THE ASSOCIATION'S BRIEF TO THE SENATE COMMITTEE ON TAXATION *

Mr. Chairman and Honourable Senators,

The Canadian Bar Association greatly appreciates the invitation of this Committee to appear before it and accepts the invitation with the hope that it may be of some assistance to the Committee in its very important work.

The Members of the Canadian Bar Association comprise approximately one-half of the lawyers practising in each of the Provinces of Canada and a large number of Judges of the various Courts. The Association has always taken a very keen interest not only in matters relating to the administration of justice in Canada but in all laws affecting the welfare of the people as a whole. It has always endeavoured to approach these problems in a broad and constructive manner. It functions throughout the year through its various Committees and Special Committees, the members of which report to the Association twice a year. For a number of years members of the Association have been giving considerable attention to the question of taxation. This was considered so important that in April, 1943, a Special Taxation Committee was organised and this Special Committee subsequently became a special section of the Association known as the Section on Taxation. Mr. M. L. Gordon, K.C., was appointed Chairman of the Section and has held that position ever since.

On the recommendation of the Section, the Council passed the following Resolution in August, 1943:—

> That the Council of The Canadian Bar Association is alarmed by provisions in the federal taxing statutes giving persons other than Parliament wide discretionary powers which constitute in effect a delegation by Parliament of its legislative authority.
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> That it accordingly recommends that a standing committee of the House of Commons be set up to which will be referred for consideration all proposed taxation legislation and that every member of the public interested may make representations to such standing committee with a view to having taxation imposed on a fair and equitable basis.
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> That the taxing departments have administrative powers only and that provision be made for determination of matters of law and disputes as to facts by a judicial body.

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* The Association's Brief on the Income War Tax Act was presented to the Senate Committee on Taxation on April 9th, 1946, by Mr. E. K. Williams, K.C., the President of the Association, and Mr. M. L. Gordon, K.C., the Chairman of its Section on Taxation. For the terms of reference of the Senate Committee see (1946), 24 Can. Bar Rev. 140.

This resolution was forwarded to the Honourable Mr. Ilsley who acknowledged the same in a letter dated 4th December, 1943. In his letter, the Minister of Finance emphasized the difficulties that arise if forward notice of probable taxation matters is given to interested individuals and corporations.

It is not to be assumed that the Association was suggesting that the Government disclose its fiscal policy before it was presented in Parliament, but the Committee suggests that the practice in Australia be explored, which provides for two statutes. The first is the Income Tax Assessment Act which provides for the method of enforcing the tax, directs the manner in which the income is to be calculated, the deductions which may be made, the times for payments and methods of appeal, etc. This Act has been on the Statute Books of Australia for many years and is only revised or amended where it is necessary to simplify and clarify its provisions. These amendments are not matters of policy, because the policy of every Government must be, as it is in Canada, to distribute the burden of taxation as fairly and equitably as possible. The second statute is the Income Tax Act, which is passed each year and fixes the rate and deals with other matters of policy.

Consideration is suggested to the adoption of a practice whereby amendments dealing with the mechanical methods of raising money, which are not matters of policy, should be made public before they are submitted to Parliament because there are always bound to be a number of groups of taxpayers who could make useful and constructive suggestions in regard to such matters, while matters which deal with policy may be reserved for the secrecy of the Budget.

At the very outset of its deliberations the Members of this Committee recognized the benefit of joint discussion with members of the accounting profession and invited Members of the Dominion Association of Chartered Accountants to sit in with them at meetings of the Committee; and it is needless to say that they have made a valuable contribution to the work of this Committee which is gratefully acknowledged.

In January, 1944, the two Committees, working as a Joint Committee, made certain recommendations to the Minister of Finance and the Minister of National Revenue in respect to amendments to the Income War Tax Act and to the Excess Profits Tax Act of 1940. All of these recommendations received most careful consideration and some of them were accepted. Some of them which were not accepted we respectfully suggest

should receive further consideration. Copies of these recommendations will be available for your information and, I hope, your detailed study.

It soon became apparent to the two Committees — and I think their opinion is shared by a very substantial body of the taxpayers in Canada — that the statute is difficult to construe and quite confusing, and if left in its present form will retard reconversion and may materially affect the prosperity of Canada. It is not improbable that, owing to these features, revenue is now being lost.

The Rowell-Sirois Report, Book II, page 113, chapter III, in dealing with Corporation Taxes, states as follows:

> The present complexity is beyond belief . . They have grown up in a completely unplanned and unco-ordinated way and violate every canon of sound taxation.

The magazine published by the Dominion Association of Chartered Accountants, whose members have probably more knowledge of the actual working of the Act than any other body, stated in 1944 Vol. 45, page 195, as follows:

> One of the postwar 'musts' is a rewriting of the Income Tax Act itself. It stands to-day as a horrible example of piling amendment upon amendment, with the result that what is stated or implied by one section of the Act may be modified by another.

Realising that sooner or later the Income Tax Act must be completely revised, the Taxation Section of the Canadian Bar Association have directed their efforts towards making a critical study of the defects in the present Act. These they put forward with great respect together with many constructive suggestions.

The matter of taxation has been the subject of wide study, both officially and unofficially, for many years. Twenty Royal Commissions have been appointed in various parts of the British Commonwealth to consider and study taxation. The persons presiding over these Commissions have usually been men of outstanding ability, and witnesses who appeared before them included the names of many persons prominent throughout the Empire. It is suggested that this evidence might be so organised and indexed that it would be available for consideration in the solution of Canadian problems.

The Committee of the Canadian Bar Association believes that the Government can derive mush assistance from well-considered criticism and recommendations from organisations

whose members are constantly in touch with the members of the public who are most affected by taxation laws. That is the service that the Taxation Section of the Canadian Bar Association seeks to perform. In performing that service they will have available the co-operation of the Canadian Tax Foundation which was incorporated in October, 1945, through the joint efforts of the Canadian Bar Association and the Dominion Association of Chartered Accountants. I make it perfectly clear, however, that the views of the Canadian Bar Association are only expressed through the Committee responsible to it. We come before you as an Association which feels that there is a most important work to be done for the benefit of Canada as a whole. We offer our services of co-operation and assure you that any assistance which you desire will be gladly rendered.

I have asked Mr. Gordon to discuss with you the details of the recommendations that the Taxation Section of The Canadian Bar Association under his Chairmanship desire to present.

Mr. Chairman and Honourable Senators,

The Taxation Section of the Canadian Bar Association desire to submit four recommendations to this Committee.

Retroactive Legislation

While the question of retroactive legislation may be a matter of Government policy and, consequently, outside the scope of this Committee, the matter is of such importance that it is impossible to consider the problems which confront you without dealing with this question and I, therefore, ask your indulgence to permit me to discuss it.

New industry must be encouraged. New industries must have capital and the first demand of capital is security. If a taxpayer arranges his business in a legitimate way, calculating that he will have to pay a certain tax and, subsequently, by retroactive amendment, a tax is levied on transactions which were not taxable at the time they were completed, security disappears.

Occasionally a taxpayer may devise some scheme which will permit him to avoid tax and he may be made to pay by retroactive legislation, but the damage done may be considerably greater than is warranted by the small increase in revenue.

We recommend that retroactive legislation should, wherever possible, be avoided.

Exemptions

Under the Canadian Statute, many sources of income are exempt and many deductions are allowed which are not permitted in England. Most of the deductions were inserted in the Canadian Act when the rates were low but, in view of the increase in rates, now amount to very substantial sums.

We recommend that a list of exemptions and deductions be prepared and an estimate made of the amount involved, so that the problem may be carefully studied.

This might be a convenient place to mention other cases where extra revenue might be obtained.

There has been a great deal of discussion about the taxation of persons who have made fortunes in Canada and then left to avoid Income Tax and Succession Duties, and take the benefit of the 15% rate. If these men gave away their property they would have to pay a gift tax and if they died would have to pay Succession Duties. Why not levy a tax equivalent to Succession Duties, and demand payment before they leave the country?

Minister's Discretion and Board of Tax Commissioners

According to a statement appearing in DeBoo's Taxation Service at page 6002, the Minister may exercise 115 discretions which are set out in a table appearing on page 6003, a copy of which is attached as exhibit No. 1.

It is important to consider how these discretions are exercised because no one man could possibly have the time to deal with the many important questions which arise. Exhibit seven referred to by Mr. Elliott[1] is a memorandum to the Inspectors of Income Tax covering discretionary powers. This memorandum contains two important statements:

p.93. As the members of the District Staff are in the best position to judge the facts and circumstances, it is expected that in most cases their report will be the deciding factor. Thus it is important that the report be carefully prepared and be as complete as possible.

p.92. If a legal opinion is required this will be submitted by one or more members of the legal staff.

Mr. Elliott pointed out that he had lost 141 key members of his staff whose average length of service was 3.9 years and, as a result, some of the work must be done by inexperienced assessors. At p. 25, Senator Vien mentioned the case of a young

[1] Evidence of C. F. Elliott, p. 73.

man receiving a salary of $200 per month who was called upon to help the inspector determine the proper salary to be allowed to a chief executive claiming $18,000 per annum.

You can judge the efficiency of the legal officers of the Department by the fact that they have won something like 66% of the cases which have been decided by the Courts. But if the opinions given by the legal officers of the Department are of the same high grade as their performance in Court, then 34% of the decisions are probably wrong. After reading this brief, members of the Taxation Committee made two comments—

> First: If a dispute is referred to Ottawa there is a tendency to uphold the decision made by the local assessor.
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> Secondly: If doubtful legal points arise, the taxpayer is usually told that the view of the local authorities will be upheld and he can appeal to the Court if dissatisfied, but in many cases the discretion is absolute and there is no appeal.

No one would suggest that the situation should be changed: it is absolutely necessary and proper that the officials of the Department should endeavour to collect all revenue which is legally due. No competent or honest Departmental solicitor could possibly recommend that an appeal from an assessor should be allowed if the decision of the Inspector could be supported on any ground however doubtful, but there is little doubt that the effective exercise of the discretion is in the hands of the assessors or, to say the least, that their opinions have a most important bearing on the ultimate result.

The tax law and its administration have been the subject of criticism of increasing heat in recent years and it is felt by many that when Parliament conferred these important duties on the Minister and authorized him to depute the same to the Deputy Minister, it did not intend that the effective exercise of such powers should so largely depend upon the views of others.

The question is accentuated by the fact that the decisions of the assessors are not made public and their policy is governed by a set of confidential directives; and many taxpayers think that they have paid more than was due because they did not know what the Department would be prepared to allow.

The problem is dealt with in an exceedingly clear manner in the report of the Committee appointed to consider the Minister's powers in England, dated 17th March, 1942. The

volume containing this report is in the Parliamentary library. We have made certain extracts therefrom and have copies for each member of this Committee, but I would like to read a portion of the same:

> We are of opinion that in considering the assignment of judicial functions to Ministers, Parliament should keep clearly in view the maxim that no man is to be judge in a cause in which he has an interest. We think that in any case in which the Minister's Department would naturally approach the issue to be determined with a desire that the decision should go one way rather than another, the Minister should be regarded as having an interest in the cause. Parliament would do well in such a case to provide that the Minister himself should not be the judge, but that the case should be decided by an independent tribunal.
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> Indeed we think it is clear that bias from strong and sincere conviction as to public policy may operate as a more serious disqualification than pecuniary interest. No honest man acting in a judicial capacity allows himself to be influenced by pecuniary interest: if anything, the danger is likely to be that through fear of yielding to motives of self-interest he may unconsciously do an injustice to the party with which his pecuniary interest may appear to others to identify him. But the bias to which a public-spirited man is subjected if he adjudicates in any case in which he is interested on public grounds is more subtle and less easy for him to detect and resist.
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> It is unfair to impose on a practical administrator the duty of adjudicating in any matter in which it could fairly be argued that his impartiality would be in inverse ratio to his strength and ability as a Minister. An easy going and cynical Minister, rather bored with his office and sceptical of the value of his Department, would find it far easier to apply a judicial mind to purely judicial problems connected with the Department's administration than a Minister whose head and heart were in his work. It is for these reasons and not because we entertain the slightest suspicion of the good faith or the intellectual honesty of Ministers and their advisers that we are of opinion that Parliament should be chary of imposing on Ministers the ungrateful task of giving judicial decisions in matters in which their very zeal for the public service can scarcely fail to bias them unconsciously.

We have noted the suggestion made by Mr. Elliott, on page six of his evidence, that he would like to have the accumulated advice of other persons, something equivalent to a Board of Directors.

No man can enforce the Act fairly unless he understands the problems which affect the persons who have to pay the tax. These problems are many and varied and no one man can understand them all. The policy suggested by Mr. Elliott has been adopted by the Government in many cases, as for instance the Canadian National Railways.

We think the suggestion has much merit and should be carefully studied: but it is not the complete answer.

The problem is most urgent. The Canadian Bar Association recommends that an Appeal Tribunal should be established. The establishment of this Tribunal would immediately do much to satisfy the public and prevent further criticism. Such a Tribunal should be able to decide disputed matters in a cheap, speedy and independent manner. In each case the reasons should be made public and we would soon have a body of legal precedent so that all might know what they were expected to pay. Decisions of the Tribunal would give a meaning to ambiguous legislation; remove uncertainty from the Departmental practice; eliminate arbitrary action by junior officials; and do much to prevent delays which must result in substantial loss to the revenue. We are of the opinion that the most immediate and important task before this Committee is to consider the advisability of setting up an independent Appeal Tribunal or Board of Commissioners, which would deal with the many problems which arise from the exercise of the discretionary powers to which I have just referred.

We thought you might be interested in considering what is being done in other countries where the same problem arises.

The Commonwealth of Australia has appointed a Board of Tax Commissioners. A leading text writer deals with their powers as follows:

> Wherever in any proceedings before the Board a matter arises wherein the Commissioner has exercised a discretionary power, the Board has authority and a duty under section 193 to investigate the matter, so as to arrive at its own decision on the point, and to substitute that decision for the decision of the Commissioner if justice so requires.[2]

This Board gives written reasons and I have here the 10th volume of their Report.

In England the Commissioners determine the amount of the tax and, in doing so, consider all pertinent facts including the proper exercise of any discretionary powers. The taxpayer has a right of appeal to the Special Commissioners and a further right of appeal to the Court on questions of law.

In South Africa there is a special Court of Tax Appeals. This Court has laid down the principle that if any discretion conferred on the Minister has been properly exercised, they will not interfere. In our opinion, this policy is not satisfactory.

[2] Ratcliffe and McGrath, p. 982.

The Board gives written judgments and I have here the 10th volume of their Report.

In the United States there is a Court of Tax Appeals which has power to determine and deal with all questions which may arise. The Court gives reasons in writing, which are contained in some 50 or 60 volumes.

We recommend that the Statute be carefully examined and all unnecessary discretions eliminated. To illustrate this point, let us consider "bad debts". Section 6 (1) (d) reads as follows:

> In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of
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> (d) amounts transferred or credited to a reserve, contingent account or sinking fund, except such an amount for bad debts as the Minister may allow and except as otherwise provided in this Act;

Many taxpayers fail to understand that the tax must be computed on the profits earned in each year and no allowances can be made for future losses. These people seem to think that if they are in a speculative business this section permits them to set up a reserve for future losses, and the form of the section has caused a great deal of misunderstanding and much irritation. It may be that the best method of dealing with bad debts is to permit the taxpayer to set up a reserve and it is a very common practice; but just why the amount of this reserve should be left to the judgment of an assessor whose decision is probably final, when it should be given as a matter of right and the amount determined by proper evidence, it is hard to understand. It is the method which is adopted which gives cause for complaint and indicates the reason why this discretion should be eliminated. The Department permits a taxpayer to deduct a debt in the year in which it is ascertained to be bad and if the amount is subsequently collected the taxpayer is charged at the rate in force when the money is received. When this ruling was introduced, it seemed an extremely fair and reasonable way of dealing with the problem but in the last five years taxes have been greatly increased and many people hope that reductions will be made in the near future. If a company sold goods prior to 1936 the tax would be 15%, after 1942 it might be 80%. It is not very satisfactory to a taxpayer who is called upon to pay 80% on a debt which was due in 1935, to be told that someone who, in 1942, would have had to pay 80%, may now only have to pay 60%.

All this confusion would be eliminated if the Statute provided that the taxpayer may write off any debt which he

cannot collect, at any time he sees fit, and if he collects the debt later on he pays at the rate in force when the money is received, subject to this proviso that if there is a difference in the rate amounting to, say, 15%, then either the taxpayer or the Revenue can claim that the tax should be fixed at the rate in force when the debt ought to have been paid.

There are many discretions of this kind conferred on the Minister and we could give you example after example of discretions conferred on the Minister which are unnecessary.

We recommend that an absolutely independent Board of Tax Commissioners should be appointed; that their independence should be secured by providing that appointments be made for life; that the Board should sit in as many divisions, or panels, of three as may be necessary to deal promptly with all business which may come before it; that the Chairman of each panel should be a qualified legal practitioner of at least 10 years' standing; that, if business requires it, the Board should be compelled to sit in each province at least once a month and should be authorized to establish their own rules of procedure; and that on completion of service they should be entitled to a pension on a par with other judicial officers.

We have prepared a draft Act—attached as Exhibit No. 2—which we hope may be of assistance if your Committee sees fit to accept our recommendations. We cannot estimate how many Commissioners would be required because we do not know the number of cases which will be brought before them, but we fancy that the volume of work will be very great. Mr. Elliott stated (p. 69) that the Board of Referees had received 5400 claims and they were still being filed at the rate of 100 a month. It is most important, both to the public and to the Revenue, that disputed questions should be disposed of promptly, and where delays are great the financial position of the taxpayer may change and revenue be lost.

Clarification of the Act

We are of the opinion that the principal difficulty in administering the Income Tax Act is due to the fact that most of the provisions are obsolete and many of them unintelligible. It was hard to understand the meaning of the Consolidated Act of 1927, which contained 29 pages, but since that date many amendments have been added to the Statute. These amendments cover 188 pages and have apparently been made with little reference to fundamental principles, being enacted to meet specific cases and then applied to something entirely different.

If the Government expects a taxpayer to make honest returns and pay what is justly due, a corresponding obligation lies on the Government to simplify and clarify the Statute so that all should bear an equal burden.

The Statute is not applicable to modern conditions. Mr. Justice Thorson, the President of the Exchequer Court, has pointed out that the language of the Statute does not permit a taxpayer to estimate his income on the accrual basis, notwithstanding the fact that, for the last 29 years, the vast majority of trading concerns have prepared their statements in this way, and it is the general opinion that this is the best method of estimating actual profits.[3]

The taxpayer is not taxed on his true income, but is compelled to calculate his income by antiquated rules which nobody can understand, some of which appeared in the English Act which was passed in 1806. Many taxpayers feel that they are unjustly charged and others who, to all intents and purposes, are in the same position, escape.

The senior officials of the Department, who are in charge of making assessments and collecting the revenue, are compelled to spend a major part of their time in adjusting disputes. This may be the principal reason why delays occur in assessments, and is one of the bottle-necks which ought to be removed.

There is not much difficulty in ascertaining gross income. If a taxpayer makes returns on a cash basis, all he has to do is to deduct the amount of cash on hand at the beginning of the year from the sum on hand at the end of the year, and deduct from the amount so found, capital profits and losses, if any. If the taxpayer files on the accrual basis, the calculation is a little more complicated but does not present much difficulty. But it is extremely difficult to determine the items which may be deducted from the gross income for the purpose of determining the net income.

Section 6 of the Canadian Act, which deals with deductions, follows the same plan in dealing with deductions as the English Acts of 1806 and 1918. Exhibit No. 3, which I hope you will find interesting, contains extracts from the three Acts in question.*

In 1806 England was a small agricultural country with a population of between eight and nine million; trade and commerce were of little importance and the wealth of the country was represented by land-holdings.

[3] *Trapp* v. *The Minister of National Revenue*, [1946] C.T.C. 30.

* This exhibit will be found in the original printed Brief (Editor).

The persons who prepared the Income Tax Act of 1806 could not be expected to visualize modern trade and commerce and the original provisions, which are still closely followed, are not suitable.

Little was done in England to modernize the Statute because, prior to 1914, the rates were low, dropping to tuppence in the pound, or less than 1% in 1874.

At first, the English Courts interpreted the Statute strictly and, if a taxpayer did not come within the letter of the law, he escaped liability. In 1867 that great Judge, Lord Cairns, stated the principle as follows:

> If the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law.[4]

Later on, when the need for revenue became great, different principles were applied — Lord Sumner stating, in 1921:

> It is a most wholesome rule that in taxing the subject the Crown must show that clear powers to tax were given by the Legislature. Applied to income tax, however, this is an ironical proposition. Most of the operative clauses are unintelligible to those who have to pay the taxes.[5]

It soon became clear that the more ambiguous the wording, the more likely the Revenue was to catch something. The drafting got worse and worse and, at the present time, it is often difficult to imagine what Parliament intended.

Do not think that this situation only exists in England, without reading Section 47 of the Canadian Income War Tax Act, which is as follows:

> The Minister shall not be bound by any return or information supplied by or on behalf of a taxpayer, and notwithstanding such return or information, or if no return has been made, the Minister may determine the amount of the tax to be paid by any person.

If this section only permits the Minister, on proper evidence, to determine the income of a taxpayer and levy the amount of tax authorised by the Act, why is it necessary? If the section means that the Minister may, regardless of any returns which have been filed, levy a tax for any sum he sees fit, why not repeal the balance of the Act?

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[4] *Partington* v. *Attorney General*, 4 E. & I. p. 122.
[5] *National Provident* v. *Brown*, [1921] 2 A.C., 222.

Avoidance of Tax

The English Courts have placed a premium on avoidance of tax. In 1929 Lord Clyde stated as follows:

> No man in this country is under the smallest obligation, moral or other, so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shovel into his stores. The Inland Revenue is not slow—and quite rightly— to take every advantage which is open to it under the taxing statutes for the purpose of depleting the taxpayer's pocket. And the taxpayer is, in like manner, entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Revenue.[6]

In giving evidence before a Royal Commission in 1919, Mr. Bremner, an English Counsel of wide experience, stated:

> It is my considered opinion, the Government would save a great deal of revenue, and the taxpayer and his solicitors would be saved a great deal of trouble, if he was told in plain language what he ought to do and how much he ought to pay.

If you will read the evidence presented to Lord Macmillan you will see that this subject is causing considerable concern in England.

It is a well-settled principle of tax law that, where a section is ambiguous, the taxpayer is entitled to choose that interpretation which is most favourable to his pocketbook. In 1934, Mr. Justice Angers stated in the Exchequer Court:

> There is the well-established principle that in a taxing act the tax must be expressed in unambiguous terms and that in case of reasonable doubt the act must be interpreted in favour of the taxpayer.[7]

No doubt some taxpayers who cannot find a logical interpretation which will save them money, will not find it difficult to invent one which will satisfy their conscience.

On behalf of the Canadian taxpayer, we most strongly urge that every effort be made to clarify and simplify the Act and we are satisfied that if this is done the officials of the Department of National Revenue will be saved a great deal of labour and that the Revenue will collect substantially more money.

Revision of Income War Tax Act

With your permission, we should like to discuss some phases of the Act which are crying for attention and, in certain cases,

[6] *Ayrshire Pullman Motor Services and D. M. Ritchie* v. *Commissioners of Inland Revenue* (1929), 14 T.C. 754.

[7] *McLaren* v. *The Minister of National Revenue*, [1934] Ex. C.R. 13.

we have suggested a remedy; not with the idea that such suggestions should be adopted, but, on the contrary, with the hope that such suggestions, and many others which will no doubt come to mind, should be carefully analyzed and the appropriate remedy applied.

Taxes Should Encourage Business

Let us consider three instances where they do not.

The Sun Life Assurance Company of Canada published a statement showing that the average man earned during his lifetime—

With elementary schooling only	$ 64,000
A high school graduate	88,000
A college graduate	175,000

In 1927 a taxpayer was allowed to deduct $500 for each child under 21. At the present time he is allowed to deduct $108 from the tax.

If it is desired to encourage education, why should a deduction be made to a man who is supporting a child at college while an ambitious student, whose father is unable to help, gets no benefit? If it costs $500 per annum to send a boy to college and, as a result, his lifetime earnings are increased $87,000, it would seem to be good business, instead of reducing the exemption, to increase the same.

A stranger who settles in Canada on the 31st day of December is taxed on his whole income for the year. Let us consider one specific case. An extremely competent mechanic came to Canada on the 25th of November and it cost him $2,640 more than if he had stayed in the United States. Men of this class are a valuable asset to the nation and the present legislation is an important deterrent.

Section 32A permits the Treasury Board to investigate any transactions made subsequent to the year 1939 and if the Board comes to the conclusion that the purpose of the transaction was to reduce or evade taxation, it may levy such tax as the Treasury Board may determine.

Mr. Ilsley stated that this section was passed as a war measure, but it is causing much consternation in the business community and it is our opinion that it should be repealed immediately.

We recommend that the Department be asked to furnish a statement of the number of cases which have come before the

Treasury Board under Section 32A, and the amount of revenue which has been collected, so that the advantages and disadvantages may be set one against the other.

Taxpayers Should Be Taxed on Real Income

If this is desirable, it is first necessary to eliminate those sections which specifically direct that the taxpayer should pay on something else.

Section 10 reads:

> (1) In any case the income of a taxpayer shall be deemed to be not less than the income derived from his chief position, occupation, trade, business or calling.

If one is entitled to speculate on the intention of Parliament, we might assume that this section was passed for the purpose of preventing rich men, who took up farming or cattle raising as a hobby, from deducting the losses on these enterprises from their income; or, possibly, to prevent people who own unproductive investments on which they hope to make a capital profit, from deducting the carrying charges. If this is so, why not draft a section which deals with the thing in mind, instead of inserting a section which covers a great deal more and which has the effect of discouraging enterprise? Any man who runs one store and thinks he can make money by opening another will probably lose money before the new store gets established, and it might easily happen that a man would make five thousand dollars per annum running a grocery store in one part of the town, and would lose a similar amount if he opened a hardware store in another part of the town. Under the present law, he would probably be taxed on the money he made and could not deduct the money he lost.

In the last five years a landscape gardener earned $8,000 per annum, or a total of $40,000. He bought a one hundred acre farm for the purpose of growing ornamental shrubs but used only one or two acres for this purpose. The farm did not pay its way and a casual employee, through the negligence of another employee, lost his leg and collected $8,000 in damages. The Income Tax Department, rightly, claimed that the man could not set off the losses on the farm against the money earned as a landscape gardener. As a result, the taxpayer was asked to pay on an income of $8,000 per annum, although he actually made only $5,000 per annum, and the balance was mighty little on which to live. I am glad to say that a compromise was

arranged which will permit this man to get out of debt in due course, if he lives frugally and his business is prosperous.

We cannot believe that a law which permits such conditions to arise, should remain in force for a single day.

Section 6 (1) (o) forbids the deduction of any increases which have been made by the Provincial Government for taxes after the 24th of June, 1940, without the consent of the Minister. If the taxes are increased they have to be paid and if the Minister will not allow the deduction of the increase, then the taxpayer must pay on profits which he did not earn.

It is also necessary to re-draft those sections of the Act which are out of line with modern business practice.

The English Statute of 1806 provided as follows:

> No sum or sums shall be set against or deducted from or allowed to be set against or deducted from such profits or gains for any disbursements or expenses whatever not being money wholly and exclusively laid out or expended for the purpose of such trade.[8]

The last three lines of this section appear without change in the present English Statute. This section has caused at least as much litigation as the provisions of the Statute of Frauds.

In Canada, the draftsman has changed six words which has produced results which are indescribable.

Section 6 (1) (a) reads:

> a deduction shall not be allowed in respect of
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> (a) disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income;

The first thing that arouses one's interest is — why did the draftsman insert the word "necessarily"? Was his intention to permit the Minister to be able to say "You cannot buy a new typewriter because the old one will do"?

But that is not all. The expenses must be laid out for the purpose of earning the income. The Judicial Committee have just held that moneys laid out for the purpose of reducing expenses are not deductible.[9] Under the English section it has been held that losses by theft[10] and, in many cases, damages due to negligence,[11] cannot be deducted. But no business can

[8] 46 Geo. III, Chap. 65, Schedule D—Rules Applying to Both the Preceding Cases.

[9] *Montreal Light, Heat and Power Consolidated* v. *Minister of National Revenue*, [1944] C.T.C. 97.

[10] *Curtis* v. *Oldfield*, 9 T.C. 319.

[11] *Strong* v. *Woodifield*, [1906] A.C. 448.

be carried on without being exposed to such claims and most people think it is unfair that they cannot be deducted. The reason why damages due to negligence cannot be deducted is apparent: 150 years ago a taxpayer who carried on business as an ironmonger was probably located in a small town and most of his customers lived close by and deliveries were probably made by errand boys: accidents were few and no one complained. His great-grandson, who conducts a hardware business in a large city, now delivers by truck and the danger is considerable.

But this is not all. If the ruling of the Judicial Committee is applied strictly to Canada, many important deductions which have always been allowed must be prohibited.[12] Fire insurance is not expended for the purpose of earning the income but for the purpose of protecting property against loss by fire. Bookkeeping expenses and accounting fees are not paid for the exclusive purpose of earning profits but mostly for the purpose of counting your profits after they have been earned. The expense of collecting accounts is not paid for the purpose of earning profits but for the purpose of collecting those profits after they have been earned.

Lord Macmillan recommended that the English section should be repealed and the following substituted:

> 24. The amount of the profits of a business shall be computed in accordance with the ordinary commercial principles applicable to the computation of the profits of that business.

Unless this Committee is prepared to recommend that Section 6 (1) (a) be amended, it is not much use considering the balance of the Act, because other troubles are merely secondary. Here is the root of the trouble and this is the section it is most necessary to consider.

Matters of Major Importance Not Fully Dealt With

The Canadian Income Tax Act does not provide a complete code, and leaves undealt with many matters of the first importance. Let us consider "depreciation", "depletion" and "obsolescence".

Depreciation

It is interesting to note that anyone, looking at the Act for the first time, is not likely to find out that depreciation is

[12] *Montreal Light, Heat and Power Consolidated* v. *Minister of National Revenue*, [1944] C.T.C. 97.

allowed, because the only reference to depreciation appears in Section 6 (1), which is headed "Deductions from income not allowed".

Everyone must admit that depreciation is a proper charge against profits but you may not realize the substantial amount involved, which is upwards of $350,000,000 per annum; nor the amount of litigation which has arisen owing to the fact that the main provision of the Act covering depreciation is section 6 (1) (n), which provides:

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

Two contradictory theories must be considered. Under one theory, depreciation is given to replace the amount expended in purchasing a capital asset which is used to earn the profits. Under the other theory, which is supported by the English Courts, a capital asset used in trade diminishes in value every year and this reduction in value is something of the nature of rent, and the actual amount by which the value of the asset is reduced is a proper charge against profits, and, consequently, it is not necessary to consider the purchase price but, on the contrary, you must consider the market price; or, in other words, value the asset and find out how much that value is annually reduced.

In an English case, the owner of a fleet of vessels had been allowed sufficient depreciation to write-down the value until it equalled the amount which could be obtained for the vessels as scrap.[13] The Court pointed out that the vessels were still of considerable value and were still depreciating year by year, and directed that a proper allowance should be made.

In another case, the English Government and a private company contributed approximately £57,000 towards the cost of a tramway. The Revenue only permitted depreciation on the amount expended by the owners but the Judicial Committee directed that depreciation should be allowed on the total cost, notwithstanding the fact that the owners had only supplied part of the money.[14]

In Canada, the Minister exercises his discretion by permitting depreciation on the actual purchase price. This may be

[13] *Hall & Co.* v. *Richman*, [1906] 1 K.B. 311.
[14] *Birmingham* v. *Barnes*, [1935] A.C. 292.

a fair and proper way to decide the point but it has been decided contrary to the rulings of our highest tribunal, and decisions of this kind impose taxation without the consent of Parliament.

We recommend that every aspect of this important subject should be studied by engineers, accountants and others who have special knowledge of the subject; and the law should be investigated by competent persons and the Act amended to cover the problem reasonably so that the taxpayer will know that he is paying according to the directions of Parliament and not according to the views of the officials appointed to collect the tax; and that minimum rates be established and that any taxpayer who claims that these rates are not applicable to his particular business should be at liberty to apply to an independent tribunal for an additional allowance.

Depletion

This matter has been very carefully considered by the Departmental officials.

The amount allowed must be very substantial but we hear from far and wide that the mining industry is being throttled by high taxation and many persons are dissatisfied. It is said that successful mines obtain substantial allowances whilst the smaller mines receive insufficient.

We feel that the situation could be improved and we suggest that the problem be re-investigated; that all interested should be given an opportunity to be heard; and that the Statutes in other countries should be carefully considered.

Obsolescence

Obsolescence is twice mentioned in the Act: first in Section 6 (1) (b) and secondly in Section 5 (1) (p).

Just why it is mentioned in the Act is difficult to say because no deduction is allowed on this account. It is interesting to speculate why a deduction is not allowed and if you want to find the reason it is necessary to go back to the beginning, because in olden days things were made to last; what was good enough for one's grandfather was good enough for his grandson, and the question of obsolescence never entered the mind of the draftsmen.

In 1918, the English Act was amended and taxpayers were permitted to deduct for obsolescence. The Canadian Statute

was introduced in 1917 and, probably, no one looked at, or considered, the amendment made in England in the following year.

An American engineer, Mr. Frederick S. Blackall, Jr. has recently pointed out that practically every machine used to produce commercial goods is six years old and some much older; that a substantial portion of the machinery used for such purposes in Europe has been destroyed and will be replaced by modern equipment; and if this country does not do the same we will not be able to compete. He also points out that the men managing most corporations know more about their own business than do the Revenue officials and that if they decide to discard obsolete machinery and install modern equipment it is because they think they will be able to earn larger profits and be able to give more employment. The Revenue will tax these profits and will also tax the profits of the manufacturer who supplies the machinery; employment will be increased and the Revenue will obtain a tax upon the wages. He is confident that if obsolescence be encouraged, the revenue would be substantially increased.

If Mr. Blackall's conclusions are sound, why not amend the Act and remedy a grievance?

Conflicting Provisions

There are many provisions in the Act which contradict one another. As an example let us compare the sections referring to the taxation of non-residents, first paying particular attention to Sections 9B (5), 8 (4), 25A (2) and 27 (7):

> 9B. (5) No exemptions, deductions or tax credits provided by any other section of this Act shall apply in the case of the taxes imposed by this section except those exemptions provided by paragraphs (a), (b), (c) and (k) of section four of this Act.
>
> 8. (4) A Minister, High Commissioner, officer, servant or employee of the Government of Canada or an agent general for any of the provinces of Canada, or any officer, servant or employee thereof, resident outside of Canada, shall be entitled to deduct from the tax that would otherwise be payable by him under this Act the amount paid as income tax to the government of the country in which he resides.
>
> 25A. (2) Any tax deducted under the provisions of subsection two of section nine B of this Act from any dividends or interest which are made taxable under subsection one of this section shall be applied as a credit against the tax subsequently found due by any non-resident person whose income is liable to taxation under the provisions of subsection one of this section.

27. (7) A non-resident person in receipt of rentals from real estate let, leased or used in Canada may file an income tax return and pay on a net income basis in Canada in respect of the income from such real estate. In such case the tax deducted at the source under subsection two of this section from any payment on account of any real property let, leased or used in Canada shall be allowed as a credit against any tax payable by the non-resident person and any overpayment by reason of such deduction at the source may be refunded.

Section 9B (5) directs that no exemptions, deductions or tax credits shall apply to the 15% tax levied under the provisions of Section 9B except the deductions provided by section 4 (a), (b), (c) and (k); but if you read on further you will find that notwithstanding the specific provisions of Section 9B (5) three deductions are allowed under the provisions of Sections 8 (4), 25A (2) and 27 (7).

Then let us look at section 9 (1) (c), (d) and (e) which reads as follows:

9. (1) There shall be assessed, levied and paid upon the income during the preceding year of every person, other than a corporation or joint stock company,

(c) who is employed in Canada at any time in such year; or

(d) who, not being resident in Canada, is carrying on business in Canada at any time in such year; or

(e) who, not being resident in Canada, derives income for services rendered in Canada at any time in such year, otherwise than in the course of regular or continuous employment, for any person resident or carrying on business in Canada;

and compare them with Article 7 of the 1942 Convention[15] arranged between Canada and the United States which exempts from tax:

(a) American citizens temporarily present in Canada for not more than 183 days if they are employed by an American national and their compensation does not exceed $5,000;

(b) American citizens temporarily present in Canada for not more than 90 days if employed by a Canadian national and their compensation does not exceed $1,500.

Article 12 of the 1941 Convention[16] arranged between Canada and the United States provides that American citizens shall not be subject to the payment of more burdensome taxes than Canadian citizens.

Canadian citizens are entitled to certain deductions whereas, under Section 9B, American citizens who pay 15% tax are allowed none.

[15] 1942 Convention, Article 7.
[16] 1941 Convention, Article 12.

Irritating Provisions

Section 3 (1) (e) provides that income shall include "personal and living expenses when such form part of the profit, gain or remuneration of the taxpayer". In 1892 the Judicial Committee decided that if an officer or servant occupied a free house, the annual value should not be included as part of his income unless he could rent it to other persons and receive the money. This section applies mainly to persons with low incomes. Lumbermen have to live in camps during the winter; most of them have their own homes and would prefer to stay with their wives and families and, if they did, would probably contribute more to the up-keep of the family by cutting wood, growing potatoes, etc., than the cost of their board. Unfortunately, they have to leave home to get employment. Few people could claim that life in a lumber camp is as comfortable as living at home, yet because of this privilege, which they do not want, their income is increased $180 per annum.

Another class of persons who were underpaid prior to 1939 is domestic servants. As a class, they work very hard and get very little; and most of them hate living in because they are always on call. It is the general opinion that poor people should get higher exemptions and we cannot see why a large and deserving class should be asked to pay on something which is not income and which they generally do not want.

We recommend that Section 3 (1) (e) be repealed or, if this is not desirable, that it be amended so as to exempt persons whose incomes are less than $4,000 per annum.

First Schedule A, Section 1, Rule 1, gives certain exemptions to married taxpayers who have children to support but if an unmarried person is charitable enough to support his brother's fatherless children, he does not get the exemption unless he maintains a self-contained domestic establishment which is defined by Section 2 (1) (j) as a dwelling house or apartment containing at least two bedrooms.

Some people in Canada live in one-room cottages; others help to pay the children's board with a relative. In both cases, if they support a dependent child they should be entitled to the exemption because, if they do not support the child, the same will probably become a public charge. The exemption should not depend upon how they support the child but on the cost of so doing.

Unreasonable Provisions

Under Schedule A, Rule 6, subject to certain exemptions, if both husband and wife have an income in excess of $660.00 per annum, both of them lose the $150.00 deduction for married status and both are taxed as single persons and may pay an increased rate. No provision is made to cover the case where the parties to the marriage have separated and one of them has children to support; and the effect of the Section is to tax one person because some other person has a taxable income.

Section 32A (3) provides that if substantially all the shares of a company having undistributed income on hand are sold to another company, and the Board finds that the main purpose of the vendor in making the sale was to avoid tax, then if you apply the Act strictly, the purchasing company apparently loses, for all time, the exemption to which it is normally entitled under Section 4 (n). In other words, the liability of the purchaser is determined by the intent of the vendor. It is hard to see how any purchaser can possibly look into the mind of the vendor and ascertain accurately the motives which impelled him to sell; and this section may seriously impede future sales of securities.

Section 32B states that where on winding up a company distributes any assets to its shareholders the Minister may value the assets and the distributable portion shall be deemed a dividend. In the first place, if the Act is applied strictly, it will cover all capital gains which the Act does not assume to tax and, secondly, the section imposes a tax on the total price without permitting deduction and liabilities.

Unfair Calculations

(*Prior to the recent reductions*)

A married man paid no tax if his income did not exceed $1200 per annum.[17] Most people assume that they are entitled to a reduction of $108 for each child but this is not so. If a taxpayer had an income of $1300 and 3 children, he still paid tax.

The reason is due to the fact that a taxpayer is entitled to an allowance from the normal tax of $28 for each child, making $84 for 3 children, while the normal tax of 7% on $1300 is $91. He is entitled to a deduction from the graduated tax which comes to $196.20 of an allowance of $80 for each child, or $240 for 3 children. But you cannot set off a credit on the graduated tax against a deficit on the normal tax.

[17] Income War Tax Act—First Schedule A, Sec. 3, Rule 1.

Notwithstanding the recent reductions, a married taxpayer earning $1300 a year, and supporting 3 children, pays $3 at the present time.

A very rich unmarried taxpayer, who has an income in excess of $100,000 a year, paid the following rates on the excess—

9%	— normal tax
85%	— graduated tax
4%	— surtax on investment income
98%	

In addition, if his income is derived from dividends paid by Canadian corporations in United States currency, there is a further tax of 5% on such income, making a total levy of 103%.

If the wife of a married man has an income of $700 a year, her husband loses his marriage exemption and may have to pay a higher normal tax.

Under Section 3 (7) a wife may reduce her income by making a gift to His Majesty, but this means that the excess is taxed at 100%.

An unmarried taxpayer pays a tax of 7% if his income does not exceed $1800; a tax of 8% if his income does not exceed $3000; and 9% if his income exceeds $3000. Consequently, if he has an income of $3,029 it will pay him to give the $29 to the Government and come in under the 8% rate, but this again is taxing the excess at 100%.

Some Pay, Others Escape

Superannuation

If two men own all the shares and are the Directors of a private company, the company may organize a Superannuation Fund, include the Directors, and deduct from the profits $900 for each man.

If the same men are partners carrying on precisely the same kind of business, they are not entitled to such privileges.

The reason is that Section 5 (1) (ff) of the Act states that the amount must be paid for the benefit of an employee, officer or director, and a partner is not an employee, or an officer, or a director.

We cannot think that Parliament intended this discrimination and the trouble has arisen because the draftsmen of the Act did not give sufficient consideration to the subject.

Travelling Expenses

Many taxpayers who receive salaries are compelled to assume certain expenses. If the employment contract is changed and the employer pays the expenses and reduces the salary, the employer may deduct the expenses and the employee only pays on what he gets.

Section 3 defines income as including, amongst other things, "wages, salaries and indemnities".

Section 5 (1) (f) permits a taxpayer to deduct from his income

> Travelling expenses, including the entire amount expended for meals and lodging, while away from home in the pursuit of a trade or business;

In 1924, Mr. Justice Audette held that an annual salary is an amount which is duly ascertained and capable of computation and no deductions were permitted by the Act.[18]

The question came up last year in the case of a member of the Alberta Legislature, and it has just been held that this taxpayer could not deduct travelling expenses.[19]

It is difficult to assume that Parliament intended that salaried employees should be treated differently from anyone else and that a taxpayer who receives a salary and has to pay legitimate expenses should not be allowed to deduct these expenses, because if the deduction is refused, the man is taxed not on his net income but on something entirely different.

It is also difficult to assume that Parliament intended that the proprietor of a business, who is entitled to receive the profits, should be authorized to deduct his travelling expenses whilst his employees are not allowed to do so.

This is one of those cases which are so objectionable because the amount of tax which has to be paid depends upon not what you do but how you do it.

Analysis of Sections 3 (7), 32 & 88

The best method of indicating the various difficulties which arise from bad drafting is to analyze one section.

I would like to deal in particular with Section 88, subsection 8, which reads as follows:

88. (8) The provisions of this section shall not apply to the following:–

[18] *In Re Lieutenant-Governors*, [1931] Ex. C.R. 235.
[19] *Mahaffy* v. *Ministers*, [1946] Ex. C. R. 18.

(a) gifts or donations made by any individual the aggregate value of which in any year does not exceed four thousand dollars, and taxation shall be on the amount in excess of four thousand dollars only;

(b) gifts or donations taking effect upon death by way of bequest or devise; and any property passing to any person upon an intestacy;

(c) gifts or donations to a charitable organization or educational institution in Canada, operated exclusively as such and not operated for the benefit or private gain or profit of any person, member or shareholder thereof;

(d) gifts or donations made to the Dominion of Canada or any Province or political subdivision thereof;

(e) Repealed.

(f) gifts to or payments made on behalf of any one person which in the aggregate to or for such person do not exceed one thousand dollars in any year.

Provided that gifts exempt under paragraphs (b) to (f) inclusive of this subsection shall not be included in compiling the aggregate referred to in paragraph (a) of this subsection.

(g) gifts or donations made in any year, if the aggregate value thereof does not exceed an amount equal to one-half of the difference between the income of the taxpayer in the next preceding year and the income tax which was payable thereon.

You will note the clause which was inserted after paragraph (f). Does this proviso apply to paragraph (g) and if not why not? The trouble is due to the fact that the proviso was inserted in 1936 and paragraph (g) was enacted in 1938 and apparently the proviso was overlooked.

In 1938, when paragraph (g) was enacted, the tax upon a married man with an income of $20,000 was $2,500; so the taxpayer could give away $8,750 without paying a gift tax. Today, the tax is in the neighbourhood of $11,000 so the taxpayer can only give away $4,500 without paying a gift tax. When Parliament increased the individual rate, did it intend to change an exemption which had been granted years before?

If a taxpayer makes a gift to his wife he pays a tax under section 88 but he is still liable to be taxed on the income arising from the gift, under section 32 (2). Was this intended?

Section 32 (2) covers all transfers from husband to wife including transfers made for valuable consideration. If a husband sells a Government bond at par, to his wife, he comes within this section. Was this intended?

If the value of the gift does not exceed $5,000 the tax is 10%, if $5,001 it is 11%. No relief can be obtained under Section 3 (7) because the exemption only applies to income and not to transfers.

The definition of a charitable institution contained in Section 88 (8) (c) is different from the definition contained in sections 4 (e) and 5 (1) (j).

Subsection 5 of section 88 permits the Minister to assess either the donor or the donee for the tax. If the donor is made to pay he can obtain no redress from the donee unless the donor can prove a binding agreement which obligates the donee to pay.

Subsection 7 clause (b) of section 88, authorizes the Minister to determine the value of the gift. Surely such matters should be determined by the Courts after hearing all pertinent evidence.

Simplification

Two and a half million taxpayers file returns each year. In most cases the return is prepared by one person and checked by another. In the Department the forms are checked twice, so that it requires ten million operations. A saving of one minute on each operation would amount to over 166,000 hours.

Simplification of the Act would permit simplification of the forms.

If it were not for the tables supplied by the Department, calculation of the amount due would be almost impossible because the rate of tax was fixed in 1942 and since that date the tax has been reduced by permitting the taxpayer to deduct the refundable portion and give him a further credit of 16%. The Schedule attached to the Act should be re-drafted to give effect to these changes.

Two taxes are levied: a normal tax of from 7% to 9% on the total income, and a graduated tax on the total income less $660.

The graduated tax changes at various arbitrary amounts which make calculations difficult, because you have to add $660 to the figures stated in the schedule appearing in the Act.

Take, as an example, a taxpayer with an income of $4,350. The form sets out the gross amount payable on an income of $4,160 which corresponds with the figure of $3,500 appearing in the Schedule attached to the Act, plus $660. The taxpayer then has to write down his total income of $4,350, deduct from this $4,160, and add 46% to the excess of $190.

If the schedule in the Act was changed so the break came at $3,340, the actual change would be made at $4,000 and the taxpayer, instead of writing down the two sums, could make the deduction in his head and all he would have to do would be

to look at the schedule, write down the amount payable on an income of $4,000 and add to this amount 46% of the excess of $350.

Most people are paid by the week. Why not take this into consideration and change the exemption slightly so as to avoid fractions if you have to make weekly deductions? It is easy to calculate one fraction but when they come by the million things are different.

The following is a list of exemptions and suggested changes:

FIRST SCHEDULE A:

s. 1 r. 1 & 3—Exemptions ..... Change $660 to $676, or $13 a week;

s. 1 r. 1	—Exemptions for married persons.....	"	1200	to	1196,	" 23	"
s. 2 r. 3	—Marriage allowance.....	"	150	to	156,	" 3	"
s. 1 r. 5	—Children's allowance from normal tax.....	"	28	to	26,	" .50	"
s. 2 r. 4	—Children's allowance from graduated tax.....	"	80	to	78,	" 1.50	"

In seeking simplification of the forms, family allowances present many difficulties and the Statute dealing with this problem covers 5½ pages. The difficulty is due to the fact that:

$5 is allowed for children under 6
$6 " " " 10
$7 " " " 13
$8 " " " 16

but if the taxpayer has 5 children:

$1 is taken off the 5th child
$2 " " 6th and 7th children
$3 " " 8th and each additional child.

As the average allowance is $5.00 per month for each child, or $60 per annum, we suggest that the family allowance be ignored in the calculation of taxes and that every taxpayer be allowed a deduction of $48 for each child or, better still, $52 each, which would be $1 per week. If a taxpayer has more than 4 children under the age of six, he will lose slightly and the same thing is true if he has more than 5 children under the age of ten; but he would make it up, and a little more, when the children got older and became more expensive to maintain.

The Revenue would lose if a man had 4 children over six and under 16 but if anyone should have an advantage it is the taxpayer with a large family in their teens, because children in their teens are more expensive to support.

Without any change in the Act, some simplification in the form might be obtained if the following changes were made:

1. The present form covers the Armed Forces and married and unmarried taxpayers. Everyone who fills in a form must first study it carefully. Naturally a taxpayer who is actually married but, for income tax purposes, is deemed to be unmarried, is liable to make mistakes if he reads over the exemptions given to married taxpayers and overlooks, or fails to understand, Clause 38. We suggest that three separate forms be prepared: one for each category. The quantity of forms would not be increased because the taxpayer would only require copies of the form which applied to him, and expenses would be saved because less paper would be used.

2. The present form T.1 General covers six pages and is printed on both sides of the paper. It is very inconvenient to place in the typewriter. We suggest that the form be divided into two parts and be printed on one side of a page which can be readily inserted in the standard typewriter: one part to include the actual details which the taxpayer has to fill in and the other to contain the instructions and schedules which he requires for his guidance.

We recommend that every effort be made to clarify the Income War Tax Act and to amend those provisions under which liability to tax depends not upon what the taxpayer does but on how he does it.

We must always keep in mind the words of Lord Justice Greer:

> I desire to repeat what I said in the beginning of my judgment, that any fiscal changes inevitably do harm to some taxpayers and generally confer benefit on other taxpayers, or do harm to some portions of the citizens of this country, and give benefits to other portions of the citizens of this country, and it might be well worth the consideration of those who make these changes from year to year and regard the Budget as a great opportunity for originality in the imposition of taxes, whether or not it would not be more advisable to leave the taxation of this country, so far as is possible, on the well-tried lines which have been dealt with year after year by decisions of the Courts of Justice, rather than to try new experiments with the object of producing something which is perhaps less certain, but which, if brought

about, would produce a more ideal state of things than the one which has been in existence for so long and is so well known.[20]

We are satisfied that the Act cannot properly be revised without a great deal of research. One of the great difficulties is due to the fact that the Courts have construed many words which are used in the Act quite contrarily to their popular meaning. Before any scientific revision of the Act is attempted:

(1) A dictionary should be prepared so that the draftsmen may know the legal meaning of the language it is proposed to employ. This work may take considerable time but the expense will be well repaid.

(2) Copies of the evidence presented to the various Royal Commissions on taxation should be obtained and indexed so that when a subject comes up for consideration we may know the views which have been expressed by others.

(3) All the case law applicable to Canadian conditions should be examined so that the draftsmen may know where in the past liability for tax has been avoided or the taxpayer inequitably treated.

(4) Statistical reports should be prepared showing the effect of any proposed amendments on the collection of the revenue.

We are convinced that no one man, however expert and capable he may be, is qualified to revise the Act because it is impossible to tax fairly unless you know all the problems which affect the person who is called upon to pay.

In conjunction with the Dominion Association of Chartered Accountants we have organised the Canadian Tax Foundation and have endeavoured to obtain, as permanent officials, the most competent men we can procure. In order to understand the different problems which affect different classes of taxpayers we are arranging study groups in various large centres and hope to include all accountants and lawyers who specialise in tax matters and have to deal with these problems in their actual practice. We think it is manifest that lawyers practising in the West know more about the problems of the Western farmer than lawyers in the East, while lawyers practising in Ontario and Quebec may know more about the mining industry than others.

The Foundation is ready to study such problems as you may deem urgent; to carry out the necessary research, and to draft amendments which we hope will be clear to all and carry

[20] *Betts* v. *Laycock, Son & Co.* (1930), 15 T.C. 439.

out the wishes of the Government. The Foundation is ready to do such work as you desire and to do it in the way you wish it to be done. We offer the services of the Foundation free of charge and trust such services may be of value to the nation.

THE CANADIAN BAR ASSOCIATION.

MOLYNEUX L. GORDON,
Chairman, Taxation Section.

HENRY F. WHITE,
Secretary, Taxation Section.

EXHIBIT NO. 1

CATEGORIES OF DISCRETION

	1. Allowance of Reserves:
5 (1) (a)	a. Depletion;
6 (1) (n)	b. Depreciation;
6 (1) (d)	c. Bad Debts;
6 (2) (c) E.P.T.	d. Inventory.
	2. Limitation of Expenses:
6 (2)	1. Expenses;
6 (3)	2. Salaries;
90 (4) (x)	3. In capital expenditure allowance;
5 (1) (b)	4. Interest.
	3. Determination of the true nature of transactions where lessening of tax may be involved with reference to companies and individuals:
23	1. Inter company purchases and sales;
21 (3)	2. Value of shareholders' property transferred to company;
23 (b)	3. Unreasonable payment to non-resident companies;
31 (1) and 52 (1)	4. Transactions between husband and wife and parent and child.
	4. Determination of the nature of income:
3 (2)	1. Interest portion;
3 (4)	2. Tax free living allowance.
7A (1) (d) 4 (1) (m)	5. Determining nature and effect of certain legal documents and reciprocal acts.
5. (1) (m)	6. Approval of Pension Schemes.
	7. Minor Administrative Discretions:
40	1. Extending time for making return;
42	2. Require production of letters and documents involved in assessment;

46	3. Require keeping of books;
74(1)	4. Demand payment of taxes for a person suspected of leaving Canada.
75(2)	8. Regulations to carry Act into effect.
	9. Waiving of penalties:
77(3)(b)	1. Failure to file return.
	10. Determination of Standard Profits:
2(1)(h) E.P.T.	a. Commencement of business;
4(2) E.P.T.	b. Nature of business.
	11. Adjust Standard Profits:
4(1)(a) E.P.T.	1. Basis of partial fiscal period;
4(1)(b) E.P.T.	2. Alteration of capital.
5.(2)and(4)E.P.T.	12. Reference to Board of Referees in case of new or substantially different business.

(The sections listed are from the Income War Tax Act unless they are marked E.P.T. which signifies Excess Profits Tax Act.)

EXHIBIT NO. 2

HIS MAJESTY by and with the advice and consent of the Senate and the House of Commons ENACTS AS FOLLOWS:

1.—This Act may be cited as the Tax Commissioners Act.

2.—There shall be a Board to be called the Board of Tax Commissioners consisting of at least members appointed by the Governor in Council, the members of which shall jointly and severally have all the powers and authority of a Commissioner appointed under Part I of the Inquiries Act.

(2) One of the members shall be appointed Chairman and another Vice-Chairman by the Governor in Council. The Chairman and the Vice-Chairman and a majority of the Board, including the Chairman and the Vice-Chairman, shall be qualified legal practitioners of any Province of Canada of at least ten years' standing. In the absence of the Chairman, the Vice-Chairman shall be vested with all the powers conferred by this Act upon the Chairman.

(3) Each member shall hold office during good behaviour for life from the date of his appointment subject to the provisions of Subsection (5) hereof but may be removed for cause at any time by the Governor in Council.

(4) The Chairman, Vice-President and other members of the Board shall be paid such annual salaries as the Governor in Council may determine.

(5) The provisions of the Judges Act (R.S.C. Chap. 105) as to the superannuation and retirement of judges of any superior court in Canada shall apply mutatis mutandis to the superannuation and retirement of members of the Board of Tax Commissioners.

(6) If any member by reason of illness or other incapacity is unable at any time to perform the duties of his position, the Governor in Council may

make a temporary appointment of a qualified person to sit in his place and stead upon such terms and conditions and for such term and at such salary as the Governor in Council may prescribe.

3.—The Board may sit in divisions of not less than 3 members and there shall be as many divisions as the despatch of business may require. One member of each division shall be a duly qualified legal practitioner of any Province of Canada of at least ten years' standing and such member shall preside at all hearings before such division.

(2) Any division of the Board shall have power to hear and determine in the name of the Board any matter submitted to the Board provided that any decision of a division of the Board interpreting any Act of Parliament of Canada or of any legislative assembly of any Province of Canada, or any section of any such Act, or involving a question of law, shall be approved by the Chairman of the Board of Tax Commissioners before such decision becomes effective.

4.—The Board shall act as a Court of Appeal to hear and determine any appeal made by a taxpayer from an assessment under the Income War Tax Act or the Excess Profits Tax Act.

(2) The Board shall have power to determine all disputes between taxpayers and the Department of National Revenue with respect to taxes payable under the Income War Tax Act or under the Excess Profits Tax Act.

(3) The Board shall have power to determine and declare the liability for tax under the Income War Tax Act or the Excess Profits Tax Act in respect of any case stated in writing to the Board by a taxpayer or by the Department of National Revenue whether or not liability for such tax has been incurred.

(4) The Board of Tax Commissioners shall duly consider any matter submitted to it and upon hearing the evidence adduced and upon such other inquiry as it deems advisable shall determine the matter affirming or amending the assessment and/or shall deliver judgment in accordance with its findings and the findings of the Board on questions of fact shall be final and conclusive.

(5) The Board shall have and may in determining any question before it exercise all the powers and discretions vested in the Minister under any of the provisions of the said Acts, and notwithstanding any previous exercise or purported exercise thereof by the Minister, shall exercise such powers and discretions in the manner in which in the opinion of the Board the Minister should have exercised the same in the first instance.

(6) An appeal shall lie from the Board to the Exchequer Court upon any question of law or question of mixed law and fact.

5.—The Board of Tax Commissioners may with the approval of the Governor in Council make all necessary rules and regulations respecting

(a) the sittings of the Board and divisions thereof throughout Canada,

(b) The practice and procedure in all matters of business to be dealt with before the Board,

(c) the apportionment of the work of the Board among its members, the allocation of members to divisions and the assignment of divisions to sit at hearings,

(d) the publication of the decisions of the Board,

(e) generally, the carrying on of the work of the Board, the management of its internal affairs and the duties of its officers and employees,

(f) any other matter or thing deemed necessary in the performance of the function of the Board as a court of tax appeals.

6.—The Governor in Council may from time to time or as the occasion requires appoint one or more experts or persons having technical or special knowledge of the matters in question to assist in an advisory capacity in respect of any matter before the Board.

7.—There shall be a Registrar of the Board of Tax Commissioners and such Assistant Registrars as may be required for the despatch of business by the Board, who shall be appointed by the Governor in Council and who shall hold office during pleasure. The salary of the Registrar and Assistant Registrars shall be such as may from time to time be fixed by the Governor in Council.

8.—In the absence of the Registrar from illness or any other cause, the Chairman or Vice-Chairman of the Board may designate one of the Assistant Registrars as Acting Registrar and such Acting Registrar shall thereupon act in the place of the Registrar and exercise his powers.

9.—Such other officers, clerks and employees as are necessary for the proper conduct of the business of the Board of Tax Commissioners may be appointed in the manner authorized by law.

10.—The salaries or remuneration of all officers, clerks and assistants, and all the expenses of the Board incidental to the carrying out of this Act, including all actual and reasonable travelling expenses of the members of the Board and the Registrar and Assistant Registrars and of such members of the staff of the Board as may be required by the Board to travel, necessarily incurred in attending to the duties of their office, shall be paid monthly out of monies to be provided by Parliament.

11.—No member of the Board or Registrar or clerk or assistant shall communicate or allow to be communicated to any person not legally entitled thereto any information obtained under the provisions of this Act or allow any such person to inspect or have access to any written statement furnished under the provisions of this Act.

12.—No member of the Board of Tax Commissioners shall, either directly or indirectly, as director, manager, partner or employer of any corporation, company or firm, or in any other manner whatever for himself or others, engage in any occupation or business other than his duties as such member, but every such member shall devote himself exclusively to such duties.