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Please note: *The opinion(s) expressed in this letter by the writer, are stated considering the limited information available to him and may not be the same where further information were made available to him, is not intended and neither must be perceived to be legal advice!*

WARNING

WITHOUT PREJUDICE

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AND TO WHOM IT MAY CONCERN

23-9-2008 SUBMISSION

Sir/Madam,

As I understand it by the various publications there is a request for idea's as to set up a new tax system but surely would it not be better to first address the basics as to what really are the constitutional powers and limitations of the Commonwealth regarding taxation matters?
 Lets have a look at the holder of the record of being the longest serving treasurer Mr Peter Costello and it is clear to me the man simply didn't have a clue what really the basics of constitutional powers were about and neither those before him or following him.

In 2007 the **ATO** (Australian Taxation Office) contacted me about what it claimed alleged failure to provide tax returns for a number of years and basically I told them to go and fly a kite and do not bother me with their nonsense. Sure, the ATO tried to rely upon the *O'Meara* case that the GST was constitutionally valid but as I made clear the *O'Meara* case was ill conceived and I demand all GST defrauded from me to be repaid. Well the ATO then responded that it acknowledged that I had a considerable knowledge about constitutional issues but that as an "organ" of the Crown it was bound to apply the laws enacted by the Commonwealth of Australia. The following applies as much to Federal laws of the Commonwealth of Australia as it does to federal laws in the USA; <http://familyguardian.tax-tactics.com/Subjects/LawAndGovt/ChallJurisdiction/AuthoritiesArticle/AuthOnJurisdiction.htm>

37 Am Jur 2d at section 8 states, in part: "Fraud vitiates every transaction and all contracts. Indeed, the principle is often stated, in broad and sweeping language, that fraud destroys the validity of everything into which it enters, and that it vitiates the most solemn contracts, documents, **and even judgments.**"

And

The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land. The U.S. Constitution is the supreme law of the land, and any statute, to be valid, must be in agreement. It is impossible for both the Constitution and a law violating it to be valid; one must prevail. This is succinctly stated as follows:

The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it. An unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted. Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it. . .

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JUSTICE IS IN THE EYE OF THE BEHOLDER AND CLOUDED BY HIS/HER SIGHT DEFICIENCY

A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby.

No one is bound to obey an unconstitutional law and no courts are bound to enforce it.

5

Sixteenth

American

Jurisprudence

Second Edition, 1998 version, Section 203 (formerly Section 256).

10 Meaning that an “**organ**” of the Crown cannot enforce unconstitutional legislation as the legislation is and remains without legal force. More over, as I pointed out the Commonwealth of Australia after a 5-year litigation had been comprehensively defeated by me on 19-7-2006 in the County Court of Victoria on all constitutional and other legal issues I had submitted to the court and there is now a **DIRECT** and **COLLATERAL ESTOPPEL** against the Crown to re-litigate those issues. Yes, taxation issues were also part of that case!

15 The way the system operates is that while the Framers of the Constitution made clear that the moment a citizen challenged the validity of legislation then it was **ULTRA VIRES** from interception unless and until a Court of law declared it to be **INTRA VIRES**, reality is that despite this not having been declared **INTRA VIRES** the Governments of all persuasions could not care less and continue their unconstitutional and so unlawful conduct. As such it is not that the Court declares a legislation to be unconstitutional but that when it is challenge it is deemed to be **ULTRA VIRES** and remain to be so unless a Court declares it, if ever at all, **INTRA VIRES**.

25 Government are well aware that generally courts are, so to say, corrupt that they will railroad any case that may be instituted against it and then the court will issue huge cost against citizens as a deterrent for them to come back to the courts. It is regrettable that this is the *modus operandi* that is existing but there can be no doubt that it is ongoing occurring. Indeed, when one look at the basics of terrorism you find that generally the basics is that governments have overstepped their marks and people having taken their complaints to the Courts and found not to be able to obtain **JUSTICE** then resort to their kind of **JUSTICE!**

30 I for one do not at all support this kind of response albeit I can **UNDERSTAND** that people in desperate situations will end up doing desperate things. After all since 1982 I have conducted a special lifeline service under the motto **MAY JUSTICE ALWAYS PREVAIL®** and often found that merely by being there to listen was resulting to avoid suicide/murder. As an attorney I have assisted many over the decades in their litigation albeit never was some leech of a lawyer to for financial benefits as I provided my services **FREE OF CHARGE**. My satisfaction simply is 35 the knowledge to have assisted a person to obtain **JUSTICE**.

40 The attempt to get a **new tax system** in place might be plausible if it is based upon what constitutionally is permissible. If it is merely more of the same rot that has been going on then we are all basically wasting our time.

45 In litigation and at other times I experience often people to criticise me for lack of proper grammar and typing errors as if somehow they are superior by having had some form of education in the English language. I do not mind people to make me aware of errors if this is done in a positive manner but lawyers often are playing with it in the court room as if they are superior. Well, at the end of the case they are defeated comprehensively and this is because while their ability to use the English language might be far superior then that of myself (without ever having had a former education in the English language and neither it being my native language) but in the end what it comes about is what is constitutionally applicable and permissible.

50 Because the scandalous conduct by the courts to apply double standards to railroad genuine cases on any technicality even upon non-existing technicalities while on the other hand allowing

Crown solicitors to roam around no matter how much they fail to comply with the rules of the Court and legislative provisions it was obvious to me that going to Court as to take the Government to task isn't going to get me anywhere other than knowing I might end up with an order of cost and that is it. Therefore the tactic is to get the Crown's lawyers to take the case to Court and then defeat them comprehensively in Court as now it is a totally different, so to say, ball game. Now the Court cannot railroad an application because it is the Crown who institute proceedings. If I were to institute proceeding for a refund of all fraudulent GST that was elicited from me I would basically have hope in hell to get anywhere as judges more than likely will refuse to accept my application on any legal nonsense they can come up with but if I refuse to provide tax returns then the onus is upon the Crown to take me to Court and then the Court cannot ignore the GST issue. Now, as I pointed out to the ATO if they take me to Court then are faced with the fact that there already is a ruling against the Crown of 19 July 2006 and so that is the very first hurdle they have to overcome. Then if in the end they loose the case, to which I have no doubt they will, they are faced that as the Framers of the Constitution made clear that all unconstitutional taxes raised has to be refunded to the tax payers. They also debated at length that the Commonwealth cannot provide retrospective legislation as it would basically make a criminal of a person while at the time having acted lawfully. I will make it very clear that regardless if Members of Parliaments are claiming to be lawyers/barristers or not I can have them all sitting a test on constitutional issues I design and each and every one of them will fail the test. Likewise those employed in the treasury. I merely have to look at how taxation laws are produced and it is obvious to me the blind are leading the blind.

Recently I became involved with setting up a company which involves also a major bank. As usual I detected numerous legal issues of concern to me and raised the issues only to get the response that I am too legalistic and should not worry about it. Well, I am not that kind of person as I am too well aware how so many shareholders lost their life savings because directors of companies didn't bother to check what they should have checked, etc. sure the Bank has been doing its business for years on end and hardly like it that I suddenly expose errors but I view they should not blame me for exposing this rather they should look at those who made the errors. Likewise so with the Government and its departments, it should not take offence against me because I expose matters but rather have taken aboard what I exposed was being conducted unconstitutionally and so unlawful and seek to correct matters.

Lets give an example.
I was a candidate in the 2001 and 2004 federal elections but upon constitutional grounds opposed to be compelled to vote. Now, lawyers ongoing were telling me that I didn't know what I was talking about (and using my lack of skills in the English language as an example) yet in the end they were defeated in Court. Regardless what Section 245 of the *Australian Electoral Act 1918* states the court upheld my submission that it was unconstitutional to force anyone to register and/or to vote. Sure, the Government is nevertheless continuing its unconstitutional nonsense and this underlines what I have set out above, they are a lawless bunch who could not care what is constitutionally applicable.

Lets take another example;
The Crowns lawyer were faced with that I challenged on constitutional grounds that it (the Crown) could not use "AVERMENT". After a day of legal arguments by the Crowns lawyers they were again comprehensively defeated by me. Yet, Crowns lawyers are still using **AVERMENT** in many cases by this concealing from the Courts that there is a ruling against it and by this conspiring to pervert the course of justice.
Now what kind of Government can this be where judicial decisions are blatantly ignored?
Obviously if the Crown had succeeded it would have ongoing been referring to it.

We are all aware how the Government of the Day may, being it for electoral purposes or otherwise legislate some sweetener or other taxation bill to increase and/or decrease taxation, in particular where it comes to an election lead up. Now, the fact that treasury goes along with this unconstitutional conduct shows that not even the Members of Parliament and neither any of the treasury realise that constitutionally there are limitations when and if any taxation legislation can be enacted.

Later this year I intent to publish another book in the **INSPECTOR-RIKATI®** series on certain constitutional and other legal issues;

INSPECTOR-RIKATI® about the BLACK HOLE in the CONSTITUTION-DVD
A 1st edition limited special numbered book on Data DVD
ISBN 978-0-9803712-6-0

It will expose details no lawyer/judge, constitutional or other law professors ever contemplated is happening in regard of the Constitution and this all because of the vandalism done to it since federation. While the Commonwealth can engage highly paid barristers who may defeat ordinary citizens such as by perverting the course of justice but in the end that is a hollow victory as it is the community that suffers. As I have made clear in past published books also what is needed is an **OFFICE OF THE GUARDIAN**, a constitutional council, that advises the Government, the People, the Parliament and the Courts as to constitutional powers and its limitations.

If the treasury or any parliamentarian committee doesn't even have a clue what is constitutionally permissible then what on earth is it about to try to create some new taxation system? Would it not be better to get the basics right first?

Did anyone in the treasury ever understood that constitutionally the minimum and also the maximum life of any taxation legislation is for the duration of the following financial year and that taxation legislation are partnering with appropriation bills and must be presented together?

Oops, with all those lawyers in the Federal Parliament and who knows how many other highly paid lawyers on the books by the Federal Government and all its other constitutional advisors this is something that despite all their educated skills in the English language never was understood by them. It turns out that my lack of skills in using the English language is turning out rather to be a bonus because it causes me to concentrate on what the real meaning is of words rather than to merely assume it.

There has been arguments that State Governments have no legislative powers to legislate as to taxation matters and again those fools who push this barrow simply do not know what they are talking about as the Framers of the Constitution made clear that the States would retain the residue of taxation powers not used by the Commonwealth. Again they debated this at length. So perhaps I could advise the treasury and parliamentarians to try to use my "**crummy English**" and then perhaps they might learn to comprehend what really constitutional taxation powers and limitations are about and realise that the Commonwealth is facing to repay all GST so far collected as retrospective legislation cannot be made in that regard.

Perhaps the Treasury would do better that before trying to get onto another new tax system it deals with issues such as those I have set out above because it is like building a house on drift sand if you are going to build a new tax system partly on no existing constitutional powers.

Let me use an example;

When you have a fly and an elephant then obviously the elephant can squash the fly. However, the fly can simply infect the elephant with a virus and then the size and weight of the elephant is to no avail. The fly will succeed over its opponent.

5 The Commonwealth is like the elephant and I might be compared with the fly where instead of using any virus I merely use the strength of the Commonwealth as a weapon against itself. I let it take me to Court and then use this to succeed in Court against it where otherwise I basically would have no hope in the world to get anywhere because of the way the courts are operating.

10 I know too well that Government department tend to ignore what is constitutionally appropriate and that is the so to say virus that then can be used against the Commonwealth.

If more citizens were to employ this strategy to bring down those who are using unconstitutional methods then we all might be the better for it.

15 In the September issue of **ABOUT THE HOUSE** published by the House of Representatives the page 13 article headed "**Dunny money sparks debate**" related to the so called Regional Partnerships Program" that also was used to build several toilets in community halls.

20 My correspondences to Mr. Kevin Rudd PM has set out that such kind of funding is unconstitutional to be conducted by the Federal Government as the Framers of the Constitution made clear that the Commonwealth of Australia could only use appropriations for matters for the "WHOLE OF THE COMMONWEALTH" with the exception of the special constitutionally created (Section 101) Inter-State Commission which had special powers to divert from the principle of "WHOLE OF THE COMMONWEALTH" pending the interest of the relevant State. If treasury doesn't even comprehend what is constitutionally permissible or not then rather than to waste time trying to set up a new tax system it might just do better to learn from my books what is relevant to them and then we might just get an improvement. More over, we might also avoid considerable abuse of Consolidated Revenue and reduce taxes instead of increasing taxes.

30 While I realise you may disregard my submission because the mentality created by those working in the treasury and in parliament might be that I am wrong and they are right, but again, in the end when it came to litigation I defeated the Crown comprehensively. As such, I would urge you to appropriately consider what I have set out above and before seeking to embark on any new tax system seek to explore what is currently done unconstitutionally so as to avoid any new tax system to inhered the same rot. As a stated above also taxation laws are coupled with 35 Appropriation Bills and as such better also look at the way unconstitutionally monies are appropriated from Consolidated Revenue. I will not go into details now but rest assure my various published books already deals with matters as will be my forthcoming book.


Signature

Awaiting your response,

G. H. SCHOREL-HLAVKA

