

*In Honour of H. Heward Stikeman
for His Outstanding Contribution
to Canadian Taxation*

INTRODUCTION BY GLENN D. FELTHAM*

H. Heward Stikeman died on June 12 of this year. It is my belief that no individual has had a more profound effect on the development of tax in

case. From what he told me, he was as clean as a hound's tooth, but it turned out that the hound's tooth hadn't been to the dentist for a while. I told him, "Remember, if I ever find that you lied to me or, in any material particular, the facts are not as you represented, I walk away from this. And if I walk away from this, Revenue Canada knows that there is something wrong." Six months later, after I had made representations to Revenue Canada on his facts, he called me up from Vancouver and said, "Do you remember that conversation we had?" I said, "Absolutely." He said, "Some of it is a little bit vague." I said, "You mean you lied to me?" "Well," he said, "I was told that information." Then I said, "I quit." He said, "You can't quit." I said, "Why not?" He said, "Well, I'm on the ledge of the Georgia Hotel in Vancouver and I'm going to jump if you quit." This was about two in the morning, so I said, "Jump." He didn't, of course. Instead, he went to somebody who was smarter than I was, Revenue Canada got off his trail, and life went on.

Teaching Tax

I have taught tax for a long time. We all teach tax as a science. We try to get students up to speed by getting them interested in funny situations, but we are still teaching the rule of law, which we expect the courts to administer. In real life, it seems to me, we are coming more and more to

in the interest of simplicity, of clearness, of transparency. They say, "But we want to tell people what is on our mind. We want to tell them where we are going." I say, "You don't tell them where you are going, but where you might go, and in the end you might not go there." In this situation, professional decision making is very difficult. One must always put a caveat on one's opinion. What good is an opinion? One can always get a prior ruling, but the prior ruling again goes back to the subjective view of a particular group within the government that decides what the philosophy up until that transaction should be.

As you can see, I am not as concerned with policy as I am with process. Any government is entitled to produce any policy it likes, however silly it may appear to me, and however fine it may appear to the government. However, the manner in which that policy is delivered to the public, the poor taxpayer, must be clearer; it must be unequivocal, it must be understandable, and it must be efficient. Sadly, the dichotomy that sometimes exists between Finance and National Revenue does not produce an exact fit. Sometimes I'm sure the ideas that Finance generates as policy, when they are written down, come out differently from what the policy makers intended in the first place. In addition, the policy itself may be sufficiently complicated to require several pages, or several dozen pages, of law to make it work. You fight your way through it, and what do you end up with? "Maybe" or "maybe not," and eventual resolution of the issue by a subjective umpire.

Perhaps I sound very bitter about this. I'm not. I'm just amazed. The source of all this trouble is the increasing tendency of government to legislate in detail so as to try to cover every eventuality. If a hole appears in the Act, which is wriggled through by a taxpayer and confirmed by a judgment in his favour in a court, the government moves quickly to close it. In this way, our written tax law has come to consist of layer upon layer upon layer of closed avenues, explanations, and changes that by themselves make one particular area simpler, but in the end make the whole mess more complicated and more burdensome.

Before 1970, we legislated by principle. We began by trying to lay out a plan of where we were going, as a coherent whole, and then we tried to design the different pieces of that whole so that they fit together. With the introduction of the 1970 Act, which was a good try, the law quite literally got stood on its head. Concepts that we had promoted for 40 years as philosophically defensible positions of fiscal theory became mechanical adjuncts to an inhuman dimension that has its basis in figures, formulas, and doctrine. Instead of legislation by principle, we are getting legislation in detail.

My interest is in seeing tax policy delivered in a better way. Something must be done about how we translate policy into law. We have to teach our students to try to divine, not how a solution to a problem would be applied by Revenue Canada, but how a solution can be sorted out by reference to established judicial principles. It is very difficult.

The Heward Stikeman Fiscal Institute

I have tried to solve the problem in part by starting the Heward Stikeman Fiscal Institute. My intention is to provide money to students, law teach-

