

is little evidence that restraint will be the order of the day.

Nor will the new debate be one in which constitutional experts, including the ready corps of academic advisers, will play much of a role. Those whose skills are devoted to incremental institutional modification or the fine points of constitutional law will be in little demand in a debate that will be much fundamental, and more essentially political, in character.

I would suggest, therefore, that the prime minister is only partially right when he states that Canadians are tired of the constitutional debate. They are tired of the constitution, to be sure, but they are also tired of the unrelenting threat to Canada's survival. To expect that they will stay out of a debate on the latter issue in order to make Chrétien happy is to expect too much. Like it or not, the national unity debate has begun again. However, it will be a very different debate this time around.

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## ECONOMIC REPORT

### REPLACING THE GST

by Fred Lazar

#### THE POLITICAL DILEMMAS FACING THE FINANCE COMMITTEE

In June, the House of Commons Finance Committee, chaired by Jim Peterson, will table its report outlining recommendations for replacing the GST (goods and services tax). The committee has held hearings across the country and has been offered much advice. Many have argued that there is no need to replace the GST since the transition costs have already been absorbed by the economy and any alternative will create new costs. Moreover, these same people have suggested that there is no alternative that would be easier to administer and simpler to operate.

Of course, the GST itself could be improved (simplifying reporting requirements, harmonization with provincial sales tax regimes). But there is no consensus that preserving the GST in some modified form is the preferred route and, indeed, if the Liberals are to abide by their Red Book, then this option is a non-starter for the committee.

In other words, even if the GST is the best alternative for the GST, the Liberal government is committed to finding another alternative. In addition to being guided by the Red Book promise, the committee has found a significant level of agreement that any new tax should be harmonized with provincial tax systems and should be hidden. Obvi-

ously, the Committee faces a very difficult task and regardless of what it proposes, there will be many critics and undoubtedly many flaws as well. Despite the continuing resentment to the GST, no one will be pleased with a new tax, and since inevitably there will be many individuals who will pay a disproportionate share of the new tax, relative to the burden under the GST, there will be many complaints. Furthermore, can the Committee and the government afford to entertain an alternative that may impose a heavier burden on taxpayers in Quebec at this critical juncture in our history?

Consequently, will the government eventually decide that the easiest route to follow is to keep the GST and declare that it has fulfilled its election promise by proposing to modify, simplify, and harmonize the GST?

#### THE GST OPTION

In deciding whether the GST should be retained, the committee and the government should consider the original rationale for this tax. The federal sales tax (FST), which was a hidden tax, had a narrow base and placed Canadian exporters at a competitive disadvantage. Both flaws could have been corrected. Instead, Michael Wilson, the finance minister of the day, and his bureaucrats, set out to find a new tax.

At that time, economists were arguing that tax reform should provide incentives for work, savings, and investment. A consumption tax would achieve these goals since it would not be a tax on income, savings, or investment by business. Moreover, Canadian exporters would be exempt from the tax and so one of the problems with the FST would be corrected.

However, a consumption tax can

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take many different forms. The existing personal income tax system with the increasing limits for RRSPs was moving more in this direction. But the Department of Finance bureaucrats were not willing to experiment with a consumption tax system that was not in place elsewhere among the G-7 or other OECD countries. So they opted for the GST version of a value-added tax.

Currently, the GST generates approximately \$70 billion in gross revenues. After all the rebates, exemptions, and credits are paid, the federal government nets around \$15 billion (this excludes the taxes paid by the federal government, its many agencies, and Crown corporations). Annual administrative and compliance costs probably range between \$500 million and \$1 billion. And although the paper trail created by the GST was supposed to reduce the size of the underground economy, lax enforcement through audits have persuaded an increasing number of Canadians that the risks they face in avoiding taxes (income as well as GST and provincial sales taxes) are minimal. While it is unlikely that the debate over the GST's impact on the underground economy will ever be resolved, it is clear that GST has not diminished the volume of underground economy activity.

The GST was a very complex and apparently inefficient replacement for the FST when one considers that the FST's shortcomings were not insurmountable. Although the GST did create a level playing field for exporters, it created a disadvantage for Canadian companies competing against imports, particularly of services. Consumption of services by Canadians vacationing abroad, and the purchase and importation of foreign goods by Canadians also have

tended to escape GST taxation. And no evidence has yet been presented that the GST has encouraged work, savings, and investment. Of course, the GST was introduced just before the 1990-91 recession and because of John Crow's fixation with inflation, the GST played a role in exacerbating the recession.

Therefore, is the argument that "the devil you know is better than the one you do not know" sufficient

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ciently convincing to justify retaining the GST? I would favour looking for a new "devil" and getting rid of the GST altogether. Its design is flawed; its implementation was ill-timed; its enforcement has been lax; its economic costs have become exorbitant; and its political popularity has been non-existent.

#### ALTERNATIVES

In searching for an alternative, the committee should keep in mind that it is dealing with a consumption tax; that is, a tax that does not create disincentives for work, savings, and investment. As well, simplification and efficiency in compliance, administration, and enforcement should be paramount in the selection and design of a replacement for the GST. Finally, there is no economic, financial, administrative, or political reason to look for a single tax to replace the GST. There are good reasons for recommending a package of alternatives.

For example, the following package could be quite attractive and should be able to meet the criteria discussed above:

- *A federal retail sales tax integrated with provincial retail sales taxes.* Although it would be preferable to have a uniform tax base across the country, at first it may be more convenient for the federal government to adopt the tax bases in each province. As a result, there would be little additional paperwork, and with no rebates, the federal tax rate could probably be set at around 3 percent in order to generate between 25 and 30 percent of the GST net revenues.
- *A pure consumption tax built on the income tax system.* The most complex issue would involve defining savings. A perfect definition is not necessary since the tax rate would be set quite low and would vary according to the definition of savings. As a result, there should be little new paperwork for tax filers. Consumer purchases abroad would be taxed automatically, while tourists in Canada would not be subject to this tax. The tax rate also could be made progressive, starting at a rate of about 2 percent, rising to a rate of 5 percent. This tax could generate another 25 to 30 percent of the net revenues of the GST.
- *A carbon tax.* The tax would be imposed on direct users of coal, natural gas, and crude oil, and since the tax would be imposed on both imported sources and domestic sources of these carbon-based fuels, the tax should ultimately be borne by consumers and not the producers. So it should not fall disproportionately on western Canada. The tax would reinforce Canada's commitment to stabilizing carbon dioxide emissions, and it could be structured to minimize any adverse competitive effects on Canadian industries. The tax rate should be selected so as to replace no more than 20 percent of the GST revenues.

- *Expenditure cuts equivalent to approximately 25 percent of the GST revenues.* The \$4 billion in spending cuts should placate irate taxpayers and make the package more defensible.

This package approach should offer several advantages, political and financial, for the government. For example, it would be very difficult for people to avoid all of the tax measures and the low rates for each individual tax should lessen the incentives to avoid any particular tax.

By diversifying the tax base, tax revenues may become less sensitive to cyclical and other shocks; hence, government revenues may become more stable, and thus predictable. The government will have the ability to change the relative importance of each measure as more information on the impacts of each measure becomes available, and as economic, financial, and competitive conditions change. The federal government should be able to escape from the either/or straight-jacket it finds itself in with the GST.

Finally, by making expenditure cuts as an integral component of the reform package, the government will become more sensitive to the need to control aggregate spending, and thus, be less inclined to periodically increase the various tax rates to achieve budgetary goals. And, of course, there should be a favourable public reaction. This will be important because none of these tax proposals is without problems. No tax is perfect in design and each measure will affect different special interest constituencies.

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## LEGAL REPORT

### REDEFINING FAMILY: ONTARIO PROPOSES SPOUSAL STATUS FOR GAY AND LESBIAN COUPLES

by Bruce Ryder

Over the past two decades, many gay and lesbian couples have engaged in a concerted effort to achieve legal recognition of their relationships. Denied the powers, rights, and benefits that accrue to "spouses," and spurred by the promise of equality provided by human rights legislation and section 15 of the Charter, they have sought redress before courts and human rights tribunals with increasing success. Our elected representatives, however, have demonstrated a strong preference for avoiding any discussion of their constitutional obligations in this area. Legislation in all Canadian jurisdictions still defines "spouse" uniformly in heterosexually exclusive terms.

#### ONTARIO'S BILL 167

The long-delayed introduction of Bill 167, the *Equality Rights Statute Law Amendment Act, 1994*, by the Ontario government thus amounts to a significant milestone. The Bill accords same-sex couples precisely the same legal status in Ontario legislation as is currently possessed by "common law," or unmarried, heterosexual couples. The Bill would accomplish this result by expanding the definition of spouse (or related terms, such as "next of kin") in more than 70 Ontario statutes to include

"a person of either sex with whom the person is living in a conjugal relationship outside marriage."

Among other things, the Bill would have the effect of imposing spousal support obligations on gay and lesbian partners, removing the barrier to the consideration of adoption applications by gay and lesbian couples, and requiring employers who provide family employment benefits to unmarried heterosexual couples to extend those benefits on the same terms to gay and lesbian couples.

On May 19, Bill 167 passed a rare recorded vote on first reading in the Ontario legislature by the slim margin of 57 to 52 (21 members were absent). Even though the Bill was presented as necessary to bring Ontario statutes into compliance with section 15 of the Charter, the government found it necessary to allow a free vote on the Bill, thus sending out the distressing signal that whether or not to comply with constitutional obligations is a matter of individual conscience. As a result, the Bill will face a closely divided legislature at each stage of the legislative process. It appears unlikely that the Bill will pass into law in its present form.

#### THE PATHS TO SPOUSAL EQUALITY

Bill 167 does not attempt to guarantee complete legal equality to gay and lesbian couples. Under existing legislation, heterosexual couples can become spouses in one of two ways: by marrying or by living together in a conjugal relationship outside of marriage for a defined period of time. Married people are "first-class" spouses in the sense that they have a fuller package of legislative rights that are effective whether or not

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