

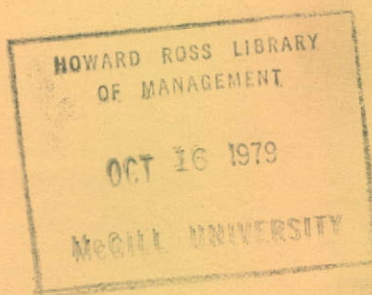
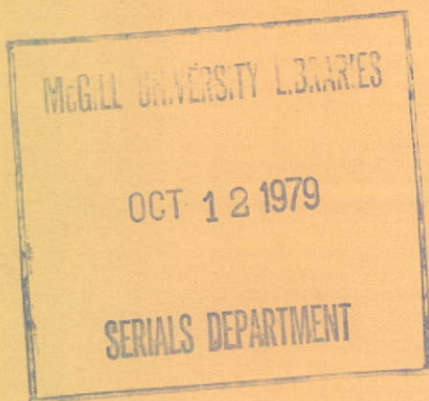
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H. Ross  
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# Canadian Tax Foundation

L'Association Canadienne d'Etudes Fiscales

## *Thirty-Third Annual Report*

For the year ending December 31, 1978



100 UNIVERSITY AVENUE  
TORONTO, CANADA



Thirty-Third Annual Report

For the year ending

December 31, 1978

# CANADIAN TAX FOUNDATION

L'Association Canadienne d'Etudes Fiscales

## THE BOARD OF GOVERNORS

Elected April 10, 1979

J. Merrill Belanger, C.A.	St. John's
H. J. Bolton, C.A.	Edmonton
James R. Brown, C.A.	Montreal
Patrick, J. Cloutier, C.A.	Sherbrooke
Carman R. Colwell, C.A.	Saint John
* George B. Cooper, Q.C.	Moncton
John M. Coyne, Q.C.	Ottawa
Glen E. Cronkwright, F.C.A.	Toronto
R. J. Dart, F.C.A.	Toronto
J. J. A. Dierker	Saskatoon
Gaëtan Drolet, Q.C.	Quebec
* Stanley E. Edwards, Q.C.	Toronto
Brian E. Felesky	Calgary
Gilles Gagné, C.A.	Montreal
* P. Nicholas Geer, C.A.	Vancouver
* William E. Goodlet, F.C.A.	Toronto
* Robert B. Goodwin	Winnipeg
Richard A. Haines, C.A.	Winnipeg
L. J. Hayes, Q.C.	Halifax
L. M. Little	Vancouver
Kenneth A. Mader, F.C.A.	Halifax
Gerald E. Noren, C.A.	Moose Jaw
* Charles Pelletier, C.A.	Quebec
Jean Potvin	Montreal
Sheldon Silver, Q.C.	Toronto
John G. Smith	Vancouver
Arthur J. Stone, Q.C.	Toronto
* George T. Tamaki, Q.C.	Montreal
David Y. Timbrell, F.C.A.	Toronto
Bruce Verchère	Montreal
Peter Walton, C.A.	Vancouver
Charles W. White	St. John's

\* Executive Committee of the Board of Governors



## OFFICERS

William E. Goodlet, F.C.A. Chairman

Stanley E. Edwards, Q.C. Vice-Chairman  
and Chairman of the Executive Committee

Charles Pelletier, C.A. Vice-Chairman

George T. Tamaki, Q.C. Past Chairman

Douglas J. Sherbaniuk Director

John W. Buckell, F.C.I.S. Treasurer

Patricia A. Hillmer Secretary

## PAST CHAIRMEN

Molyneux L. Gordon, K.C. (deceased)

Gordon R. Munnoch, K.C. (deceased)

J. Grant Glassco, F.C.A. (deceased)

W.G.H. Jephcott, F.C.A. (deceased)

Claude S. Richardson, Q.C. (deceased)

Kenneth LeM. Carter, F.C.A. (deceased)

\* Lazarus Phillips, Q.C., Montreal

\* Thomas A. M. Hutchison, F.C.A., Toronto

\* R. deWolfe MacKay, Q.C., Montreal

\* John A. Wilson, F.C.A., Toronto

M. Gerald Teed, Q.C. (deceased)

\* A. Willard Hamilton, C.A., Montreal

Henry F. White, Q.C. (deceased)

\* Campbell W. Leach, C.A., Montreal

\* Stuart D. Thom, Q.C., Toronto

\* A. J. Little, F.C.A., Toronto

\* John DeM. Marler, Q.C., Montreal

\* Archibald D. Russell, C.A., Vancouver

Arthur S. Pattillo, Q.C. (deceased)

\* Lancelot J. Smith, F.C.A., Toronto

\* Phillip F. Vineberg, Q.C., Montreal

\* H. Marcel Caron, C.A., Montreal

\* John M. Godfrey, Q.C., Toronto

\* Robert B. Dale-Harris, F.C.A., Toronto

\* Roger Letourneau, Q.C., Quebec

\* Frank T. Denis, C.A., Montreal

\* W.E.P. DeRoche, Q.C., Toronto

\* Denham J. Kelsey, F.C.A., Vancouver

\* Robert H.E. Walker, Q.C., Montreal

\* Kerr Gibson, F.C.A., Toronto

\* John H. C. Clarry, Q.C., Toronto

\* Jacques Raymond, C.A., Montreal

\* Advisory Committee of Past Chairmen

## STATEMENT OF FINANCIAL POSITION

AS AT DECEMBER 31, 1978

(With comparative figures for 1977)

## ASSETS

CURRENT ASSETS	1978	1977
Cash	\$ 152,687	\$ 166,308
Investments, at cost (note 2)	1,100,000	675,000
Accounts receivable and deposit	15,866	41,636
	<u>1,268,553</u>	<u>882,944</u>
 FIXED ASSETS		
Furniture and office equipment	48,246	47,338
Leasehold improvements	14,835	14,835
	<u>63,081</u>	<u>62,173</u>
Accumulated depreciation and amortization	38,966	34,455
	<u>24,115</u>	<u>27,718</u>
	<u>1,292,668</u>	<u>910,662</u>
 TRUST FUND		
Cash	10,035	9,105
	<u>\$1,302,703</u>	<u>\$919,767</u>

## LIABILITIES AND RESERVE

CURRENT LIABILITIES		
Accounts payable	\$ 78,820	\$ 79,948
Deferred revenue	218,471	193,829
	<u>297,291</u>	<u>273,777</u>
 RESERVE		
Retained for continuation of the Foundation's activities		
Balance, beginning of year	636,885	416,288
Excess of revenue over expense	358,492	220,597
Balance, end of year	<u>995,377</u>	<u>636,885</u>
	<u>1,292,668</u>	<u>910,662</u>
 TRUST FUND LIABILITY		
Taxation and economic growth study fund, joint project with Queen's University	10,035	9,105
	<u>\$1,302,703</u>	<u>\$919,767</u>

APPROVED ON BEHALF OF THE BOARD OF GOVERNORS

George T. Tamaki  
ChairmanW. E. Goodlet  
Vice-Chairman

STATEMENT OF REVENUE AND EXPENSE  
FOR THE YEAR ENDED DECEMBER 31, 1978

(With comparative figures for 1977)

	1978	1977
REVENUE		
Subscriptions		
Corporate	\$ 178,574	\$ 164,096
Individual	311,051	235,946
	<u>489,625</u>	<u>400,042</u>
Investment income	84,896	55,186
Conferences	548,562	547,305
	<u>1,123,083</u>	<u>1,002,533</u>
EXPENSE		
Research salaries	178,861	189,276
Research consulting	16,532	17,446
Publications	76,820	119,923
Special studies	15,931	(21,366)
Books and periodicals, library	11,686	9,770
Conferences - direct expense	227,575	228,097
Salaries - administration	112,591	107,519
Pension and insurance plans	34,178	32,696
Rent	38,215	37,740
Travelling	7,707	7,356
Telephone and telegraph	5,367	5,137
Postage	19,108	19,393
Office printing, stationery and supplies	6,171	10,099
General office expense	9,338	14,342
Depreciation and amortization expense	4,511	4,508
	<u>764,591</u>	<u>781,936</u>
Excess of Revenue over Expense	<u>\$ 358,492</u>	<u>\$ 220,597</u>

STATEMENT OF TRUST FUND LIABILITY  
FOR THE YEAR ENDED DECEMBER 31, 1978

(With comparative figures for 1977)

	1978	1977
Balance, beginning of year	\$ 9,105	\$ 14,092
Interest income	930	913
	<u>10,035</u>	<u>15,005</u>
Expenses for special study		5,900
Balance, end of year	<u>\$ 10,035</u>	<u>\$ 9,105</u>

STATEMENT OF CHANGES IN FINANCIAL POSITION  
FOR THE YEAR ENDED DECEMBER 31, 1978

(With comparative figures for 1977)

SOURCE OF WORKING CAPITAL	<u>1978</u>	<u>1977</u>
From operations		
Excess of revenue over expense	\$358,492	\$220,597
Depreciation and amortization not requiring a current outlay of working capital	<u>4,511</u>	<u>4,508</u>
	363,003	225,105
Proceeds of disposal of fixed assets	<u>          </u>	<u>95</u>
	363,003	225,200
 APPLICATION OF WORKING CAPITAL		
Additions to fixed assets	<u>908</u>	<u>8,141</u>
INCREASE IN WORKING CAPITAL	362,095	217,059
WORKING CAPITAL, BEGINNING OF YEAR	<u>609,167</u>	<u>392,108</u>
WORKING CAPITAL, END OF YEAR	<u><u>\$971,262</u></u>	<u><u>\$609,167</u></u>
 COMPONENTS OF WORKING CAPITAL		
Current assets	\$1,268,553	\$882,944
Current liabilities	<u>297,291</u>	<u>273,777</u>
	<u><u>\$ 971,262</u></u>	<u><u>\$609,167</u></u>

# NOTES TO FINANCIAL STATEMENTS

December 31, 1978

(With comparative figures for 1977)

## 1. Summary of accounting policies

### (a) Fixed assets

Fixed assets are stated at cost. Depreciation and amortization are provided over the estimated useful lives of the assets on a straight-line basis at 10% per annum.

### (b) Deferred revenue

Subscription revenue applicable to future period is deferred.

2. Investments	1978	1977
Guaranteed investment certificates		
7 3/4% to 9 1/2% due 1978 to 1982	\$ 325,000	\$ 475,000
Kinross Mortgage Corporation		
Debenture 10% due 1980	100,000	100,000
Royal Trust Company, M Fund		
10,115,348 units		
Market value \$98,761 (1977 \$101,178)	100,000	100,000
Term Deposits		
Canadian Imperial Bank of Commerce		
9 1/4% to 10% due January and		
February 1979	425,000	
Bank of Montreal		
10 1/2% due March 29, 1979	150,000	
	<u>\$ 1,100,000</u>	<u>\$ 675,000</u>

## 3. Lease commitments

The Foundation rents office space under a lease expiring in 1982. The basic annual rent is \$32,258 plus an amount representing the escalation of taxes and operating costs since the lease was written.



## AUDITOR'S REPORT

The Board of Governors and the Members,  
Canadian Tax Foundation  
L'Association Canadienne d'Etudes Fiscales

We have examined the statement of financial position of the Canadian Tax Foundation/L'Association Canadienne d'Etudes Fiscales as at December 31, 1978 and the statements of revenue and expense, trust fund liability and changes in financial position for the year then ended. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests and other procedures as we considered necessary in the circumstances.

In our opinion, these financial statements present fairly the financial position of the Canadian Tax Foundation/L'Association Canadienne d'Etudes Fiscales as at December 31, 1978 and the results of its operations and the changes in its financial position for the year then ended, in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Toronto, Ontario  
January 30, 1979

Jarrett, Gould & Elliott  
Chartered Accountants

REPORT OF THE CHAIRMAN  
TO THE THIRTY-THIRD ANNUAL MEETING OF THE  
CANADIAN TAX FOUNDATION

APRIL 10, 1979

This Report and that of the Director constitute a record of the activities of the Foundation during the past year. The Foundation had a good year in 1978: an ambitious research program entailing the preparation of a series of studies on the financial aspects of Canadian federation was launched last spring and is reaching fruition this year; virtually all of our conferences and seminars attracted record attendance; memberships, both corporate and individual, increased; and, financially, the net result of the year's activities was a substantial increase in the resources for carrying on our work.

I propose to discuss certain of the main events of the year under the headings established by custom in past annual reports and leave others to be dealt with by the Director.

Membership and Finance

Since the organization of the Foundation in 1945, it has been financed principally by subscriptions from its corporate and individual members. It is only in recent years that our conferences and investments have contributed appreciable amounts to revenues. Membership is a conventional index of growth, and it is most gratifying to be able to report a net addition to the rolls of 359 individual members during the year, bringing the total number to 7,224 at December 31. In the last four years we have increased by nearly 25 per cent the number of individual members of the Foundation.

An increase in the individual membership rate from \$40 to \$50, and from \$20 to \$25 for students and academics, became effective on January 1, 1978 and was justified by both the rising cost of labour-intensive research and the increase in the quantity of material being furnished to members. Even a modest program of research nowadays requires a heavy financial outlay for personnel, travel, printing, library facilities, and so on.

Corporate memberships also increased, but at a pace that was slower than we would have wished. A net addition of 5 new corporate subscribers brought the total to 398. A further 200 companies contributed through associations.

Turning now to our finances, I would point out that a statement of the financial position of the Foundation was sent to all members with the Notice of the Annual Meeting; hence it will be unnecessary to discuss it in detail. Total subscription income increased by \$89,000 to nearly \$490,000. The main explanation for this, of course, was a combination of the growth in individual memberships and the increase in the individual membership fee. Another contributing factor was the increase in the subscriptions of 83 corporate members. Their generosity is very much appreciated. Investment income amounted to \$85,000 and our conference activities, particularly the Annual Conference, generated a net revenue of \$320,000. While it is highly gratifying to realize profits on our conferences, as my predecessor pointed out in his Report to this meeting last year, conference revenues can be capricious and cyclical. And they are subject to the vagaries of the postal service, airline strikes, the weather, and so on, and are no real substitute for a solid base of individual and corporate subscriptions.

On the expenditure side of the ledger, there was a decrease of \$17,000 to \$537,000 from \$554,000 in the previous year. The two main reasons for the decrease were a reduction in the net cost of publications, due in part to higher sales in 1978 over 1977, and the departure of a research associate from the staff in mid-year.

The net result is a favourable balance of \$358,000 compared with \$220,000 in the previous year.

Expenditures for the current year will almost certainly be considerably higher than last year. For one thing, as the Director will elaborate, a number of studies in our series on Financing Canadian Federation, as well as several other studies, are well advanced and, if completed on schedule, will result in a substantially higher publications bill. Also, new projects will be undertaken, both in the tax field and in the field of government expenditure. Finally, if we are able to attract additional qualified staff -- particularly lawyers and accountants with experience in taxation -- our expenditure for salaries will also show an increase.

#### Conferences

While research and publications are the main focus of attention in the day-to-day activities of the Foundation, it is fair to say that our conferences have come to be regarded as one of the most significant contributions made by the Foundation to the study and exposure of tax problems. As a focal point for the discussion of all manner of tax and fiscal issues, the conferences hold a unique place in Canadian public affairs.

The Annual Conference in November was the thirtieth in this

series of major meetings of tax practitioners, government officials, and representatives of the business community and universities. Despite the substantial difficulties which two strikes in the postal service caused to the Foundation and members, the attendance of nearly 1,400 persons was eloquent testimony of the continuing high level of interest in tax matters. While increases in the size of our conferences are not being sought, they are the inevitable result of the growth of our membership. The topics chosen for discussion covered a wide variety of subjects, ranging from an analysis of the competitiveness of the Canadian business taxation system to a consideration of an expenditure tax to replace the income tax, although the main focus of attention was on issues of current interest under the income tax. The ever-popular Workshop Sessions were given over to a discussion of two case studies concerned with personal tax planning. We received requests for over 4,300 copies of papers delivered at the Conference, and we were glad to be able to provide them at a nominal cost as a service to members in advance of the regular publication of the conference report.

Over the years, our Corporate Management Tax Conferences have proved to be of considerable interest to businessmen and their professional advisers, and last year was no exception. The 1978 Conference was devoted to a discussion of two subjects of topical interest, "Tax Planning for Corporate Distributions Before 1979" and "New Strategies for Corporate Acquisitions". Because of the timeliness of the papers on corporate distributions, every effort was made to publish the report of the proceedings as early as possible. Regrettably, distribution of the report was held up by the postal strike in mid-October.

In the regional conference program, which encourages the



discussion of local as well as national issues, soaring attendance made it clear that we were serving a strongly felt need. The Foundation's inaugural conference in Calgary -- the 1978 Prairie Provinces Tax Conference -- attracted a capacity attendance, as did the British Columbia Tax Seminar in Vancouver in May. The latter event is held in cooperation with the Faculty of Law at the University of British Columbia. Also held in May was the Banff Tax Seminar, which is cosponsored by the Banff Centre School of Management Studies. Our annual French language seminar, Journées d'Etudes Fiscales, was postponed from May to September to permit a discussion of federal income tax amendments and the Quebec income tax and succession duty changes which were introduced in the late spring. Also held in September was the Atlantic Provinces Tax Conference which was jointly sponsored with the Institute of Public Affairs at Dalhousie University.

The conference and seminar program for 1979 is already off the mark. The Prairie Provinces Tax Conference, held in Edmonton in January, attracted an overflow attendance of 475, the largest ever for a regional conference. We regret that we were unable to accept all registrations for want of space. The Fifteenth Banff Income Tax Seminar and the British Columbia Tax Seminar are scheduled for May. In the fall, the Atlantic Provinces Tax Seminar will be held in Halifax under the joint sponsorship of the Foundation and Saint Mary's University. September 10 and 11 are the dates for the Journées d'Etudes Fiscales, which will be given over to a discussion of recent federal and Quebec tax developments.

The theme for this year's Corporate Management Tax Conference, which is scheduled for June 21 - 22 in Toronto, will be tax planning for

executives and employees, and will include a consideration of deferred income plans.

Finally, let me remind you that the 1979 Annual Conference will be held in Toronto at the Royal York Hotel on November 26, 27, and 28.

### Tax Legislation

An important event on the tax scene in 1978 was the introduction of Bill C-56, containing the amendments to the income tax that were announced in the Budget Speech of April 10. In accordance with our long-established practice, after the First Reading of the Bill in the House of Commons, a committee of lawyers and accountants organized by the Foundation met with senior officials of the Department of Finance on May 30 to review technical aspects of the proposed legislation. The object of the meetings is to assist officials to uncover possible defects in the amendments. While parliamentary exigencies do not always permit a desirable length of time for studying the Bills, the examination given the proposed amendments provides an additional safeguard against errors becoming law. These meetings continue to be indicative of the cooperation that exists between the Foundation, government tax officials, and members of the legal and accounting professions who make up the examining committee.

The amendments to the income tax announced in the second Budget of 1978, on November 16, were laid before Parliament shortly before the Christmas recess in the form of a Notice of Ways and Means Motion that was as detailed as a Bill. Since there was ample opportunity for the Joint Taxation Committee of the Canadian Bar Association and the Canadian Institute of Chartered Accountants, with which the Foundation cooperates, to review the amendments for technical defects and bring

them to the attention of the government, there was no need for the Foundation to organize a committee. However, the committee will be convened again at the next opportune occasion.

#### Changes in the Board of Governors

The Foundation has been singularly fortunate over the years in having on its Board of Governors men who consistently have been prepared to contribute generously of their time and energy in advancing the interests of the Foundation -- in seeking new members, formulating policies, participating in our conferences -- often at considerable sacrifice to themselves. The past year has been no exception.

Retiring from the Board this year to join the distinguished body of alumni of former governors, who now number 324, are the following:

Claude Ducharme, Q.C. - Montreal

Keith E. Eaton, Q.C. - Halifax

Charles E. English, C.A. - Calgary

Donald R. Fenwick, F.C.A. - Toronto

Alan J. Irving - Winnipeg

Robert Law, Q.C. - Toronto

W. Merrill Leckie - Vancouver

Peter S. Leggat, C.A. - Montreal

Leonard A. Martin, Q.C. - Corner Brook

James S. Palmer, Q.C. - Calgary

Jacques Raymond, C.A. - Montreal

Robert M. Sedgewick, Q.C. - Toronto

While these men do not receive a certificate or other tangible evidence of their service as governors, they do take with them the

sincere appreciation of the Foundation for their considerable efforts on its behalf during their terms of office.

I know I am voicing the opinion of all members when I express a special word of tribute to Jacques Raymond, C.A., who retires as Past Chairman. He has served continuously on the Board for six years in several capacities and has earned our gratitude. His wise counsel and good judgment and Gallic charm will be thoroughly missed at our meetings, although it is reassuring to know that Mr. Raymond's continuing association with the Foundation is assured as a member of the Advisory Committee of Past Chairmen.

In a few moments you will be asked to elect a new Board of Governors. Included with the Notice of Meeting you received a list of nominees named by the Presidents of the Canadian Institute of Chartered Accountants and the Canadian Bar Association, pursuant to our By-Laws. The nominees who are not at present Governors are as follows:

Hugh J. Bolton, C.A. - Edmonton

John M. Coyne, Q.C. - Ottawa

Robert J. Dart, F.C.A. - Toronto

Brian A. Felesky - Calgary

Gilles Gagné, C.A. - Montreal

Robert B. Goodwin - Winnipeg

Laurence J. Hayes, Q.C. - Halifax

Les M. Little - Vancouver

Charles Pelletier, C.A. - Quebec

Jean Potvin - Montreal

Sheldon Silver, Q.C. - Toronto

Charles W. White - St. John's

Mr. Pelletier is no stranger to the Board, having served previously as Governor from 1969 to 1971.

I do not wish to leave this portion of my report without recording, with deep regret, the death on September 8, 1978 of Arthur S. Patillo, Q.C., a Past Chairman of the Foundation. A native of Nova Scotia, Mr. Patillo graduated in law from Dalhousie University and practised law in Halifax until he moved to Toronto in 1944. A partner for many years in the Toronto law firm of Blake, Cassels & Graydon, Mr. Patillo was general counsel in the late 1950's to a Royal Commission on Energy. He served as Chairman of the Foundation in 1964 and later as President of the Canadian Bar Association and Chairman of the Ontario Securities Commission.

#### Conclusion

Through its research, publications, and conferences, the Foundation has, for over 30 years, performed an important service to the professional, business, and academic communities, to the government, and to the public at large. While it has achieved much in the study of taxation and public expenditures in Canada, much remains to be done. The endless stream of amendments to Canadian tax legislation and the urgent need for scrutiny of expenditures by governments at all levels provide ample opportunity for continued service. Our past accomplishments may be taken as evidence that we will give our best effort in this endeavour.

On behalf of the Board of Governors and the members of the Foundation, I wish to record our thanks and appreciation to all the staff of the Foundation for their contribution to the continued success of this organization. To our Director, Douglas Sherbaniuk, we owe a special



debt of gratitude for his devotion to the Foundation and its objectives.

As retiring Chairman I would like to express my thanks to the officers and Governors of the Foundation whose cooperation and assistance were invaluable to me during my term of office. I am sure I speak also for my colleagues on the retiring Board in extending my best wishes and warmest welcome to the incoming Board for the ensuing year.

I now move, seconded by William E. Goodlet, F.C.A., the following resolution -- namely, that this Report of the Foundation for the fiscal year ending on December 31, 1978 and the financial statements of the Foundation as of the same date as submitted to this meeting be, and they are hereby, approved and adopted.

George T. Tamaki, Q.C.  
Chairman

April 10, 1979

REPORT OF THE DIRECTOR  
TO THE THIRTY-THIRD ANNUAL MEETING OF THE  
CANADIAN TAX FOUNDATION  
APRIL 10, 1979

Remarks on Retroactive Tax Legislation

In setting the effective dates of tax laws, the federal and provincial governments have traditionally observed a policy of making the laws applicable as of the date of their announcement, usually in a Budget Speech. By and large, they have eschewed the enactment of taxing measures having effect prior to the time that notice of the proposed changes is given to the public.

However, in the past year or so we have seen a spate of tax measures of the latter variety. In 1978, five provinces, in order to reverse the effect of three decisions of the Supreme Court of Canada,<sup>1/</sup> enacted retrospective tax changes that reach back three and four years. In January 1979, the federal government introduced an amendment to the Excise Tax Act which, if enacted, would be retroactive to April 1, 1975, again, in order to reverse the effect of a recent decision of the Federal Court of Canada.<sup>2/</sup> The bill contain-

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1 / Simpsons-Sears Limited v. Provincial Secretary of the Province of New Brunswick [1978] CTC 296; 78 DTC 6242 (retail sales tax); Canfor Limited v. Minister of Finance for British Columbia [1977] CTC 616 (corporation capital tax); and Canadian Industrial Gas and Oil Limited v. Government of Saskatchewan [1977] 6 W.W.R. 607 (mineral income tax and royalty surcharge); [1978] 6 W.W.R. 477 (payment of interest on tax unlawfully collected).

2 / British Columbia Railway v. The Queen [1979] CTC 56; 79 DTC 5020 (manufacturers' sales tax).

ing the amendment, Bill C-38, died on the order paper when Parliament was dissolved for the election. Several of the provisions in Bill C-37, which contains the amendments to the income tax announced in the federal Budget of November 16, 1978, are retrospective to a date prior to November 16. It should be noted that most of these provisions are intended to confer benefits on taxpayers. Bill C-37 also died on the order paper with the dissolution of Parliament. Finally, the United Kingdom Parliament, many of whose traditions we have adopted, enacted a measure in 1978 which was designed to counter certain artificial tax avoidance schemes which were causing an enormous loss of revenue. The provision was made effective as of April 6, 1976.

In light of these developments it would seem appropriate to spend a few moments this morning considering the significance of retrospective taxation on the Canadian scene. This is a subject, incidentally, which seems to have evoked little interest in Canada, judged by the paucity — indeed the almost complete absence — of any discussion in our tax literature.

At the outset I should make it clear that, while there is no universally accepted definition of a retroactive statute, I have adopted as a working definition of such a law one which purports to determine the legal significance of acts or events that have occurred prior to the date of its enactment.

#### Constitutional Validity of Retroactive Tax Laws

One of the first questions to arise in any consideration of retrospective legislation is its constitutional validity.

The British North America Act, which confers taxing powers on the federal and provincial governments, imposes no prohibition, express or implied, against retrospective laws generally, including retroactive tax legislation. One might seek relief in the provisions of the Canadian Bill of

Rights, section 1 of which declares and recognizes certain human rights and fundamental freedoms, including the right of the individual to the enjoyment of property and the right not to be deprived thereof except by due process of law. There have been so few cases decided under the statute that we are truly without compass or rudder as we seek to navigate our way through the due process provision as it applies to retroactive tax measures. In light of the notable lack of success in challenging retroactive tax laws in the United States as being in violation of the Fifth Amendment to the Constitution -- the due process of law provision -- in order to constitute an improper taking of property, a retroactive tax law, it seems to me, would have to be highly arbitrary and capricious before it would be struck down under the Canadian Bill of Rights.

It has been observed recently that retrospection in criminal law is precluded in the terms of Article 11(2) of the Universal Declaration of Human Rights (1949) and Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedom (1953). The question has been raised: "If this principle is correct for criminal matters why should it not apply to tax also?" <sup>3/</sup> Perhaps the answer is that tax laws are not regarded as being penal in nature. As the United States Supreme Court has noted:

... the obligation to pay taxes is not penal. It is a statutory liability, quasi-contractual in nature, enforceable, if there is no exclusive statutory remedy, in the civil courts by the common law action of debt or indebitatus assumpsit. <sup>4/</sup>

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<sup>3/</sup> A Barrister in Business, "Retrospective Anti-Avoidance Legislation", 1978 British Tax Review 329 at 332.

<sup>4/</sup> Milwaukee County v. M.E. White Co. (1935) 296 U.S. 268 at 271. The case was concerned with a suit to enforce a judgment for taxes recovered in one State in the courts of another State.

While there are few, if any, impediments to the enactment of retroactive tax laws in the constitution, the Canadian Bill of Rights and international conventions, there is no lack of authority for judicial disapproval of retroactive laws. A British judge stated many years ago that retrospective laws are

...prima facie of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law. <sup>5/</sup>

Moreover, it is a well-established rule of statutory construction that a court will permit the retrospective application or construction of a statute only if the language used plainly affords no other result. <sup>6/</sup>

In the result, it is legislative self-restraint alone that determines the frequency and extent of retroactive tax legislation.

#### Conflicting Interests of Taxpayer and Government

Central to the problem of retroactive taxation is the conflict of interests between taxpayers and the government and the necessity to balance those interests. On the one hand, it is of paramount importance to the taxpayer that he be able to rely on the existing law in planning his affairs with certainty and with predictability of results. If a retroactive measure increases the burden of a taxpayer who acted in a manner which was previously permitted,

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<sup>5/</sup> Willes, J., in Phillips v. Eyre (1870), L.R. 6 Q.B. 1 at 23

<sup>6/</sup> See Wright, J., in Re Athlumney [1898] 2 Q.B. 547 at 551-2.

Perhaps no rule of construction is more firmly established than this — that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language which is fairly capable of either interpretation, it ought to be construed as prospective only.



he may properly feel that he has been unfairly treated. The result may be a loss of taxpayer confidence in the tax system. In a tax system based on voluntary self-assessment, it is vital that the respect and confidence of taxpayers be maintained.

On the other hand, the primary concern of the government is the prevention of revenue loss by elimination of tax advantages under existing law and -- as we shall see from a review of recent Canadian amendments -- retention of taxes unlawfully collected, both by retroactive measures.

In balancing these conflicting interests, the reliance factor should have priority, on grounds of equity and recognition of the rule of law. However, in cases where reliance is minimal or absent, there can be less objection to retroactive tax measures.

#### Retroactive to What Date?

Retroactive tax provisions can conveniently be divided into two categories -- those measures which are retroactive to the date of the announcement of the tax change and those which are made retroactive to a time prior to the date of the announcement.

There is little that can be said in support of the latter type of change where taxpayers are adversely affected. If the taxpayer has conformed his conduct to existing law, it would be unfair to increase his burden retrospectively. In support of retroactivity prior to the announcement of a proposed change, it has been asserted that the legislature should be able to cure inadvertent defects or "mistakes" in statutes, a point we shall have to consider in our review of recent federal and provincial tax changes. This argument gives rise to the difficult problem of differentiating between correction of a "mistake" and implementation of a change in policy.

With regard to retroactivity to the date of the announcement of a proposed change, it has long been the accepted practice in Canada to make tax changes effective as of the date of the Budget introducing them. A taxpayer who is forewarned of an impending tax change can hardly argue that he is entitled to rely on the existing law in arranging his affairs. Notice of the proposed change acts as a "neutralizer" of reliance. One effect is foreclosure of last minute, under-the-wire attempts to take advantage of a favourable provision that is to be amended.

The problem to which this practice gives rise is the lack of certainty during the gestation period of the legislation, between Budget night and the date of enactment. Taxpayers cannot rely on the existing law nor can they be assured that the law will be amended as announced, as recent events amply demonstrate. Consider the history of the changes introduced in the Budget of November 16, 1978. A detailed Notice of Ways and Means Motion was introduced in the Commons on December 19, 1978 in order to give taxpayers an opportunity to study the provisions carefully and make representations for change to the government. The amending bill, Bill C-37, was given First Reading on January 29, 1979 but, before Second Reading, Parliament was dissolved for the election. The result is that taxpayers have no body of law -- existing or proposed -- upon which they can rely with assurance. In a Department of Finance Press Release dated March 27, 1979, the Minister of Finance announced that it was the government's intention to reintroduce all of the income tax amendments and that they would generally be effective as of the dates originally proposed in Bill C-37. Nevertheless, changes are bound to be made in the amendments in the course of debate.

Delay is tolerable if it is of relatively short duration, but nearly five months have elapsed since the Budget of November 16 and the ultimate disposition of the amendments -- which may be enacted, withdrawn, or modified

-- is still many weeks or months away. Similar delays have been experienced from time to time during the 1970's. Although the United Kingdom follows a similar practice, lengthy delays are obviated by reason of the Provisional Collection of Taxes Act, which provides that tax changes are to expire unless the bill has received Royal Assent on or before August 5th. A knowledgeable commentator on the Canadian parliamentary system has observed that similar legislation would not be appropriate for Canada:

The enactment in Canada of a statute similar to the Provisional Collection of Taxes Act, however desirable as a means of obviating the need for the Crown to act illegally, would have serious constitutional implications. Under the rules of practice of the British House the government can stop filibusters easily. It can bring on decisions on the Finance Bill before the deadlines described in the Provisional Collection of Taxes Act. As long as the Canadian House lacks a fully satisfactory closure rule or time-allocation rule, the fixing of such deadlines would increase intolerably the power of the opposition. 7/

A possible answer to the problem of uncertainty, which was proposed in the Report of the Committee on the Tax Legislative Process, would be to change the current practice so that amendments became effective only on receiving Royal Assent:

...taxpayers would at least be able to proceed during the legislative process with some assurance as to the state of the law.

...Not all proposed amendments could be dealt with in this way. Fiscal policy changes, loophole-plugging amendments, and perhaps any amendment that would require a change in the printed tax return, would have to be effective as of budget night. But essentially structural changes could be proceeded with on the basis that they would become law only after Royal Assent. 8/

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7/ J. Stewart, The Canadian House of Commons, at 108 (1978).

8/ "The Tax Legislative Process" (1978) 26 Can. Tax J. 157 at 175.

## Types of Retroactivity

A distinction between different types of retroactive provision should be noted. The determination of effective dates varies with the type of provision, and properly so.

### 1. Benefits to the Taxpayer

Retroactive relief measures are generally unobjectionable -- for example, provisions which correct hardships inadvertently created in previously enacted legislation or which relieve taxpayers from an unanticipated, unduly harsh tax burden in a particular situation. To illustrate, section 83 of the Income Tax Act, providing for the election by a corporation to pay tax free dividends, was repeatedly amended retroactively to relieve corporations from the punitive excessive election provisions under Part III.

### 2. Correction of Clerical Errors

There is no reluctance to correct retroactively purely clerical errors -- typographical, grammatical or spelling -- since they have no adverse effect on taxpayer conduct. An example of technical corrections is to be found in the Schedule to Bill C-11, 1977, which sets out 48 amendments to be made in the French version of the Income Tax Act.

### 3. Changing Government Policy

Little can be said in support of the enactment of retroactive legislation which reflects a change in government policy if the result is to increase the burden of taxpayers who have properly relied on the existing law.

To illustrate, after the decision of the Supreme Court of Canada in Stanley Mutual Fire Insurance Company v. M.N.R.<sup>9/</sup> in which it

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<sup>9/</sup> [1953] CTC 187; 53 DTC 1119.



was held, in effect, that a mutual insurance company was not taxable, Parliament enacted legislation to overrule the decision, making the amendment (section 68A of the old Act applicable, in the case of resident corporations, to the 1954 and subsequent taxation years and, in the case of the nonresident corporations, to the 1947 and subsequent taxation years.

Another example concerns the deductibility of expenses in the computation of income from oil and gas wells. Regulation 1201 was amended in 1957 to include a reference to section 83A, the effect of which was to reduce the amount of deductible expenses. The amendment was made retroactive to 1955.

Lastly, recent changes in the tax treatment of insurance companies were severely criticized by a former Senior Tax Policy Adviser to the Department of Finance:

An ugly precedent has been introduced into the Act in the rules concerning the 1975 Canadian investment income of insurance companies. ...the rules for computing income for a year should not be changed retroactively, notwithstanding that they produce a loss. I know the circumstances of their introduction and in this instance I believe that they were acceptable to the industry. But a precedent is a precedent, as witness the fact that the same principle has already appeared in the transitional rules concerning the new reserve limits. I urge the Foundation and its members to do their best to see that the practice does not spread. 10/

#### 4. Reversal of Judicial Interpretation

At the outset of these remarks, I referred to tax changes enacted or introduced in the past year for the purpose of reversing the effect of recent judicial decisions. A review of those events is now in order.

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10/ J.R. Brown, "Tax Reform - Six Years Later", 1977 Conference Report 41 at 46.



In Simpsons-Sears Limited v. Provincial Secretary of the  
Province of New Brunswick,<sup>11/</sup> the Supreme Court of Canada held that the taxpayer was not liable for sales tax of \$57,000 in respect of catalogues which it had distributed to customers in New Brunswick on the ground that it was not a "consumer" of the catalogues within the meaning of the taxing statute. Shortly after the decision was rendered, four provinces amended their retail sales tax legislation so as to make a promotional distribution of material such as catalogues subject to tax. In order to obviate the refund of taxes collected without authority, the amendments enacted in 1978 were made retro-active to January 1, 1975 in the case of Ontario, New Brunswick, and British Columbia, and to January 1, 1974 in the case of Prince Edward Island.<sup>12/</sup>

In Canfor Limited v. Minister of Finance for British Columbia,<sup>13/</sup> the Supreme Court of Canada held that the taxpayer's indebtedness to affiliated companies, amounting to \$4.4 million, and its secured indebtedness to the bank, amounting to \$8 million, did not form part of the taxpayer's paid up capital within the meaning of the Corporation Capital Tax Act of British Columbia. The effect of the decision, which was rendered November 23, 1977, was overturned by a 1978 amendment which was made retroactive, not to the date of the decision but rather to October 1, 1977. The reason for this, I understand, was based on revenue considerations -- to ensure that certain corporations having October year-ends were brought within the scope of the amendment.

In Canadian Industrial Gas & Oil Limited v. Government of  
Saskatchewan,<sup>14/</sup> the Supreme Court of Canada held that Saskatchewan's

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11/ [1978] CTC 296; 76 DTC 6242.

12/ For a critical commentary on the retroactive measures, see G. Riehl, "Rule Changes in Mid-Stream", The Globe and Mail, May 4, 1978.

13/ [1977] CTC 616.

14/ [1977] 6 W.W.R. 607; [1978] 6 W.W.R. 477.

"mineral income tax" and "royalty surcharge" were indirect taxes and also restrained international and interprovincial trade and commerce and so were beyond the legislative jurisdiction of the province. Faced with the prospect of having to return some \$500 million in tax revenues collected over the preceding three years, the Government of Saskatchewan responded to the decision by enacting a new tax, The Oil Well Income Tax Act, which is retro-active to January 1, 1974, and is intended to protect the revenues already collected. According to the press, "Premier Blakeney has repeatedly warned the oil industry that even if the tax legislation was overturned by the Supreme Court, new legislation to patch any holes found in the original tax law would be promptly passed. The Saskatchewan government, Blakeney has said, has no intention of returning the tax taken to the industry."<sup>15/</sup> The industry was thus put on notice that the tax would be collected in one form or another.

In British Columbia Railway Company v. The Queen,<sup>16/</sup> the Federal Court held that the taxpayer was not liable for manufacturers' sales tax in respect of goods manufactured for its own use, in this case, railway ties used in its railway lines. Collier, J. reached this conclusion "with considerable reluctance," pointing out that the sales tax on goods produced for own use had been in effect for approximately 55 years. In Bill C-38, which was introduced in Parliament in January, 1979, it was proposed to ratify the unlawful collections by an amendment which was deemed to have come into force on April 1, 1975 in order to avoid having to make refunds. Although the bill died on the order paper when Parliament was dissolved, it is to be reintroduced after the election.

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<sup>15/</sup> The Public Sector, V.1, No.8, November 28, 1977.  
For a criticism of retroactivity "on such a massive scale," see  
Canadian Tax News, Vol.V, Nos. 7 & 8, Dec. 1977/Jan.1978, at 105-06.

<sup>16/</sup> [1979] CTC 56; 79 DTC 5020.

In the circumstances of this case, the reliance factor cannot readily be argued, since manufacturers and producers have been paying the tax for many years. Also, it seems likely that the tax would have been passed on to customers or built into the manufacturer's pricing structure. A refund would have been a windfall. Hence, the amendment does not seem to me to present a strong case for going to the barricades.

Since retroactive taxes are normally regarded as unjust, reprehensible, and unsound as a general principle, what conclusions can one draw from these recent events? For one thing, it seems clear that, in determining the standards according to which governments will have resort to retrospective tax legislation, the magnitude of the tax involved is an important factor. For another, once having collected revenue, governments are loathe to refund it.

The reversal of judgments by retroactive legislation, of course, makes resort to the courts a futile step and any judicial victory a hollow one. In light of the 1978 retroactive measures, taxpayers who have doubts about the validity of legislation may have second thoughts about expending the time, effort, and money to go to litigation if in the end the status quo is restored.

Before leaving this line of cases, I should point out that there is ample U.S. authority which would tend to support the position taken by federal and provincial governments.<sup>17/</sup> According to one commentator, "It is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called 'small repairs'."<sup>18/</sup>

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<sup>17/</sup> See, for example, United States v. Heinszen & Co. (1907) 206 U.S. 370 (statute imposing tariff duties having been held invalid after duties collected, ratifying statute denying refunds upheld); and Rafferty v. Smith, Bell & Co., Ltd. (1921) 257 U.S. 226 (to the same effect).

<sup>18/</sup> Hochman, "The Supreme Court and the Constitutionality of Retroactive Legislation" (1960), 73 Harv. L. Rev. 692 at 705.

"Curative" legislation designed to restore what was believed to have been the status quo prior to an adverse judicial ruling has been regarded as especially appropriate.<sup>19/</sup>

#### 5. Anti-Avoidance or "Loophole-Closing" Provisions

Another type of retroactive provision is designed to eliminate a situation in existing law that affords a "loophole" or "unintended benefit". As a general rule, anti-avoidance or loophole-closing provisions are retroactive to the date of the Budget introducing them. Even where the loophole is flagrant, our legislators have been reluctant to make an amendment effective as of a date prior to the public announcement.

A notable exception to this approach is to be found in the 1978 Finance Act of the United Kingdom, which contains a provision intended to counter certain highly artificial tax avoidance schemes involving commodity contracts which created artificial losses and were causing a huge loss to the Revenue.<sup>20/</sup> The government's intention to introduce legislation to nullify the effect of the schemes was announced on November 25, 1977. Although the measure was not enacted until 1978, it was made applicable to all transactions of the proscribed type entered into after April 6, 1976. The Opposition Party's Shadow Chancellor moved amendments to have the measure retroactive only to the date of the announcement, November 25, 1977, or to April 6, 1978, the date of commencement of the taxation year, or April 11, 1978, which was Budget day, but his proposals "...were rejected by surprisingly large Parliamentary majorities...."<sup>21/</sup>

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<sup>19/</sup> Slawson, "Constitutional and Legislative Considerations in Retroactive Lawmaking" (1960), 48 Cal. L. Rev. 216 at 238.

<sup>20/</sup> According to the Chief Secretary to the Treasury, "...in three known schemes during 1976-77 the tax involved approached £200 million and each of two companies benefited to the extent of £100 million." Taxation, 22 July 1978, 298.

<sup>21/</sup> Taxation, 22 July 1978, 298.



The propriety of such a measure has evoked sharp differences of opinion among tax commentators. Those critical of the provision have expressed concern about its implications as a precedent and the likelihood of increasing resort to retrospective legislation in circumstances not involving the more exotic avoidance schemes.<sup>22/</sup> Those who support the provision regard it as appropriate in the particular circumstances.<sup>23/</sup>

This development in the United Kingdom can perhaps be best explained on the basis of the change in attitude towards taxation over the decades. Taxation today is not simply a method of raising revenue to enable government to provide certain goods and services such as defence, roads, and education; it is also a means of funding social programs, re-distributing wealth, and regulating the economy. In a rare instance of judicial philosophizing about the changing role of taxation, Hyde, J. of Quebec Court of Queen's Bench stated in Guay v. Lafleur:

...Modern commerce and the levying of taxes upon it is very different from what it was in the 19th century. Since then we have seen a vast growth in the scope of government activities. If we are to live in the welfare state it must be supported by all. Public policy in this respect is determined through the democratic process. The surest way to create dissatisfaction with it is to ignore the "tax dodger".<sup>24/</sup>

A more traditional view regarding retroactivity of anti-avoidance measures was taken in Australia recently. The Income Tax Assessment Amendment Bill of 1977 contained two anti-avoidance measures which were to apply to transactions taking place after the commencement of the 1976-77

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<sup>22/</sup> See, for example, the comments by A Barrister in Business, "Retrospective Anti-Avoidance Legislation", 1978 British Tax Review 329; and "Retrospective Legislation", Taxation, 22 July 1978, 297.

<sup>23/</sup> D.C.Potter, "Retrospective Anti-Avoidance Legislation", 1978 British Tax Review 133; and Eric Meade, F.C.A., "Finance Act 1978", Taxation, 30 September 1978, at 486-87.

<sup>24/</sup> [1963] CTC 201 at 208-9; 63 DTC 1098 at 1104.



income year. In commenting on the effective date, the Honourable R.I. Viner, M.P., the Minister Assisting the Treasurer, stated:

... it has been put to the government from a number of sources that this course would involve an unfairly retrospective change in the law that would interfere with the arrangements entered into before the Bill was introduced in reliance on a view of the then state of the law.

The government has decided that in order to remove any element of retrospectivity the two measures I have referred to should apply only to arrangements entered into on or after 21 April 1977, the date on which the Treasurer introduced the Bill in this House. 25/

Whether Canadian law makers, in seeking to thwart anti-avoidance schemes, would gravitate to the United Kingdom pole or the Australian pole is a matter for conjecture.

#### 6. Transactions of a Permanent Nature

Amendments which are nominally prospective may apply retrospectively to transactions which may have been entered into many years previously. To avoid a freezing of the law, such retroactivity may be unavoidable and is hardly objectionable. The principle involved was clearly and succinctly expressed recently by Dickson, J. of the Supreme Court of Canada:

No one has a vested right to continuance of the law as it stood in the past; in tax law it is imperative that legislation conform to changing social needs and government policy. A taxpayer may plan his financial affairs in reliance on the tax laws remaining the same; he takes the risk that the legislation may be changed. 26/

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25/ Press Release, Government of Australia, undated.

26/ Gustavson Drilling (1964) Limited v. M.N.R. [1976] CTC 1 at 9; 75 DTC 5451 at 5456.

A more sympathetic view was expressed by a senior official in the United States Treasury, who stated:

These provisions have been deliberately kept in the tax law over many years, and they constitute standing invitations for taxpayers to erect new buildings, drill for oil or embark on programs of charitable contributions. Even if we should conclude that it would be unwise to continue some of these benefits or if we should alter some of them, it would not be appropriate to remove the preference precipitously after taxpayers have embarked on programs which they might not have adopted except for these provisions. 27/

Adopting this approach in some instances, Parliament has endeavoured to ameliorate the effects of tax changes on pre-existing arrangements through the use of transitional rules or "grandfather" clauses, examples of which may be found in Bill C-37 -- for example, the provision continuing the tax advantages of income debentures issued before November 17, 1978. 28/

### Conclusion

Any of the retrospective tax changes to which we have referred, taken in isolation, might be regarded as an unusual event, an aberration, a departure from well-established, well-entrenched principles of tax law. But the trend revealed by these several measures, viewed collectively, is disquieting and shows an apparent willingness by governments to resort to retrospective legislation with more alacrity than we would have expected.

Perhaps it is premature to conclude that retrospective anti-avoidance legislation is "respectable", or that legislation ratifying the illegal collection of taxes is now acceptable as a matter of course. But surely it behooves all who are concerned with the evolution of our tax laws to be alert to developments concerning the effective dates of tax changes.

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27/ E. Cohen, "The Administration's Interim Program of Tax Reform and Tax Relief", 47 Taxes 325 at 327 (1969).

28/ For a cogent argument against the use of transitional rules see M. Graetz, "Effective Dates for Tax Legislation -- Retroactivity and Transition Rules" (1977), 33 National Tax Journal 237.

## The Foundation in 1978

Let me now continue with the review of our affairs that was begun by the Chairman.

### Publications and Research

Publications are a major feature of our activities, constituting as they do the medium through which the results of research conducted or sponsored by the Foundation are made public. It will be of interest to our members to know that our publications are now going to over 40 foreign countries and that our mailing list now exceeds 9,000. During 1978, we received some two dozen requests for permission to reprint, excerpt, or translate material from Foundation publications and were pleased to grant it.

The centrepiece of our publications is, of course, the bi-monthly Canadian Tax Journal, which is well known to you. Readers may have noticed a number of changes in the appearance and format of the first issue of 1979. The new type of binding will enable us to publish more material, the introductory pages have been modified for clarity, and the features have been grouped in the latter half rather than interspersed among the articles. The last mentioned change will help us to expedite publication, as the features are usually submitted later than the articles and hold up production.

The twenty-fifth edition of The National Finances, the Foundation's annual analysis of the federal government's revenues and expenditures, was distributed to members last month. While publication for a quarter of a century may long since have diminished any novelty about this handbook, it has established its importance as an invaluable reference for those who have an interest in the financial operations of the federal government.

This view was expressed by the nationally syndicated columnist, Douglas Fisher, who devoted his March 16, 1979 column to a review of this year's edition. His laudatory comments about the usefulness of the book to himself and to every citizen seriously interested in governments and their money-raising and spending made the hundreds of hours spent by the staff in its preparation seem well worthwhile.

Two issues of the Tax Memo series were published last year: "Provincial Finances 1978," which analyzes the revenues and expenses of provincial governments, and "1978 Tax Developments", which is a compilation of tax developments in Canada as reported in the Journal feature, "Checklist". The purpose is to bring together in one place for convenient reference information on federal and provincial budgets, amendments to regulations, and non-budgetary tax changes.

A new issue was added to our series of Tax Papers last year, Douglas G. Hartle's, The Expenditure Budget Process in the Government of Canada. The purpose of this volume is not to assess the effectiveness of government programs but rather to shed some light on the ways and means by which federal expenditure decisions are made and to indicate some of the forces which affect the outcome. This study has been in high demand by university professors and students. The first printing of over 10,000 copies, most of which were distributed to Foundation members, was soon exhausted. A second printing of 500 copies failed to satisfy demand, and a third printing is now in process.

Other publications distributed to members over the past year include the Report of the proceedings of the 1977 Annual Conference, the Report of the proceedings of the 1977 and 1978 Corporate Management Tax Conferences and, for the convenience of members who are particularly



interested in the field of estate planning, a reprint of the features on "Estate Planning in Canada" contained in the 1976 and 1977 issues of the Journal.

The research and publications program for 1979 is the heaviest in the Foundation's history. In addition to the seven studies in our series on Financing Canadian Federation -- about which I shall say more in a moment -- five other studies are underway, of which two will soon be ready for publication.

Professor Roger Smith has completed his study on Tax Expenditures, which examines various incentives, concessions, and preferences granted in the personal and corporate income taxes and attempts to calculate the revenue foregone by the federal government as a result of these measures.

Also ready for the printer is F.H.Finnis's monograph on assessment practices and procedures in Canada. It will be a welcome addition to the scanty information available on the subject.

Professors Harry Kitchen and Robin Boadway have made good progress with their comprehensive study, Canadian Tax Policy. The authors discuss the development of the Canadian tax system and analyze the major taxes imposed by the federal and provincial governments.

Professor Richard Bird recently commenced the preparation of a background paper on tax incentives for investment, a subject of growing importance in light of the increasing number and variety of tax incentives to business investment in Canada. The purpose of the paper is to survey the existing literature on the subject and to set up a plan for possible further research in this area.



A new study, which will enquire into the vexed question of the meaning of "cost" in Canadian income taxation, will be undertaken by Professor Keith McNair, F.C.A., of the Faculty of Law at the University of Western Ontario. He will be concerned with the meaning of "cost" in various contexts, -- for example, inventory valuation, capital gains, and capital cost allowance.

I am glad to be able to report good progress on our series of seven studies<sup>5</sup> concerned with various aspects of Financing Canadian Federation. The studies range from the preparation of reference material on the historical evolution of the federal fiscal system to a more speculative collection of essays on possible future arrangements of that system.

#### 1. The Financing of Canadian Federation

This study is a thorough revision and updating by David Perry of the Foundation's classic 1966 study of the historical evolution of federal-provincial fiscal arrangements. The revision will bring the story up to date through the important changes of 1977.

#### 2. The Tax Rental Agreements, 1941 - 1962

Tax collection and administration in Canada were never more efficient -- or more centralized -- than during the period of the tax rental agreements from 1941 to 1962. An analytical history of the agreements, which draws on Department of Finance files, the archives, Privy Council Office material, and provincial data, has been prepared by R.M. Burns. The manuscript is undergoing final revision and should be ready for publication by fall.

#### 3. The Tax Collection Agreements

This study complements the Burns study, providing a detailed and informed account of the origin of the tax collection agreements in 1962

and their evolution to the more flexible structure of 1977. The principal researcher is Ernest H. Smith, formerly a member of the Tax Policy Division of the Department of Finance.

#### 4. Financing Canadian Government: A Quantitative Study

The discussion of intergovernmental transfers in the Perry study is complemented and put into perspective in the fourth study by Richard Bird. In addition to providing a broad overview of the growth and changing composition of government expenditures and revenues, this study also considers public debt and contains some international comparisons. The manuscript is being edited for publication by late spring.

#### 5. Transfers to Government

Transfers of funds from higher to lower levels of government have been an important aspect of the Canadian federal system for many years. This study, by Professor Robin Boadway, discusses transfers or grants originating with the federal government and with the provincial governments.

#### 6. Financing Canadian Municipalities

The purpose of this study is to provide a detailed examination of the finances of Canada's third level of government -- the municipalities. It seems unlikely, in view of the enormous scope of the task, that the work can be completed before the fall of 1980.

#### 7. The Fiscal Dimensions of Canadian Federalism

The final item in this series is the convening of a small conference of experts under the auspices of the Foundation to discuss and analyze present and future fiscal dimensions of Canadian federalism. The conference is intended to complement the essentially factual and descriptive work carried out in the other studies under this program with a more speculative

consideration of possible alternative fiscal structures for the Canadian federation. The conference has been scheduled for October 12, 1979 at the Royal York Hotel.

As for the content of the conference, two major themes are to be explored: (1) the nature and effect of possible alternative distributions of taxes between the federal and provincial governments, and (2) the nature and effect of possible alternative intergovernmental fiscal transfers. Two papers will be devoted to each subject, with two pre-designated discussants for each paper. The papers and comments of the discussants, together with a summary of the discussion, will be published.

In total, these studies would constitute a substantial contribution to the current discussions of Canada's future, and one which the Foundation is uniquely able to make.

#### Staff

Since the last annual meeting there have been several changes in personnel.

It is a matter of deep regret for me to have to report that Tina Vandermeer, Secretary of the Foundation, was obliged by reason of serious illness to relinquish her duties last October. She came to the Foundation as Associate Secretary in 1974 and was appointed Secretary in 1976. She performed in an exemplary fashion her many duties, which entailed conference administration, editing, secretarial tasks and, at one time, membership affairs. She was a familiar figure at the registration desk at our various conferences and made many friends for us across the country. One could hardly have asked for a more cooperative, congenial colleague. She is missed by all of us.

To replace Miss Vandermeer as Secretary, Patricia A. Hillmer joined the staff on March 1, 1979. She comes to us from the Canadian Institute of Chartered Accountants, where she served as Conference Administrator and Public Relations Assistant. Ms. Hillmer holds the degrees of Bachelor of Arts from the University of Toronto and Master of Arts from the University of Sussex. In light of her experience in organizing conferences, editing manuscripts, and working with committees, she is well qualified to undertake the duties of this office.

We were sorry to lose the services of Roy Wilson, who retired last August after seven years as assistant to the Treasurer. His successor is Burt Joyner.

Joyce Everton resigned as receptionist and secretary in December 1978. Her duties have been assumed by Marion Bruce.

The mainstay of all our activities is the staff, who are responsible for the quality of the day-to-day operations of the Foundation. On the research side, we are fortunate in having a talented team whose contribution to the work of the Foundation grows more valuable as each year goes by. David Perry, Millie Goodman, and Mary Gurney are known to many of you either personally or through the product of their fertile pens. With a staff as small as ours, versatility is a necessity, and their duties include a variety of tasks, such as writing for one or another of our publications, reviewing manuscripts submitted for publication, responding to requests for information, assisting at conferences, and so on.

Editorial matters are attended to by Catherine Frost, whose responsibilities grow commensurately with the expansion of our publications program.

On the equally important administrative side of our operations are John Buckell, Treasurer, who has management of our finances and membership affairs, our Librarian, Marjorie Robinson, and the Assistant Librarian, Nestor Roldan, who serve so capably the research staff, members, and students, who are using our collection in increasing numbers. Essential, of course, both to research and administration is the work of our secretarial staff: Thora Harris, who assists me in so many ways, Anne McAlonen, the secretary to the Treasurer and the Foundation Secretary, and Evelyn Thompson, who attends to the vital matter of membership records.

This will be a notable year for us in that it marks the twenty-fifth anniversary of service to the Foundation by two members of the staff — Evelyn Thompson, who came in January, 1954, and Mary Gurney, in April of that year. I take this opportunity to express publicly the deep appreciation of all who have been associated with the Foundation over the years — governors, members, and colleagues — for the loyal services rendered.

May I say in conclusion that I have very much enjoyed the past year and wish to acknowledge my sincere appreciation to all who assisted in our activities: to the Foundation's members everywhere; to the participants in our conferences and committees; and to the Executive Committee and Board of Governors, and particularly George Tamaki, for their leadership and encouragement.

Douglas J. Sherbaniuk  
Director

April 10, 1979









