Consent is a journal of ideas and opinions on individual freedom.

24

Consent

KIDS FIRST!

-Cheryl Stewart & Sandra Evans

{Both graduates of McMaster University, **Cheryl Stewart** (Bachelor of Physical Education) and **Sandra Evans** (Bachelor of Engineering (Electrical)) have opted to work full-time in their homes to raise and nurture their young children. Both are members of the **Organization for Quality Education (OQE)** and **Kids First**.
The following essay was originally presented by the authors to **The Standing Policy Committee for Human Resource Development** in December 1994 under a submission titled "Child Care - In The Best Interests of Our Children." It was also presented to all federal cabinet ministers and to a number of key provincial politicians.
The authors note that their proposals were warmly received by **MP Julian Reed**, while responses that have been received from other Liberal MPs and Ministers have been extremely disappointing.}

INTRODUCTION

We are Canadian mothers who work at home full-time nurturing our children. We both had successful careers in the paid workforce prior to choosing to stay at home and raise our children.

Our first experience with the child care issue was in 1992 when we participated in the community consultation stage of the Ontario NDP's child care reform process called, "Setting the Stage". We were concerned about the direction the process was taking toward institutional child care and how it was virtually ignoring other forms of care --- particularly parents who choose to care for their own children.

The NDP's document stated that child care was "an important prerequisite to job creation, economic renewal and growth." The federal Liberals' Red Book stated that "the availability of child care is an economic issue".

We see child care as the care required to raise happy, healthy, stable productive members of society.

Governments at all levels seem to have considered advice about child care from everyone OTHER than Canada's mothers. What is more tragic than this lack of consideration for mothers, is government ignorance of the needs of children. Throughout the whole debate on child care, the needs of children are never factored in, or if they are, they are not deemed of enough importance to warrant any special consideration. Child care is always discussed within the realms of women, feminism, equality and economics.

CHILD CARE CHOICES

Governments have fallen prey to some myths about child care choices.

(1) Information from **Statistics Canada** is often quoted saying that over 60% of women with preschool children are in the paid work force. The statistic is misused and many people presume that 60% of the nation's children require day care. Even the federal Liberal party has been misled by this statistic. The "Improving Social Security in Canada: Discussion Paper Summary" states that "most parents work outside the home". This assumption is GROSSLY and DANGEROUSLY untrue!

Only 38.5% of women with children under 3 years old work full-time. The majority of these 38.5% who do require substitute child care prefer to have their preschool children cared for by a relative or informal caregiver. In fact, the majority of Canadian children are cared for by their parents. The public never hears that 36.1% of women with children less than three years old and 30.1% with children 3-5 years old are not in the labour force at all. This is one-third of Canadian mothers with preschool children!

Also misleading is the definition of "employed". "Employed" includes mothers who run businesses or do contract work from their homes, mothers who care for other children so they may still remain at home to raise their own children, mothers who work with or without pay for a family-operated enterprise (farmers' wives), mothers who have flexhours, or mothers on maternity leave who may not return to the labour force.

In reality, many mothers who are considered part of the paid labour force do not need substitute child care services. A large number of women who are considered "part-time working moms" by the statistical definition actually consider themselves full-time stay- at-home parents. Even OUR children would be considered "day care" statistics since we do some part-time paid work around our full-time caregiving work.

(2) The argument has been made that families who have one parent at home do so because they can afford that luxury, and that many women must work out of financial need. In response, let us once again look at the statistical picture.

According to a 1991 **Statistics Canada** Report on the characteristics of dual-earner vs. single-earner families, the average earnings of

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husbands in dual-earner families was $35,681; the average earnings for husbands as sole earners was $36,590. If affordability was the main factor in the decision to have a spouse at home raising the children, we should see the husband's earnings in single-earner families being substantially higher than the husband's earnings in dual-earner families. This is not the case. Husbands as sole-earners make only $909 more on average.

(3) In looking at the views of Canadians, in particular women, we find that:

Two-thirds of Canadians, according to a 1991 Decima poll, said that the best place for pre-school children is in the home with their parents. A nationwide **CBC/Globe & Mail** poll revealed that 76% of Canadians nationwide believe that children's well-being is being sacrificed because both parents have to work. As well, another 1991 **Decima** poll found that 76% of women indicated that they would stay at home with their children if they could. So why can't they?

"Governments at all levels seem to have considered advice about child care from everyone OTHER than Canada's mothers."

The answer is that the political, economic an social pressures against raising children in the home are very strong.

As a society, we appear to be ignoring what history has taught us --- that children are best cared for in a home setting. We are regressing as a nation by removing children from the home and placing them within institutions once again.

FUNDING DISCRIMINATORY

Presently, the child care funding systems at both the provincial and federal levels are discriminatory.

(1) Approximately 80% of provincial child care funding in Ontario is aimed at the provision of licensed, regulated child care which cares for only 8.5% of Ontario's children under the age of 13 who have parents in the work force.

(2) The federal tax-deduction/credit system only helps parents who can afford the most expensive child care which is usually regulated and receipted. It ignores parents who provide their own child care. The child care expense deduction permits double income families, regardless of income, to claim child care costs up to $5,000/year/child under the age of 7 and $3,000/year/child from ages 7-14.

In addition, activities such as hockey, camp, drama or music camps, or playschools and nursery schools --- which all families use --- may be claimed by double income families under the Child Care Expense Deduction. However, single-income families are presumed by the federal government to have no child care costs and pay out of pocket for these activities. Child care costs exist because CHILDREN exist, NOT because women work outside of the home.

This deduction has an inverse relationship to need. As your income level increases, so do the benefits of this deduction. Single-parent, working poor and dual-parent single-income families derive no benefit from this deduction.

The present Child Care Expense Deduction uses as its criteria WHERE the child is cared for. It is clearly biased in favour of one child care choice. Tax breaks are not passive. They provide an incentive to encourage us in a particular direction. By providing substantial assistance to only those parents who use receipted formal child care, government is influencing parental choice.

(3) Double-income families are permitted to file individual tax returns. Single-income families end up paying significantly more taxes than double-income families at the same income level. The single-income family thereby subsidizes the lifestyle and child care choices of the double-income family.

"Child care is always discussed within the realms of *women, feminism, equality,* and *economics."*

(4) We are extremely concerned with the direction the present federal Liberal government is going with child care funding and policy. The Liberal Red Book states that "the objective of the Liberal policy on child care is to create genuine choices for parents by encouraging the development of regulated child care alternatives". This is not giving genuine child care choices. This is pushing an agenda for regulated child care, whether parents want it or not, at the expense of their tax dollars.

The Liberals have outlined "a commitment of $720 million over three years to provide for the subsidization or creation of up to 150,000 day care spaces to begin after a year of 3% economic growth" . Again, this is not "giving genuine child care choices". It is rewarding one choice (regulated day care) over all other choices.

(5) This past spring, Tony Silipo, Ontario Minister of Community and Social Services, submitted to Mr. Axworthy Ontario's funding requests for child care. Ontario wants $56 million in 1995/96, $106 million in 1996/97, and $144 million in 1997/98, largely for day care spaces and subsidies. Mr. Silipo referred to child care as a "major labour market strategy" needed "for the future health of our economy". CHILD CARE IS NOT A DETERMINING FACTOR IN ECONOMIC RECOVERY!!! Any economist can tell you that. We do not support Mr. Silipo's funding requests!

ONTARIO CHILD CARE REFORM TO DECEMBER 1994

You are likely aware that because no further provincial funding is available, major reforms in Ontario will not be forthcoming at this time. This, after a costly two-year process! However, we feel it is a godsend because the government obviously did not listen to what many parents had to say during the initial consultation process. The high profile "day care advocates" seem to have the ear of the present and past governments.

In the **Ontario Ministry of Community and Social Services**' Child Care Proposal Document, drafted in April 1994, the entire document, except for one line mentioning family resources centres in their role in supporting parents and other caregivers, is focused on centre-based care.

Here are some of the Ministry of Community and Social Services' list of "accomplishments" in that document:

(i) We have added 18,000 new fee subsidies - a 39% increase over 1990/1991.

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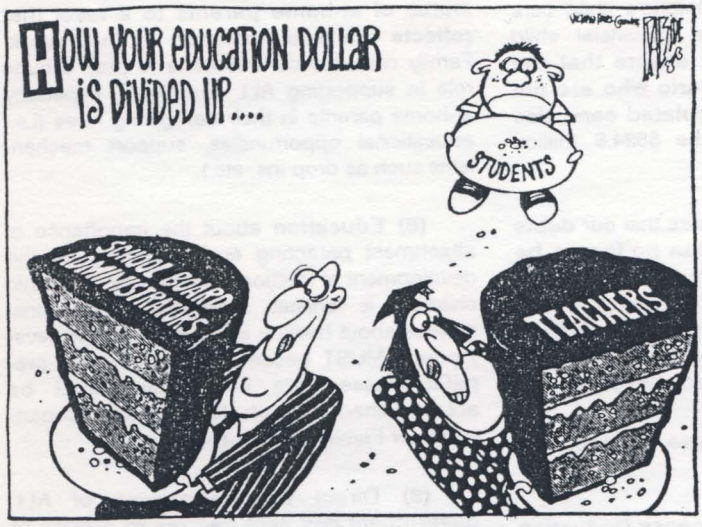

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(ii) We have expanded licensed capacity by 16,000 spaces - a 10% increase over 1990/1991.

(iii) We continue to build new child care centres as part of new elementary schools.

(iv) We have committed $44 million to build 2,500 new child care spaces.

(v) We have increased provincial funding for child care from $350 million in 1990/1991 to $524.6 million in 1993/1994 - an increase of 49%.

WE ARE NOT IMPRESSED!

ALL OF THIS FOR 8.5% OF ONTARIO'S CHILDREN IN LICENSED, REGULATED CARE!!!! Isn't there something awfully wrong with this picture? Our taxes continue to rise while our choice to give up paid jobs to stay at home and nurture our own children is made more difficult every year.

The MCSS' document, The Ontario Child Care Management Framework which was issued in 1992, specified that each region of Ontario serviced by a child care branch form a child care planning committee.

These committees are not structured or mandated to revolutionize child care by basing their work on children's needs and where Ontario's children are actually cared for. They are set up to reinforce government policy and funding direction which is primarily for institutionalized care. These committees are not a legitimate taxpayers' expense and should be eliminated.

FAMILY RESOURCE CENTRE POLICY

In the spring of 1994, the Ontario MCSS formulated a Child Care Resource Centre Policy. Although we have a number of concerns, finally, for the first time, this document recognizes the role that family resource centres play in the healthy functioning of families, and outlines a basic mandate for the centres across Ontario.

We envision family resource centres as being the "hub" of every community across Canada. Most of the centres' funding in Ontario has been frozen for the previous three years and cut this year. Our greatest fear is that the services and supports provided to parents at home and informal caregivers will be sacrificed further if the ministry mandates more "day care services". After all, the voice of at-home parents is very quiet compared to other high-profile day care advocacy groups. Family resource centres are often the only source of support and education that at-home parents and informal caregivers receive.

Tony Silipo, the Ontario Minister of Community and Social Services, informed us that his ministry is providing $19.5 million in 1994/95 for family resource centres in Ontario. This is only 3% of his Ministry's child care funding. Again, we are not impressed!

SOCIAL ISSUES

We are told, as women, that we have choices now more than ever, that in whatever we choose we will be supported. The message being sent by government and the media, however, is that only a woman in the labour force can be truly fulfilled, especially if she is doing what has been traditionally considered a man's job. Women's progress has always been equated with the struggles of women in the workforce.

Thirty years ago, women were expected to remain in the home, while women who pursued careers came under severe criticism. Today, the situation has reversed and women who remain at home fight a daily battle against societal prejudice. Years ago, the idea of having to defend the choice to remain at home --- to have to prove that the best place to care for children is in the home, by parents --- would have been ridiculous.

There is a fear within the feminist movement that if, as a society, we place importance on childrearing and nurturing, we will somehow negate all the gains toward equality that women have made.

The fact is that women who are working, when they would rather be at home with their children, are just as unliberated today as were mothers thirty years ago who remained at home when they would rather have been out in the workforce.

Government leaders and feminist groups do not welcome ideas of allowing women to spend more time at home with their children as a solution to the child care crisis. To them, it seems to be a contradiction in terms between liberation and equality. What a hypocritical society we are! The issue is not about what's best for families and children. It's about pushing a certain ideological agenda.

Day care is a touchy issue. Any negative comments made in reference to day care is instantly labelled as "anti-women". The backlash against day care critics is so severe that many experts remain silent. Why must government and feminists restrict certain views on day care? Why must families be manipulated into making only politically correct choices that advance the cause of certain groups?

"The issue is not about what's best for families and children. It's about pushing a certain ideological agenda."

Our tax laws and social policies must refocus to allow greater support for healthy family functioning instead of massive social programs that reduce or remove family responsibilities. And, we believe, none of this needs to cost women their hard-won status as equal partners in society, or place a greater burden on taxpayers than they already carry.

OUR PROPOSALS

(1) We need a philosophical revolution in this country to reverse the trend toward institutionalized care of our children from birth up. We need politicians and bureaucrats who will have the courage and vision to start

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looking at the care CHILDREN really need, and what supports families need to provide that care. We need politicians and bureaucrats who will preface every meeting and every policy considered about child care with: "Is this in the best interests of our children?"

We need politicians who will admit that child care is NOT "an important pre-requisite to job creation, economic renewal and growth" or "a major labour market strategy", but IS the care required to raise happy, healthy, trusting, empathic children who do not become a costly burden on society. Children's needs should have the highest priority to which all economic and child care issues should be subordinated.

(2) The government funds home child care providers and day care associations who provide input on child care policy and funding. The largest caregiver sector, at-home parents, is not represented at all. We propose that both provincial and federal governments support the creation of an AT HOME PARENT ASSOCIATION that would provide a voice to governments on issues relevant to parents who care for their own children. We stress that **we do NOT want government funding** for this, **just simply the governments' OFFICIAL RECOGNITION** of its existence and full participation on matters related to child care funding and policy.

(3) Eliminate funding to all advocacy groups, especially those who have tremendous power to continue the trend toward the institutionalized care of Canadian children.

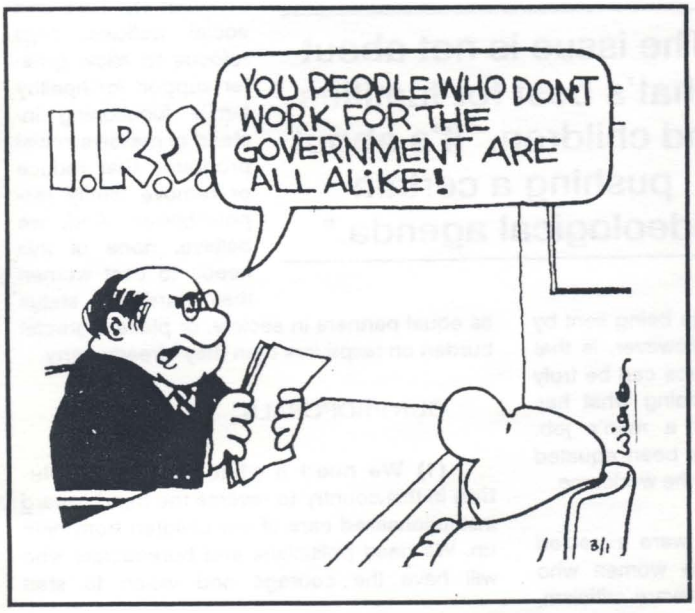
(4) Before granting Ontario's child care funding requests, examine provincial child care funding patterns and **ensure that the 91.5% of children in Ontario who are not cared for in licensed regulated care also benefit equitably** from the $524.6 million spent on child care.

(5) Politicians must realize that our **debts (provincial and federal) can no longer be ignored**. Any policy related to child care should be fully scrutinized to see if it is a legitimate taxpayers' expense --- especially if the policy only services one strident minority (i.e., those choosing regulated child care).

(6) Make tax laws more equitable for ALL families.

(i) The Child Care Expense Deduction should be removed. We suggest redistributing all the money government currently spends on child care (well over $6 billion) into either a single refundable tax-credit, or into enhancing the existing child tax benefit. This would be done according to financial need, basing the credit or benefit on FAMILY income, and phasing benefits out at higher income levels. Lower income families would then receive more assistance.

With this credit or benefit, families could CHOOSE the child care that best suits their needs. This could be used for a day care centre, a home child care provider (licensed or informal), a baby-sitter, or to offset the costs of raising children in the home. Government would, therefore, remain neutral with respect to child care CHOICE.



(ii) Calculate personal income tax on combined family income.

(7) Parents must be supported when they choose to care for their own children. Parents at home, in addition to being financially penalized, are isolated, receive no recognition for the work they do, receive little or no "professional development" opportunities and often suffer from low self-esteem --- all of this for doing the hardest job there is: raising healthy, happy children.

This must be reversed. **There must be a concerted effort to increase the status of at-home parents to a level that reflects the true demands of their work**. Family resource centres have to play a huge role in supporting ALL caregivers, especially at-home parents in their caregiving roles (i.e., educational opportunities, support mechanisms such as drop ins, etc.).

(8) Education about the importance of attachment parenting and imprinting on the development of trusting, affectionate, empathic children is critical. Post-natal educational classes about healthy infant and toddler development MUST become as common as pre-natal classes are now. This could be accomplished through local Health Departments or Family Resource Centres.

(9) Direct the conversion of ALL government day care centres to private or non-profit centres so our tax dollars don't subsidize someone else's choice of child care. Let the supply and demand marketplace work itself out within the non-profit and private day care sector.

(10) Review the subsidy system. Many families with an at-home spouse exist on less income than other families who could qualify for day care subsidies.

RESEARCH

Before concluding, we would like to draw attention to a submission made to the Standing Policy Committee on Human Resources Development by **Dr. Mark Genuis** of the **National Foundation for Family Research and Education** based in Edmonton.

Dr. Genuis was asked to inform the government on the implications of its proposals to spend $720 million of federal funds and an additional $720 million of provincial funds on non-parental care.

The first study examined the issue of non-parental care as its central focus. A meta-analysis was done on all the studies on day care done since 1957 throughout the world. The second study examined the implications of childhood bonding to parents.

Dr. Genuis found the results were conclusive that the regular non-parental care for more than twenty hours per week has an unmistakably NEGATIVE effect on the social-emotional development, behavioral adjustment, and childhood bonding to parents. A minor negative influence was found in the cognitive realm. (Positive cognitive develop-

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ment has been used extensibly as a reason to support day care and early entry into formal schooling.)

The influence of day care quality, family structure, age of entry into non-parental care, and socio-economic status were found to have NEGLIGIBLE influence on each of socio-emotional development, behavioral adjustment, bonding, and cognitive development.

The results of the second study revealed that insecure bonding to parents prior to the age of 10 years is a direct cause of emotional and behavioral problems in adolescence, as well as youth crime. The deciding factor influencing the security of bonding to parents was the regular separation from parents, not the place or type of care once the separation occurred.

Dr. Genuis concludes that by funding regular separation from parents, the government is preparing a recipe for increasing numbers of serious emotional and behavioral problems in both present and future Canadian children.

We trust that the Standing Committee will seriously consider Dr. Genuis' findings as they have far-reaching implications in altering present child care funding and policy directions.

CONCLUSION

Thank you for this opportunity to express our views and concerns about child care in Canada. We entrust you with the responsibility to ensure that our concerns and proposals as Canadian mothers will be heard and seriously considered, both within the political and bureaucratic levels of government during this reform process.

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OUR MOST SERIOUS CONSIDERATION

-Gordon Domm

{**Gordon Domm** is the retired Police Officer who defied the **Karla Homolka Trial Publication Ban** in late 1993 by distributing details from the foreign media about that trial. He was subsequently charged and convicted of two counts of Contempt of Court. He appealed these convictions. After accepting Domm's factum (written argument) as filed by his lawyer, the Ontario Appeal Court scheduled and confirmed his Appeal Hearing for Monday, February 19, 1996 to be held at Osgood Hall on University Avenue in Toronto. Domm is also the head of **Citizens' Coalition Favouring More Effective Criminal Sentences**, based in Guelph Ontario.}

THE KARLA HOMOLKA TRIAL BAN AND SECRET PLEA BARGAIN

Our sacred and constitutional right to freedom of expression and open and accountable trials were both unnecessarily and unjustifiably curtailed by **Justice Kovac**'s relentlessly enforced Homolka Trial Publication Ban. The appeal of my convictions is based not only on these grounds, but also on grounds that this was far too widesweeping a ban to meet the criminal law provisions for such bans.

I felt when I defied the ban --- and I feel even more strongly now since the horrendous revelations came out at Paul Bernardo's trial about the degree of Karla's involvement in these grisly crimes --- that the ban and the way Homolka's trial was handled limited proper public scrutiny of the appropriateness of her sentence and plea bargain. The end result was that Karla Homolka was able to get the lightest sentence of any convicted co-conspirator in any serial murder in history. Homolka's murders were among the most despicable and horrendous of all such serial murders, and this was known when her plea bargain was made.

I also feel that the NDP government of that day would never have pursued the enforcement of this ban during its government tenure if it hadn't been a convenient way to cover up Karla's degree of involvement, and to meet the public's demand that this case be solved quickly.

Over the past few months, our group's secretary, **Jim Garrow**, has been conducting extensive lobbying efforts before **Senator Anne Cools** urging her to take corrective measures to rectify the obvious miscarriage of justice in the sentencing of Karla Homolka.

On October 17, 1995, Senator Cools tabled Senate **Bill S-11** which calls for Homolka's 12-year sentence to be replaced with a life sentence. Her bill is now in second reading debate stage in the Senate of Canada, and she is hopeful that this bill will pass in both the Senate and in the House of Commons. Where a miscarriage of justice is evident in a criminal sentencing, the Parliament of Canada does have the right and obligation to pass such a bill, and change the sentence.

PAUL BERNARDO'S SENTENCING

Although co-accomplice Paul Bernardo has been convicted of two counts of first degree murder, his punishment for the grisly murders fell far short of what it should have been to adequately protect society with certainty for a long enough period, or to adequately deter others who might be contemplating similar crimes.

Bernardo was sentenced on his two murder charges to one maximum life sentence with no chance of parole for 25 years, although he will be able to apply for judicial review in 15 years, and for pre-parole temporary absences in 12 years. In addition to three square meals a day and benefits, he will also be guaranteed a university education should he choose to apply for one (a guarantee that law-abiding citizens are not privy to).

On all his other numerous crimes, Bernardo has been designated a dangerous offender and given an indefinite sentence, but this will add no specific time to his life sentence. There really are no teeth to his indefinite sentence, which is actually referred to in the Criminal Code as an "indeterminate" sentence, not an "indefinite" sentence.

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Section 761(1) of the **Criminal Code of Canada** says that persons like Paul Bernardo who are given indeterminate sentences and designated dangerous offenders shall forthwith after three years of custody, and again every two years of custody thereafter, be given a review by the Nation Parole Board to determine whether parole should be granted.

At this point in time we cannot possibly predict how many bleeding heart criminal sympathizers might sit on any future parole hearing for Paul Bernardo. They just might feel that he has been rehabilitated and therefore should be released on early parole.

"Equity in criminal justice is defined as equal treatment before and under the law. Today, equity has become more relative to the offender..."

If the court really wanted to be certain that Bernardo would be jailed for life under due process of law, they should have tried him on all the Scarborough rapes (with no plea bargains). For each conviction the judge could have sentenced him to maximum consecutive sentences with no parole until half of each sentence was served. If this didn't add up to more than 100 years of consecutive sentencing without parole, then the court could have added similar sentencing on each of the other crimes that Bernardo had already been convicted of, relative and in addition to the murders of Leslie MaHaffy and Kristen French, which he hadn't been sentenced for then. This cumulative sentencing would have ensured that he would have been put away for the rest of his natural life. The way they did it did not.

I realize that consecutive sentencing in serial crimes is not the practice in Canadian courts, but I do not believe that justice is well served by handing out concurrent sentences for convicted serial sex murderers like Paul Bernardo, especially when they mix murder with their sex crimes.

Of course, in Bernardo's case, if there had been full trials without guilty pleas on the Scarborough rapes, it is likely the apparent mishandling of these rape complaints by the police, the courts, and the government would have been exposed. I hope the real motivation for the Bernardo Plea Bargain on his sex crimes wasn't to hide these mistakes, but I do suspect that it was.

Perhaps an all-inclusive public inquiry would serve to clear the air about this perception, or to correct the mistakes made and hold the decision makers accountable. Such an inquiry might also clarify whether judges should consider giving consecutive sentences in serious cases such as this one.

EQUITY

Equity was one of the most important founding principles of our Criminal Justice System. Equity in criminal justice is defined in our Constitution as equal treatment before and under the law. Equity in criminal sentencing (the last major stage in the criminal justice process) means, or should mean, sentences relative to the severity of the crime and the degree of involvement of the offender.

Today, equity in sentencing has become more relative to the offender, the offender's grouping, the offender's character, and on how well he or she is represented by counsel. That's where we went wrong! That's why public confidence in our justice system has plummeted, and why it's effectiveness diminished. That's what must be corrected if we are to return to our once proud Justice System of the 1940's and 1950's when our citizens' safety was more assured and free from crime.

The basic causes for our loss of justice equity today are:

(1) parole, **(2)** plea bargaining, **(3)** alternative sentencing, **(4)** weak-kneed toothless sentencing laws, **(5)** the Young Offenders Act, and **(6)** publication bans on trial evidence. These six dangerous practices must be abolished. In their place, mandatory minimum to maximum sentences should be imposed for all serious crimes, especially for serious violent crimes. Our elected legislators could then be held accountable during their next re-election campaigns if they don't set appropriate sentencing ranges on our most serious crimes.

Hopefully, we will choose to move towards a more lawful society where law abiding citizens who want to live in peace can do so more safely. As we move towards the 21st century, I sincerely hope that all concerned Canadians in all walks of life will give these proposals their most serious consideration and input.

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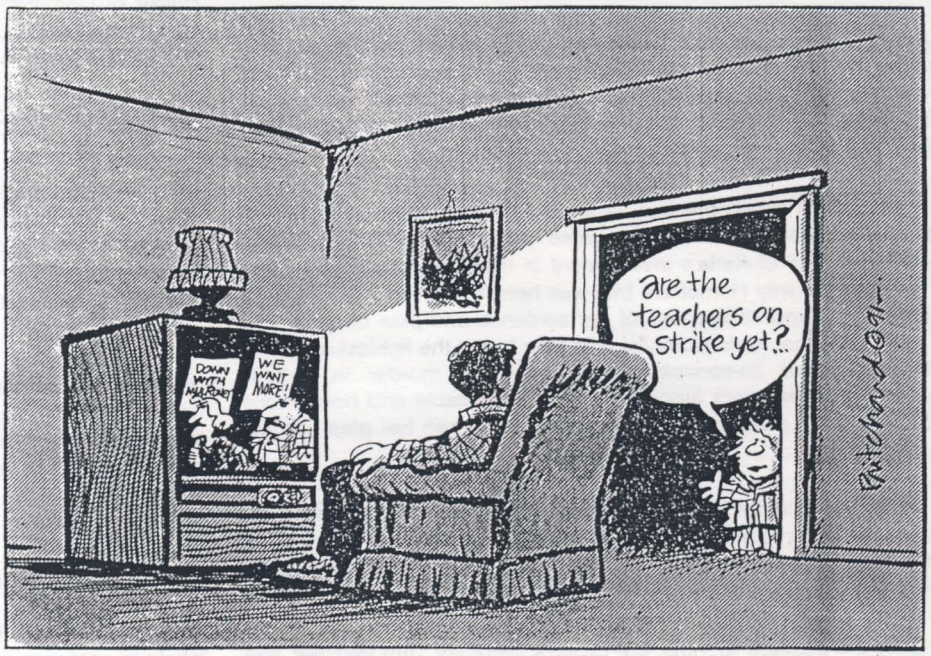

HOW CHILDREN DEVELOP PASSIVE MINDS

-R.N. Whitehead, Ph.D

{**R.N. Whitehead** is the clinical director and founder of the **Oxford Learning Systems** and the **Oxford Learning Centre** schools.}

PART I
WHY IT HAPPENS AND WHAT WE CAN DO ABOUT IT

Success in school and life requires an active and independent mind. Today, this does not come automatically or even easily. In fact, quite the opposite is true. Without realizing it, we are training and encouraging our children to become passive and obedient!

The process begins with small children passively watching television. (Now, let's not start a revolution! I don't really hate TV and I don't think television is necessarily all bad. However, we must teach children HOW to engage it actively.) Left to their own devices, children often sit passively in front of the television set, receiving no mental stimulation, encountering no give and take, taking no time for integration. Just sitting and watching.

This is bad because it tricks kids into thinking that they can receive stimulation while remaining passive --- that they can take the "easy way" and still benefit. But, it just SEEMS that way | It is not true.

In order to really experience television, you must watch it with a focused and active mind: one that notices detail, infers meaning, develops understanding, integrates past experiences with the present show, and judges the appropriateness or value of the actions of the characters. When kids "just sit", they learn not to be active participants in their own lives; they learn to unfocus and float.

This trend continues when school starts. With schools over the last ten years paying so much attention to social development, kids are encouraged to "get along" in class. They are expected to fit in, often regardless of the occasion.

For example, we've all heard the wail of anguish as a little one explains how she got in trouble. "It wasn't my fault, I never did anything!!!"

More often than we care to admit, these claims are absolutely true. Too much attention is placed on the social skill of good citizenship and harmony instead of on justice. It doesn't take kids long to realize that they can get good strokes just for participating and getting along, regardless of the quality of the participation or the justice of the situation. We call this the "Fail but Be Nice and Succeed" Syndrome.

However, children DO understand that our adult expectations for them are social, and they really do strive to meet them. When children achieve these expectations, they are rewarded with praise and attention for blending seamlessly into the group and not standing out. It is as if the mere ability to do what one is told is more important than the quality of the task. It is important for us to realize that our children do not understand why this is such a high priority for them.

As adults, our lives are full of conflict. We complain, argue, watch movies, videos and television programs full of action, conflict and perhaps even violence. Where is OUR harmony and why is harmony so important anyway? This is a mystery to our children. Why do they have to get along at all costs? No answer. We have created a conflict in their minds and substituted obedience and harmony for logical reasons.

To adults, this seems a small thing --- just one of life's little inconsistencies --- but these are small developing minds! They need consistency! They need to learn how to reason, how to properly use their rational faculty.

Instead of encouraging this, we create a major conflict for our kids. They want reasons, and we substitute a sort of "because we said so" or "because it's good for you" "reason". In other words, we teach them to follow and obey, not to reason and think. In so doing, we reward passivity and punish the development of active independent minds. Kids learn this lesson well.

"As parents, WE can teach our children social skills. This is not the job of our schools. This excludes too much academic growth and keeps the child's mind passive..."

As parents, WE can teach our children social skills. This is not the job of our schools.

Most, if not all, public school primary and kindergarten programs consider that the development of social skills in children is of major importance. This excludes too much academic growth and keeps the child's mind passive, as it "follows without real understanding" the arbitrary rules and expectations of the teacher.

These mistakes are further compounded as learning programs usher in the era of "matching" activities. These are primary school activities which ask the child to "match" similar objects, colours, sounds, etc. to each other.

In essence, this is not wrong in and of itself, but most school programs actually stop here. "Matching" types of activities require little or no higher order thinking skills such as understanding and using metaphor. Today's school programs lock themselves into this mode from the primary grades into secondary school and even university.

This is wrong because children don't discover differences or create generalizations. Their activities are not extended to concepts which

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would lift the child above the concrete world into the world of the intellect --- a world where light and colour and imagination also truly exist, as well as logic and order.

"Matching" activities require only a passive mind. Flashcards, choral reading, group activity (children actually learn very little from group activities) all bring home the same message: "Don't be independent and think on your own; be nice and follow instructions; be passive and you will be rewarded."

I'm not accusing school officials of PLANNING this result, just of ignoring the obvious fact that this IS the result of today's programming.

Now that we have "socialized" kids and rewarded passivity, we begin to "teach" them. I suppose the harm of these programs could be undone at this point, but they are not! The only road back from this journey would be to build learning programs based on the developing cognitive needs of the student: to teach our students to move from the CONCRETES of physical life (the things we see, taste, touch, smell and hear), to the ABSTRACT (ideas like "honesty" or "justice") --- in other words, to teach kids how to build new categories and meaning from the endless parade of physical senses in their lives.

For example, in mathematics we should make sure that the student understands the concepts of addition and subtraction BEFORE we move on to abstract numbers. This can be done with blocks, diagrams, words, or manipulatives. There is no one "best way", but today's programs move too quickly from the concrete to the abstract in math. Students have to begin memorizing instead of understanding.

Think back. Do you UNDERSTAND your math or just memorize it? If we expect children to actually "see" their math, to understand it, we have to make sure that they actually do! Memorizing facts or orders of operations will get you the answer, but no understanding. Memorizing is passive. Understanding is active!

In reading, we turn the tables the opposite way, but we still end up with passive minds trying to memorize their whole vocabulary.

Instead of showing kids how to decode the language they already know, we confront them with an endless array of "whole words" to be memorized. A child first hears language by listening to his or her parents, but he does not merely copy the sounds of his parents. A child must make an enormous mental step in order to begin learning this language.

Every word in our language represents a particular and single concept. When children first learn a language, they first have to understand --- in a mind that has no language at all --- that the strange sound they are hearing is connected to whatever the parent is pointing or referring to.

"Language is primarily a tool of thinking, NOT of communication."

For example, when you say "mommy" to the child and point at yourself, how will the child know what you are doing, or that the sound you have made even has any meaning at all?

Understanding that the sound refers to one specific concept is a feat which requires the child understand that it is necessary CATEGORIZE INFORMATION in order to make greater sense of his/her universe. Without language we can only think about what is in our conscious mind RIGHT NOW. All the learning of the past would be lost to us. Without words to summarize and represent concepts, we would have to develop each concept anew every time, much like lower thinking-order animals do.

"Amazing! Language and thinking are developed together and in the same way."

All the language children learn is through their ears. They hear sounds, learn to distinguish the differences between these sounds, learn to blend diverse sounds together and learn what concepts are and what the individually blended sounds (words) stand for. All this information is filed in the subconscious and the language is verbal.

The next step seems logical. Children already understand all the concepts of language implicitly. If they can speak in clear sentences, they already have comprehension!!! We should not worry about that. Our task should be to teach them how to access the incredible amount of stored knowledge and literature humankind possesses.

How? By teaching children to understand the code or script we use to write our language. It is a unique code and it is designed to be built from the ground up, much the same way every single verbal or mental concept is formed!

Amazing! Language and thinking are developed together and in the same way. In fact, language was developed so we could further enlarge our knowledge. Language is primarily a tool of thinking, NOT of communication.

Reading should not be any different. If we first helped children to understand abstract concepts by making sure they understood concrete ones --- by teaching verbal language --- then we should teach reading in the same manner. That would suggest to our children that their IS some order and logic to the learning of written language, just as there was in the learning of the spoken language and in thinking!

The building blocks of reading are letters and there are only 26 of them. All words flow from these basic 26 units. If for no other reason other than it is and rational, we should consider using ONLY PHONICS reading programs for our children. It is empowering and important for the development of their self-esteem.

If we insisted that our children learn to read using phonetic decoding, they would begin to see that there is an order in the universe of reading, that they ARE capable of understanding and succeeding on their own. Understanding and succeeding does not depend on how one acts in a group, or on obtaining approval or endorsement by these mysterious "teacher adults".

From learning to read in Grade one (which is when it should happen), to writing a thesis in university, a student must be able to think: to see similarity and difference, to generalize, to integrate, to concentrate, and to intentionally focus.

Passive minds do not learn well. They memorize. They mimic! But, they do not learn. Planning, goal setting, taking personal responsibility and achieving are all the hallmarks of an active mind. Learning to think accurately and independently is one of the primary building blocks of self-esteem and success.

NEXT ISSUE: Part II: Motivation, The Road to An Active Mind

IS THE FEDERAL INCOME TAX ACT UNCONSTITUTIONAL?

-Paul McKeever, B.Sc.(Hons), M.A., LL.B.

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Disclaimer: Nothing in this article should be construed as legal advice. It is not intended as such. Anyone wishing to challenge, in court, the constitutionality of the federal **Income Tax Act** or any other legislation, should obtain advice from a lawyer who practices constitutional law. On the day that this analysis was written, the author was not a lawyer. }

A year or so ago, everyone in my neighbourhood received a copy of a small newspaper published by a religious organization that wants the federal government to stop taxing Canadians and, instead, implement the Social Credit monetary system developed by English **Major C.H. Douglas** early in this century. In that newspaper, I found an interesting article claiming that the federal **Income Tax Act** is unconstitutional, and that a fellow in Winnipeg, named **Gerry Hart**, won the argument in court some 22 times; apparently he had never paid income tax in 40 years.

I looked, but it turns out that none of Hart's constitutional arguments were ever reported. (Only some decisions are published; the rest are filed away in court houses, and are not brought to the attention of most lawyers). So, not having found a good description of Hart's constitutional argument, I asked one of my income tax professors about the constitutionality of the **Income Tax Act**.

"I found an interesting article claiming that the federal Income Tax Act is unconstitutional. So, to satisfy myself about this issue, I decided to research it myself."

His response was something to the effect of: "I thought that the constitutionality of the Income Tax Act was a dead issue. The federal government can tax whatever the heck it wants to tax."

For a while I left the issue and got back to my studies. Then, in the midst of some legal research, I came across a book in the law library that had been written exclusively about Gerry Hart and his argument that the **Income Tax Act** was unconstitutional (see references below). Reading it left several questions unanswered, so to satisfy myself about this issue, I decided to research it myself.

ZIGGY

I began by reading sections 91 and 92 of the **Constitution Act, 1867** (formerly called the **British North America Act**). These two sections, as interpreted by English and Canadian courts, tell the federal Parliament and the provincial Legislatures whether or not they have the jurisdiction to pass certain laws. If the federal Parliament, or a provincial Legislature, purport to pass a law that the Constitution of Canada gives them no jurisdiction to pass, the court may state that the law is of no force or effect, and the people of Canada, or of that province (as the case may be) may then ignore it.

Under the title "Powers of the Parliament", Section 91 lays out the matters over which the federal government can pass laws, it states:

"It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, **in relation to all matters not coming within the Classes of Subjects by this Act assigned** (in Section 92) **exclusively to the Legislatures of the Provinces**; and for greater Certainty, **but not so as to restrict the Generality of the foregoing Terms of this Section**, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, --- 3. The raising of Money by any Mode or System of Taxation." (my emphasis)

So, according to the wording of section 91, if a bill which Parliament wishes to make law is "in relation to" any matter "coming within the Classes of Subjects...assigned exclusively to the Legislatures of the Provinces" in section 92, then the bill cannot become law because Parliament does not have the jurisdiction to legislate with respect to that matter. And, a class of subjects listed in section 91 cannot be interpreted as "restricting the generality of" an exclusive provincial power listed in section 92.

Thus, the wording of subsection 91 (3) suggests that "any Mode or System" really means "any Mode or System left over when you take out those Modes or Systems that fall within the exclusive jurisdiction of the provinces". So, according to section 92, which modes or systems of taxation fall within the exclusive jurisdiction of the provinces?

Under the title, "Exclusive Powers of Provincial Legislatures", section 92 lays out the classes of matters over which only the provincial

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Legislatures can pass laws. With respect to the power to pass tax laws, it states:

"In each Province the Legislatures may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, --- 2. **Direct** Taxation **within the Province** in order to the raising of a Revenue **for Provincial Purposes**." (my emphasis)

CALVIN AND HOBBES – BY BILL WATTERSON

So, the wording of the **Constitution Act, 1867** suggests that the federal Parliament cannot pass a law which imposes "Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes". However, as pointed out earlier, the wordings of all laws (including the Constitution) are subject to the interpretation which is given to them by the courts. Thus, the next step in my research was to find out how the courts have interpreted section 92(2) in the context of subsection 91(3).

I began by reading what **Professor Peter W. Hogg**, of Osgoode Hall Law School, had to say on the subject. His book, **Constitutional Law of Canada** is probably the most influential and authoritative text on Canadian constitutional law, and is regularly referred to by our courts when they make decisions involving the Canadian constitution. In the context of subsection 91(3), he states that subsection 92(2) "...limits the provinces to "direct taxation", to taxation "within the province" and to taxation "for Provincial Purposes" "(p. 736).

Having found that Professor Hogg interprets s. 92(2) by first breaking it into those three components, I began reading what **Professor G.V. La Forest** (as he then was) had to say in his book, **The Allocation of Taxing Power Under the Canadian Constitution**. Professor La Forest is now Mr. **Justice La Forest** of the **Supreme Court of Canada**. His influential book has been referred to many times since it was first published. It is referred to not only by academics, but by the courts when they have addressed issues involving the constitutional division of taxation powers between the federal and provincial governments in Canada.

"It is reasonable to conclude that the Income Tax Act, being an act passed not by a provincial Legislature, but by the federal Parliament, is unconstitutional."

According to Professor La Forest, the constitutional division of taxation powers in subsections 91(3) and 92(2) has been interpreted by our courts to what I will herein call the "purposes test".

"As early as 1882 the Privy Council (then Canada's highest court) in **Parson's** case stated that sections 91 and 92 of the British North America Act had to be read together and the general words of the federal power **could not be intended to override the specific grant to the provinces**. This was followed by Lord Hobhouse's statement in **Bank of Toronto v. Lambe** that the raising of revenue for provincial purposes **was wholly within provincial competence** {i.e. jurisdiction}. Finally, in **Caron v. R.**, Lord Phillimore expressly stated that Parliament could not levy direct taxation to raise revenue **for provincial purposes**." (my emphasis)

Thus, between 1881 and 1924, our highest courts wrote the decisions which first drew the line between federal and provincial tax law-making powers: the provinces could tax income for provincial purposes, and the Dominion could tax income for Dominion purposes.

The **purpose** for the tax indicated whether or not a given law was constitutional.

When Professor La Forest's book was published in 1981, the courts still had not disagreed with the decisions in **Bank of Toronto v. Lambe** and **Caron v. R.**; the courts continued to recognize those two cases as the one which distinguished federal from provincial tax law-making powers. Nonetheless, Professor La Forest stated that:

"...in the **Caron** case it was held that Parliament could levy income tax notwithstanding that it was direct taxation, and as already seen there are numerous federal payments to the provinces that are used for provincial purposes. The **British North America Act** itself sanctions such actions, for section 118 provides for the payment of subsidies to the provinces which at one time amounted to almost half the provincial revenues.

"For these reasons, the dicta of the Privy Council should probably be ignored. They were made when the device of transfer payments might still have been considered doubtful, and in that context might have had some practical effect." (p.52)

These statements can be interpreted in two ways.

On one hand, Professor La Forest could have been implying that the federal Parliament can now tax income for any purpose. On the other hand, Professor La Forest could have been implying that the purposes test is no longer an appropriate way to distinguish between the federal and provincial tax law-making powers.

It is important to remember that, when Professor La Forest made these statements, the decisions in **Parsons, Lambe,** and **Caron** remained good law; they had not been overturned by the courts. Thus, Professor La Forest was not providing case authority for his position; he was simply suggesting that Canada has changed, and that judges and lawyers should probably consider this fact when arguing in court about the constitutional division of taxation powers. In short, his words were academic opinion, not law.

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Nonetheless, for reasons different than those of Professor La Forest, Professor Hogg has said that the purposes test is no longer appropriate. He states that, in section 92(2), the words "for Provincial Purposes" have "turned out to be unimportant" (p.737) for the purposes of determining the constitutionality of federal tax legislation:

"Nor does the phrase 'for Provincial Purposes' in s. 92(2) constitute an implied restriction on the federal taxing power of s. 91(3). In **Winterhaven Stables v. Canada** (1988), it was argued that the federal Income Tax Act was valid on the ground that the income tax was used for the raising of a revenue for provincial purposes. In support of the argument, it was pointed out that the revenues raised by the income tax contributed to the grants that were made to the province out of the Consolidated Revenue fund to subsidize provincial programmes of post-secondary education, health care and welfare. The Alberta Court of Appeal rejected the argument, holding that it was not an objection to a federal taxing statute that some part of the revenue would ultimately be used for provincial purposes. **This decision confirmed that there are no limits on the purposes for which the federal Parliament may raise taxes...**" (pp. 737-738; my emphasis).

"Of course, for a large number of reasons, no judge is very likely at all to agree with my analysis."

Now, it is important to take the following point into consideration: what **Winterhaven** does not say is that the federal government can tax income, within the provinces, for any purpose. All it really says is that, **the phrase "for Provincial Purposes" in subsection 92(2) is no longer useful when distinguishing between the federal and provincial tax law-making powers.**

So if the purposes test is no longer an appropriate way to draw a line between the provincial taxing power granted by subsection 92(2), and the federal taxing power granted in subsection 91(3), the question must be asked: should no line be drawn at all, or must a line be drawn but drawn by applying a different test?

The answer to this question was first provided in 1881 by the Privy Council in **Parson**'s case. In that case, the Privy Council stated that though the description "the raising of money by any mode or system of taxation" in section 91(3) is sufficiently large and general to include "direct taxation within the province in order to the raising of a revenue for provincial purposes" assigned to the provincial legislatures by s. 92, it obviously could not have been intended that "...the general power should override the particular one" (p.108).

The answer was again provided by the Supreme Court of Canada in 1950 in the case of **Attorney General of Nova Scotia v. Attorney General of Canada**. In that case, all judges agreed that the legislative powers given to the provinces in subsection 92(2) could not be exercised by the federal government. The Chief Justice in that case stated:

"The constitution of Canada does not belong either to Parliament, or to the Legislatures; it belongs to the country and it is there that the citizens of the country will find the protection of the rights to which they are entitled. It is part of that protection that Parliament can legislate only on the subject matters referred to it by section 91 and that each Province can legislate exclusively on the subject matters referred to it by section 92.

"The country is entitled to insist that legislation adopted under section 91 should be passed exclusively by the Parliament of Canada in the same way as the people of each Province are entitled to insist that **legislation concerning the matters enumerated in section 92 should come exclusively from their respective Legislatures**. In each case the **Members elected to Parliament or to the Legislatures are the only ones entrusted with the power and the duty to legislate concerning the subjects exclusively distributed by the constitutional Act to each of them**." (my emphasis)

"By agreeing with my analysis, a judge would be triggering a massive shortfall in revenues, and this would speed-up the collapse of the Canadian economy."

In other words, the decisions in both **Parson**'s case and **Attorney General of Nova Scotia v. Attorney General of Canada**, support the proposition that there is a type of tax legislation which would be unconstitutional if introduced by the federal Parliament.

These decisions remain good law to this day; they have not been overruled. Thus, in order to determine whether or not the federal **Income Tax Act** is unconstitutional, we must determine how the federal tax law-making power differs from the provincial one: according to both the Privy Council and the Supreme Court of Canada, there must be a difference.

What, then, is the difference? Recall that Professor Hogg breaks subsection 92(2) into three components: (1) Direct Taxation, (2) within the province, and (3) for Provincial Purposes. Recall also that professor Hogg effectively states that the **Winterhaven** decision rendered (3), the phrase "for Provincial Purposes", useless for distinguishing between federal and provincial powers to pass legislation.

This leaves only two possible ways in which the federal and provincial tax law-making powers can be distinguished: either (1) by the phrase "Direct Taxation", or (2) by the phrase "within the Province".

The phrase "within the Province", although useful for determining the constitutionality of provincial tax legislation, is not useful for the purpose of distinguishing between federal and provincial tax law-making powers. Any tax levied by the federal government on a person, property, transaction or benefit in all provinces would, in each province, be considered a tax "within the province".

How, then, is the federal power to pass tax legislation different from the provincial power to pass tax legislation? When we remove from subsection 92(2) the two phrases which, according to the above arguments, are irrelevant for the purposes of making this distinction ("in the Provinces" and "for Provincial Purposes"), we are left with the following:

"**Exclusive Powers of Provincial Legislatures**: s. 92. In each Province the legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next hereinafter enumerated; that is to say, --- 2. Direct Taxation in order to the raising of a Revenue."

Because all taxation is "in order to the raising of a Revenue", we must conclude that the provincial Legislatures may exclusively

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make Laws in relation to direct taxation.

Income tax is a direct tax. Consequently, only the provincial Legislatures may exclusively make Laws in relation to income tax (and the Supreme Court of Canada has said that it is unconstitutional for a provincial Legislature to transfer its constitutional tax jurisdiction to the federal Parliament or vice versa; see **Attorney General of Nova Scotia et al. v. Attorney General of Canada** (1950)).

Thus, it is reasonable to conclude that the Income Tax Act, being an act passed not by a provincial Legislature, but by the federal Parliament, is unconstitutional.

Also, it is important to notice that, by my analysis, the **Income Tax Act** is unconstitutional whether **Winterhaven** was decided correctly or incorrectly. If **Winterhaven** was decided correctly, the federal **Income Tax Act** is unconstitutional for the reasons I've explained. If **Winterhaven** was decided incorrectly, then the federal **Income Tax Act** is unconstitutional for the reasons argued in that case.

If a court were to agree with the analysis I've just put forth, it could state that the federal **Income Tax Act** is of no force or effect.

Provided there were no successful appeals of the decision, Canadian residents would not be required to pay federal income tax. Moreover, those Canadians who live in provinces where provincial income tax payable is based upon a percentage of one's federal income tax payable would also have a provincial income tax payable of zero dollars (because their federal tax payable would be zero dollars).

"It seems reasonable that there really IS something to the rumour that the federal *Income Tax Act* is unconstitutional."

Of course, for a large number of reasons, no judge is very likely at all to agree with my analysis.

By agreeing with my analysis, a judge would be triggering a massive shortfall in revenues, and this would speed-up the collapse of the Canadian economy (say goodbye to those who lend money to the federal and provincial governments).

Moreover, even if the analysis I've put forth were accepted whole hog, the courts would probably give the federal and provincial governments a grace period during which they could set up a constitutional method of taxing the income of Canadian residents.

This is not to mention ideological ramifications: Canada would be (at least temporarily) forced into a tax system reminiscent of that which existed in Canada's laissez-faire heyday (which, instructively, occurred around the time the **Constitution Act, 1867**, was drafted).

Although this state of affairs might please freedom-loving individualists, it would not be at all acceptable to Canadian socialists who believe that a higher average standard of living results from, and justifies, enslaving others to some extent. Without making other legislative changes, rendering the federal Income Tax Act of no force or effect would make it much more difficult for the federal government to play Robin Hood.

Whatever the courts would decide, it seems reasonable that there really is something to the rumour (more frequently heard, of late) that the federal Income Tax Act is unconstitutional. And, if there is, perhaps it is also true that Gerry Hart avoided paying income tax for 40 years by repeatedly convincing the Manitoba Court of Appeal of the truth of that rumour. Perhaps a request from the Manitoba Court of Appeal's records office is in order.

<END>

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