduction shall not be allowed in respect of (n) depreciation except such amount as the minister in his descretion may allow etc." The minister, in this connection, has both judicial and administrative authority. He has judicial authority in determining whether a taxpayer is entitled to depreciation because the first words of sec. 6 say "a deduction shall not be allowed." Then having decided to make an allowance, the minister has administrative authority in determining the quantum. That administrative power is not subject to appeal and in making this statement I have in mind the Pioneer Laundry case and the one dollar allowance.

Had the depreciation claim been say $80,000 (a reasonable amount) and the minister allowed $15,000 without giving any reasons (which he is not bound to give) then it seems clear from the authorities that the taxpayer would have had no remedy. This comment is not made as a criticism of the department because in my opinion, on the merits of the case, I think the department was right. That case could with considerable force be urged in support of the contention that existing legislation enabled the department to maintain uniformity in depreciation matters. Nevertheless, a general rule in the Act setting out the principle of depreciation would tend towards greater certainty on the part of the taxpayer and give to him rights based on legal principles found in the many court decisions. Under the existing law the Minister is the final arbiter judicially and administratively.

Much conflict could arise, and some does, over sec. 6 s.s. 2. "The Minister may disallow any expense which he in his discretion

may determine to be in excess of what is reasonable or normal for the business carried on - - - or which in his opinion has unduly or artificially reduced the income." Under the very capable administration of the Act presently existing, the deputy minister and his senior officers have acted fairly and properly and have always been ready to correct any errors of junior officials.

But as a mtter of principle in respect of the relationship between the Crown and the taxpayer, should such enormous power be placed arbitrarily in the hands of a sole judicial and administrative authority who is at the same time one of the two parties in a controversial question? Would it not be better legislation to place in the Act a general rule of law permitting the taxpayer the right to claim such expenses as are reasonable or normal for the class of business carried on by the taxpayer. Then it becomes a question of fact or practice common to that business whether the expense is reasonable or not and the final decision is made by the Courts or some other independent tribunal for determination.

May I repeat emphatically that these comments and this paper has reference entirely to post-war conditions. As I have already stated the present acts and the wide discretionary powers therein are justifiable and essential during war time when the quick and full collection of revenue is vital to Canada's war effort.

I think it is generally conceded that sec. 32-A will not continue after the war and for that reason I have not dealt with it in detail. Many concerns with limited capital reserves desiring to reorganize and expand find it impossible because of the great uncertainty arising out of the arbitrary powers in favour of the Treasury Board.

I have only dealt with a few of the one hundred discretionary powers to indicate the desirability of a complete change in the Act and the application of legal principles not only for greater protection of the taxpayers but also for the general good of the nation's activity.

In my opinion the Income Tax Acts should state the facts and provisions in a positive or negative form and in the event of dispute between the taxpayer and the Crown either should be entitled to go to an independent tribunal for a determination of the matters in issue on the principles of law recognized in our judicial system for many years past. There should be no final and conclusive authority in favour of the Minister. Nearly all of the expressions giving discretionary power to the Minister which in effect often means junior officials or district offices should

be eliminated from the Act. If that were done then a business man struggling during the post-war period to put his business on a stable basis could with foresight, shrewdness and considerable certainty plan the consequences of his act and the success of his enterprise in consulatation with accountants and his qualified solicitors.

These changes should be carefully planned now and not under the confused conditions of the post-war period. Uncertainties of the tax laws and provisions and economic conditions during the post-war period may be complicated by the lack of strong Federal Government owing to the peculiar political situation which faces Canada at the present time. The members of the legal profession and of the Dominion Chartered Accountants Association are in a position to contribute materially to the public welfare of the people of Canada by understanding the matters to which I have referred generally and by actively participating in bringing about the necessary reform.

I have endeavoured to place before you the economic and financial conditions of Canada, the responsibilities of industry, commerce and business generally, the possible repercussions that may follow in the war, the burden of taxation, the deviation from the accepted principle of tax law and the importance of altering the Income Tax Acts in order to restore those principles and give assurance of stability to the taxpayer in the future.

It is the unpredictability of tax liability which, in the very nature of the administration of the Act, can only be determined two or three years after the business man has made his investment or taken some important step that will make bold men timid and venturesome men inactive. The vital necessity of providing employment for over 600,000 members of the armed forces and more than 1,000,000 war workers makes an early correction of the present situation imperative in the national interest.

To deal effectively with these remedies requires an informed public opinion and particularly a grasp of the matters and issues involved by the legal profession of Canada which, operating through the Canadian Bar Association, may be able to induce the Government of this country to realize both the importance and the soundness of the changes which most students of these problems believe essential to Canada's future.

LEON J. LADNER.

Vancouver.

SCHEDULE

"Opinion of Minister"	"Shall be final and conclusive	In his discretion (determine or allow)	Power to determine or shall or may determine or apportion	Approved by the Minister (not forms or regulations)
(9)	(9)	(10)	(18)	(1)
Sec. 2 (i) Proviso Sec. 3–2 Sec. 4 (m) Sec. 6–3 Sec. 7A–1–(b) Sec. 9 B–1 Sec. 13–1 Sec. 13–2 Sec. 92–8	Sec. 2 (i) Proviso Section 4 (o) Section 5 (i) Sec. 5 (j) Sec. 5 (k) Sec. 6 –3 Sec. 6 –4 Sec. 10–3 Sec. 21–3	Sec. 2 S (ii) Sec. 3 (4) Sec. 5 (b) Section 6 (n) Sec. 6 (o) Sec. 6 (2) Sec. 7A–8 Proviso Sec. 26–2 Sec. 27A–2 Sec. 31	Sec. 3 (2) Sec. 5 (a) Sec. 5 (h) Sec. 6–5 Sec. 9B (7) Sec. 10–2 Sec. 11–2 Sec. 23 Sec. 23 A Sec. 23 B Sec. 47 Sec. 88–7 (a) Sec. 88–(b) Sec. 89–2 Sec. 89 (3) Sec. 90–3 Sec. 90–4 (x) Sec. 90–5	Sec. 4 (i)

"Minister shall be Judge"	Excess Profits Tax Act	Excess Profits Tax Act	Excess Profits Tax Act	May or may give effect to	If the Minister is satisfied
(1)	(2)	(5)	(12)	(2)	(11)
Sec. 4 (k) Proviso	Sec. 2 (1) (i) Sec. 7 (b)	Sec. 4 (4) covering Ss. 1–2–3 of S. 4. Sec. 7 (b)	Sec. 2 (1) (d) (ii) Sec. 4 (a) (b) (i) (b) (ii) (c) Sec. 6 (1) (b) Sec. 6 (2) (a) (b) (c) Sec. 8 (b) Sec. 9 (1) Proviso First Schedule Sec. 3 (c)	Sec. 4 (m) Sec. 6 (n) Proviso	Sec. 4 (r) Sec. 5 (a) Sec. 5 (s) Sec. 6 (k) Proviso Sec. 6 (n) Proviso Sec. 7A–1 (d) Sec. 7–A8 (3) Sec. 7A–8 (5) Proviso Section 7 A–9 Proviso Sec. 9 B–11 Proviso Sec. 32 B

Minister may allow	Minister may prescribe	May be adjusted	Treasury Board opinion may be: found determined made	Excess Profits Tax Act	Excess Profits Tax Act	Excess Profits Tax Act
(3)	(1)	(1)	(3)	(1)	(1)	(7)
Sec. 5 (p) Sec. 6 (d) Sec. 6 (i)	Sec. 11–5	Sec. 23–B	Sec. 32 A (1) Sec. 32 (2) Sec. 32 (3)	Sec. 32–A	May Direct Sec. 15–A	Sec. 2 (1) (b) Proviso Sec. 4 (2) Sec. 5 (1) Proviso Sec. 5 (2) Sec. 5 (3) Sec. 7 (b) Sec. 9 (3)