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## Editorial

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### Report on Judicial House of Lords

The case-load of the Appellate Committee of the House of Lords is, and has been throughout the modern era of extensive and complex fiscal legislation, dominated by disputes between the Inland Revenue and the taxpayer. Finance Acts, more than any other species of legislation, are subject almost as a matter of course to judicial interpretation and repair. The financial stakes in finding loopholes in fiscal legislation are high. Professional tax advisers make a lot of money, as well as saving fortunes for their clients, by capitalising on the linguistic uncertainties of this complex field of law. In this context the legislative process certainly does not end with the royal assent being given to an Act of Parliament.

It is nowadays commonplace, accepted even by the most conservative observers of the judicial process, that "interpreting" statutes necessarily involves an element of legislative creativity. But it can also be argued, on constitutional grounds, as well as on the practical ground that the law needs to be certain so that those affected by it know precisely

where they stand, that there is a limit to the extent to which even the final appeal court (leaving aside its special status as part of the High Court of Parliament) should usurp the functions of a sovereign legislature. This view is forcibly argued in a recent report by the Taxation Committee of the Institute of Directors, commenting on the Law Society's report, *Tax Law in the Melting Pot*.

Particular exception is taken to the "new approach" adopted by the House of Lords in the tax avoidance case, *Ramsay v CIR* [1982] AC 300, and applied by their Lordships in subsequent tax appeals. In *Ramsay*, Lord Wilberforce rejected the appellants' contention that any general attack on tax avoidance schemes must be a matter for Parliament: faced with the growth of such schemes, "the courts are not obliged to stand still". "Such immobility must result", he continued, "either in loss of tax, to the prejudice of other taxpayers, or to Parliamentary congestion or (most likely) to both".

Invoking the 1688 Bill of Rights, the Committee expresses concern at what it sees as a recent trend in the judicial House of Lords "to usurp the function of Parliament and to re-mould legislation by a disregard of rights conferred by legislation". It calls for legislative action

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