

## CHAPTER 1

### From CAP to the CHST: The Losses

#### Introduction

Women all over the world are struggling with increasing economic inequality and with the impact of restructuring, whose elements include reducing the size of government, deregulating markets, privatizing services, and cutting social programs. In Canada there is another element in the restructuring dynamic: the push for increased devolution of responsibility to the provinces, with a concomitant weakening of the capacity of the federal government to play a constructive role in creating and maintaining a Canadian social safety net.

The future of social programs and arrangements between levels of government for allocating resources and responsibilities is inextricably intertwined. Because of this, the *Budget Implementation Act (BIA)* represents both the most significant change in social policy and the most significant change in relations among Canadian governments since the 1950s. It has implications for Canada's ability to maintain coherent and equitable standards for social programs, for the distribution of power and responsibility between federal and provincial governments, and consequently for the shape of the Canadian state.

Many Canadian women now fear that the “social union” or the “social Canada”<sup>1</sup> that they believe in, and have relied on, is disappearing. The spectre arises of a diminishing patchwork of social programs, different in different provinces and territories, inconsistent in goals, form, and adequacy, and vulnerable to changing political temper.

In this chapter we ask: What was in the Canada Assistance Plan (CAP)? What does the *BIA* take away? What is the history of national standards for social programs and the federal government's role in setting them? We ask further: Is the federal government's role as national standard setter essential? If it is essential, how should the federal government as standard setter relate to Quebec, and how does this affect the national unity debate?

#### The Larger Frame

##### The Material Inequality of Women

The *BIA* is important to women because of their high rate of poverty and general economic inequality. This legislation fits into a larger pattern of government decision making that ignores, and consequently threatens to exacerbate, women's economic inequality.<sup>2</sup>

There is a tendency for discussions about poverty and social programs to become divorced from a critique of underlying unequal power relations and of social institutions. The gendered dimensions of poverty are rarely acknowledged. Poverty is seen as an indication of individual weakness, as individual tragedy, as an abstract social ill, or, currently, as a problem of children but not of their

mothers, grandmothers, and aunts. For its effects to be fully understood, the *BIA* must be seen in the larger context of women's economic inequality.

Women in Canada are poorer than men and face a higher risk of poverty.<sup>3</sup> In 1995, 57 percent of all persons living in low-income situations in Canada were women: 2.059 million women.<sup>4</sup> At all ages and stages of their lives but one, the rates of poverty are higher for women than for men; however, the differences between the sexes are most pronounced in the youngest and oldest groups.<sup>5</sup> In 1995, 18.2 percent of women, compared to 14.3 percent of men, were living in poverty.<sup>6</sup>

Single mothers and other “unattached women” are most likely to be poor, with poverty rates for these groups reaching as high as 57.2 percent for single mothers under 65, and 43.4 percent for unattached women over 65.<sup>7</sup> The poverty rates for single mothers are much worse when the figures are disaggregated by their ages and the ages of their children. Single mothers with children under seven had poverty rates as high as 82.8 percent in 1995, and single mothers under age 25 had a poverty rate of 83 percent.<sup>8</sup> Poor single mothers under 65 are also living in the deepest poverty, with incomes \$8,851 below the poverty line in 1995.<sup>9</sup>

Poor mothers have poor children. In 1995, 20.5 percent of all Canadian children under 18 were poor,<sup>10</sup> the highest rate in 16 years. The poverty rate among children with single mothers was 62.2 percent.<sup>11</sup>

Aboriginal women, immigrant women, visible minority women, and women with disabilities are more vulnerable to poverty than other women. In 1990, 33 percent of Aboriginal women, 28 percent of visible minority women, and 21 percent of immigrant women were living below the low-income cut-off, compared to 16 percent of other women.<sup>12</sup> Also, at all ages, women with disabilities have lower incomes than women without disabilities or men with disabilities.<sup>13</sup>

While national data on welfare recipients<sup>14</sup> is not disaggregated by sex, extrapolating from statistics on “family type” it is reasonable to estimate that more adult women than men receive social assistance.<sup>15</sup> Children are the largest group that receives social assistance in Canada.<sup>16</sup>

Women have a higher incidence of poverty. But even when their incomes are above the poverty level, they are not economically equal to men. Though women have moved into the paid labour force in ever-increasing numbers over the last two decades,<sup>17</sup> they do not enjoy equality in earnings, or in access to non-traditional jobs and managerial positions,<sup>18</sup> or in benefits.<sup>19</sup> The gap between men's and women's full-time, full-year wages is, in part, owing to occupational segregation in the workforce that remains entrenched and to the lower pay that is accorded to traditionally female jobs. Though the wage gap has decreased in recent years, with women employed on a full-time, full-year basis now earning about 72 percent of the amount earned by men in comparable jobs, part of this narrowing of the gap is due to a decline in men's earnings as a result of restructuring, not to an increase in women's earnings.<sup>20</sup>

The average annual income of women from all sources is about 58 percent of men's income,<sup>21</sup> and there is an equivalent gap in pension benefits, with women receiving only 58.8 percent of the Canada Pension

Plan/Quebec Pension Plan (CPP/QPP) pension benefits that men receive.<sup>22</sup> This significant gap in annual income is due, in part, to the wage gap, but also to the fact that women work fewer hours in the paid labour force than men. They work fewer hours because they cannot obtain full-time work,<sup>23</sup> and because they carry more responsibility for unpaid care-giving duties.<sup>24</sup> As of 1994, 40 percent of women, compared to 27 percent of men, held non-standard jobs,<sup>25</sup> that is, they were self-employed, had multiple jobs, or jobs that are temporary or part-time. These jobs are unlikely to be unionized and unlikely to provide pensions or benefits.<sup>26</sup>

Visible minority women, Aboriginal women, and women with disabilities earn less than their male counterparts, and less than other women in most age groups.<sup>27</sup>

Although women's earnings are substantially lower than men's, women play a significant role in keeping their families out of poverty through their earnings. Without women's earnings, poverty rates would rise dramatically and the number of poor families would more than double.<sup>28</sup>

In addition to diminished rewards for their labour, women do not enjoy an equal share of wealth, including property, savings, and other resources. This means that their opportunities to make autonomous choices regarding relationships, education and work are restricted.<sup>29</sup>

It is clear that female sex, motherhood, and single status are significant determinants of poverty. Being a woman of colour, an Aboriginal woman, or a woman with a disability further increases the risk of poverty. It is also clear that women generally are economically unequal to men, and that race and disability complicate and deepen that inequality.

Women's persistent economic inequality is caused by a number of interlocking factors: the social assignment to women of the unpaid role of caregiver and nurturer for children, men, and old people;<sup>30</sup> the fact that in the paid labour force women perform the majority of work in the "caring" occupations and that this "women's work" is lower paid than "men's work";<sup>31</sup> the lack of affordable, safe child care;<sup>32</sup> the lack of adequate recognition and support for child care and parenting responsibilities that either constrains women's participation in the labour force or doubles the burden they carry; the fact that women are more likely than men to have non-standard jobs with no job security, union protection, or benefits;<sup>33</sup> the entrenched devaluation of the labour of women of colour, Aboriginal women, and women with disabilities; and the economic penalties that women incur when they are unattached to men, or have children alone. In general, women as a group are economically unequal because they bear and raise children and have been assigned the role of caregiver. Secondary status and income go with these roles.

To eliminate this inequality requires removing the economic penalty from doing "women's work"; valuing caregiving and nurturing work, both socially and economically; spreading the responsibility for it more evenly across society; compensating for the insecurities inherent in non-standard work; and eliminating economic insecurity as a means of keeping women attached to men.<sup>34</sup> Economic autonomy for women requires access to stable, decent-paying jobs with benefits, or access to other sources of incomes, such as adequate social assistance and pensions. It also requires that women can have children *and* adequate incomes. Without these opportunities, women, too often, have no choice but

dependence on men, or poverty. Neither is a formula for equality.

The fact that the incidence of poverty is high and persistent among women and children makes it obvious that poverty cannot be dealt with unless the particular nature of women's poverty is addressed. Social policy has been unsuccessful at diminishing the substantial differences in the risk of poverty between single mothers and other unattached women, on the one hand, and couples, single fathers, and unattached men on the other.<sup>35</sup> Nor has it succeeded so far in putting women, economically, on an equal footing with men, and in changing the economic imbalance of power in most women's individual relationships with men, or between women and men as groups.

Women are not poor for the same reasons that men are poor; and women, as a group, experience economic inequality with all its ramifications. The lack of success in eliminating these conditions is directly attributable to an unwillingness on the part of policy makers to acknowledge that poverty and economic inequality have a gendered character that is further complicated by racism, and discrimination based on disability.

### **Restructuring**

The *BIA* must also be situated in the context of global restructuring. Restructuring has been presented to women as a natural force over which governments have no control.<sup>36</sup> Isabella Bakker describes it this way:

In the last few years, the term restructuring has been used as a “buzzword” referring to a necessary but painful process of change for Canadians. In general, restructuring is presented as a response to the inevitable pressures of global liberalization. The new global economy, we have been told, requires increased international competition between countries for investment and production, a greater emphasis on trade, and less government spending and regulation of the economy. In other words, governments have no choice but to adapt their domestic economies, particularly the fiscal side, to the new demands of an increasingly global economy. Treaties and international trade agreements such as NAFTA reflect governments' intentions to create a favourable investment climate for foreign capital. Firms, industries, and workers are also being challenged to be more “flexible” and “competitive” in an effort to stem the outflow of manufacturing operations to countries of the South.

The internationalization of production is the most obvious manifestation of the forces driving restructuring. Broadly referred to as globalization, what it signals is a transformation of the methods and locations of production. Technological and managerial changes are taking place that allow firms to divide the different aspects of their operations globally in order to take advantage of the lowest-cost raw materials, the best research and development, the highest-quality assembly, and the most effective marketing.

...

Nation states' responses to transnational production are increasingly circumscribed by

a neo-liberal consensus that imposes the same demands on all governments: the need to reduce state spending and regulation, maximize exports, and enable market forces to restructure national economies as part of transnational or regional trading blocs. The economic becomes self-regulating and depoliticized in the sense that the imperatives of efficiency and competition become inevitable, imposed by some external force over which people have no control. ... Its presentation as a universal force makes “restructuring” appear apolitical and, in conjunction with this, gender, race, and class neutral.<sup>37</sup>

The neo-liberal economic agenda also dictates a particular approach to government. The private sphere — the home, the market — is considered worthy of enlargement and sanctification, and the public sphere, including the institution of government itself, is considered dangerous and best kept small. When governments follow this agenda, they treat their capacity to impose limits on the market, in the name of collective values, as suspect, and permit the unqualified assertion of market-oriented values, such as self-reliance and competition.<sup>38</sup> The citizenry becomes individualized. The emphasis is not on understanding and addressing the “social and structural foundations of dependency”<sup>39</sup> but on “individual solutions to what are perceived to be individually determined problems.”<sup>40</sup>

The *BIA* is a prominent Canadian example of restructuring. It both reduces social spending and privatizes dependency, as programs and services formerly considered to be public are eliminated, and people are enjoined to turn to the private sphere of the family and the market to have their needs met.

The reduction in social spending and the dismantling of social safety nets have been justified worldwide as necessary to deal with deficits. In Canada, it is telling that the *Budget Implementation Act* is the official name of the statute that brings restructuring to social programs. Before the introduction of the *BIA*, the federal government had been engaged in a public review of social security programs. This was pre-empted by the February 1995 budget announcement. Government documents issued prior to the 1995 budget are replete with comments that blame the deficit on rising social program costs. A 1994 federal government publication *Improving Social Security in Canada: The Context of Reform, A Supplementary Paper*, states: “Our ability to pay for social programs is stretched to the limit. ... These trends toward ever greater expenditure cannot be sustained. Economic well-being and a healthy labour market are being jeopardized by the size of the deficit. Reducing the federal deficit will inevitably require lower spending on many governmental activities, including social security.”<sup>41</sup>

However, many critics point out that increases in social spending have contributed very little to creating deficits and debt.<sup>42</sup> Economists Mimoto and Cross argue that government spending on social programs did not increase between 1975 and 1990, and accordingly that the deficit cannot be due to government social spending.<sup>43</sup> Lisa Philipps states that,

The notion that excessive social spending was somehow responsible for the deterioration of Canada's fiscal condition has now been thoroughly discredited. Looking back on the last two decades, numerous analysts have concluded that an extraordinarily high interest rate policy, combined with the lower employment and economic growth that high interest rates helped to engender, are overwhelmingly responsible for the dramatic rise in the debt

burden. Nor are social spending cuts primarily responsible for the recent success of some governments in shrinking or even eliminating their deficits. Rather, the explanation lies in the increased revenues they are enjoying in a period of stronger economic growth, helped along by lower interest rates. It is interesting to note that the same economic factors were responsible for diminishing the massive levels of public debt accumulated during the war years. These facts cast grave doubt on whether the degree of social spending cuts was ever warranted or needed to balance government budgets.<sup>44</sup>

There are other reasons for scepticism about the legitimacy of invoking the deficit as a rationale for current directions. As progressive Canadian scholars and activists have persuasively argued, it is an inadequate analysis of costs and benefits that chooses to focus only on the costs associated with social spending, without taking account of the costs of *not* engaging in adequate social spending. Social spending is not just an expense; it is a necessary social investment, the lack of which also has costs.<sup>45</sup> One significant cost of *not* spending on social programs is that women's inequality is reinforced. Not spending is not gender-neutral.<sup>46</sup>

However, governments do not admit this fact. Rather, they have pursued a course of persuading Canadians that social expectations must be reduced, and that social programs, as we know them, are beyond our means. This choice of political direction is a significant move away from the redistributive values that are key to women achieving equality. It also means that women are taken for granted. It is assumed, when social programs are cut, that women will provide unpaid care for children, husbands, elderly parents, and others. Numerous studies now show that the demands on women to play this role have serious consequences for their health, their incomes, and their autonomy.<sup>47</sup>

It is clear that, in the name of deficit reduction and restructuring, both the current federal Liberal government, and the Conservative government before it, have used the cover of economic policy to depoliticize highly value-laden decisions. These decisions have been characterized as urgent fiscal decisions that serve the common interests of all Canadians, in order to block critics from debating their ideological content and their social impact. Deficit rhetoric relies on quantification and a mathematical version of reality, but the choices made are not neutral. Lisa Philipps argues that,

technical discourses have worked to depoliticize one of the most pressing social conflicts of our time, translating it into a matter of expert knowledge and shrinking the space for popular resistance to the harmful effects of such policies on many citizens. At the same time, they have helped to legitimate the way restraint policies exploit and deepen class, gender and other social inequalities, by promoting an ideological vision of society in which market power is minimally constrained, and individuals are held personally responsible for their own economic difficulties.<sup>48</sup>

In Canada, blocking debate over the ideological content and the social impact of restructuring is further assisted by the shift of power and responsibility to the provinces to design and pay for social programs and services. The impact of the restructuring of social programs and services is thrust out of public debate, both by being characterized as a neutral economic issue, and by being driven into a

fragmented sphere of provincial and territorial jurisdictions, where there is no identifiable venue for discussion of the overall impact on Canada and on its most disadvantaged people.

## **National Social Programs and Fiscal Federalism**

There can be no doubt that the repeal of the CAP, combined with the shift to the CHST, represents an extremely serious threat to the social security system in Canada. In one fell swoop the federal government has eliminated the regulatory underpinnings and the funding framework for crucial components of a national safety net, including social assistance, counselling and referral services, child care, child welfare programs, community development services, legal aid, and services for persons with disabilities. The shifts effected by the *BIA* have been referred to as “a fundamental watershed in the evolution of Canadian social assistance policy,”<sup>49</sup> and as “the most important social policy changes in Canada in almost thirty years.”<sup>50</sup> To understand these shifts, it is essential to look more closely at how social programs in the areas of health, post-secondary education, and welfare developed in Canada, the fiscal arrangements that have supported these social programs, the content of national standards, and the role of the federal government.

### **Health**

For the last 30 years, Canada has had national standards for health and social assistance. These standards were set out in federal legislation in the *Medicare Care Act*, the *Canada Health Act (CHA)*, and the CAP, even though health and social assistance (as well as post-secondary education) fall into provincial jurisdiction under the division of powers in Canada's constitution. The national medicare and welfare programs were created and their standards were enforced through the use of the federal spending power. The story of their development is the story of fiscal federalism.

In 1948<sup>51</sup> the federal government first used the power of its treasury in the field of health by providing grants to the provinces for hospital construction, cancer control programs, and other specific health care services. Gradually, grants for other services were added. In 1953, after four provinces had initiated some form of public hospital insurance, the federal government introduced the *Hospital Insurance and Diagnostic Services Act*. Under this *Act* the federal government reimbursed 50 percent of the provinces' costs of providing specified hospital services under their insurance plans. By 1961 all provinces had joined this scheme.

In 1968 the *Medicare Care Act* came into effect. This provided medical care insurance similar to the hospital insurance that was already in place. Under this *Act*, “[t]he federal contribution to each province was 50% of the average national per capita cost multiplied by the province's population. Provincial expenditure levels were not taken into account directly, and no ceiling was imposed on the amount of the grant. Initially provinces were required to meet four conditions to be eligible for reimbursement: the provincial plans had to provide universal coverage, be comprehensive in the range of services covered, be administered by the province or an agency of the province, and be portable between provinces.”<sup>52</sup> Although medicare was invented in Saskatchewan, the federal government converted it into a national program by offering, on certain conditions, to share its costs. By 1971 all provinces were a part of the national medicare program.

In 1977 the financial arrangements were changed and the separate grants that the federal government provided for hospital insurance, medicare insurance, and post-secondary education were rolled into Established Programs Financing (EPF). Under this arrangement, the federal government transferred more “tax points” to the provinces; that is, it reduced its share of corporate and personal income tax and allowed the provinces to raise theirs proportionately.

Although both federal and provincial governments have constitutional powers to impose income taxes on individuals and corporations, in practice, the two levels of government coordinate and rationalize income taxes for the practical reason that they both look to the same tax base, that is, to the same taxpayers and the same income. At various times, one or the other level of government has agreed to cede some of its “tax room” to the other. In other words, one level agrees to reduce its income tax rate on the understanding that there will be a corresponding rise in the taxes collected by the other level. The amount of “tax room” ceded in this fashion is often expressed as a certain number of “tax points,” referring to the percentage points by which one level of government reduces tax rates in order to leave “room” for the other.<sup>53</sup>

In 1967 the federal government began ceding tax points to the provinces to replace part of its cash commitment for post-secondary education. In 1977, with the new EPF, the federal government gave up an additional chunk of tax points as part of a permanent arrangement for funding post-secondary education and health. It also provided block cash transfers to support both health and education, which gave an equal per capita payment to each province. This cash transfer was set at the level of 50 percent of the federal contribution to hospital, medicare, and post-secondary education programs in 1975–76. The cash transfer would grow from year to year to reflect changes in provincial population and growth in Gross National Product (GNP).<sup>54</sup> The 1977 EPF was an agreement through which the provinces agreed to provide post-secondary education and health services with the cash and tax points transferred by the federal government.

The National Council on Welfare explains how the EPF arrangement works on an ongoing basis in this way:

Each year, the federal government calculates its total commitments under EPF to each province and territory. It then calculates the revenue raised that year by the tax points that were transferred to each province and territory [in 1977], and it subtracts the tax revenue from total EPF entitlements. The amount left over is paid in cash by Ottawa.<sup>55</sup>

This change from cost sharing to block funding for health and post-secondary education was a result of unease at both federal and provincial levels. At the federal level, there was increasing concern about the open-endedness of the funding formula and the lack of control it afforded as health costs rose. As long as the federal government paid 50 percent of provincial health-care costs with no ceiling, its expenditures were dictated by provincial levels of spending. At the provincial level, there was resentment because of the extent of federal intrusion into the province's constitutional jurisdiction over health and education.<sup>56</sup> The shift to the block funding of the EPF meant that the amount of the federal government's cash transfer was no longer determined solely by the provinces. For the provinces, it meant that they were freer to allocate the funds between health and education according



to their priorities and with fewer conditions.<sup>57</sup>

In 1984, at the time when federal cash transfers were at their highest level, the *Canada Health Act (CHA)* was enacted to replace the legislation that dealt separately with hospital insurance and medical care insurance. The *CHA* sets out the five standards that provinces must meet in order to receive the full EPF cash transfer:

- accessibility: provide reasonable access to health care without financial or other barriers;
- comprehensiveness: cover all medically necessary hospital and medical services;
- universality: cover all legal residents of a province (after a three-month residency);
- portability: entitle residents to coverage when temporarily absent from their province or when moving between provinces; and
- public administration: administer health plans by an agency of the province on a non-profit basis.<sup>58</sup>

The *CHA* outlines the federal government's authority to enforce the standard of accessibility by reducing the cash transfer dollar for dollar if a province allows doctors to bill their patients or hospitals to charge user fees. It also allows the federal government to reduce the cash transfer if other standards are violated.<sup>59</sup>

Though the *CHA* articulates the standards and recognizes the federal role in the health field, legislation is not the key here. Both the existence of the national medicare program, and the enforcement of the five national standards flow from the federal government's (1) spending on a matter that constitutionally falls within provincial jurisdiction, and (2) conditioning the transfer of funds to the provinces on their adherence to the standards that it sets.

### **Social Assistance and Social Services**

As with health, national standards regarding welfare have been developed through the federal government's sharing the costs of social assistance and social services with the provinces and setting conditions on its contribution.

In the 1950s, the federal government passed the *Old Age Assistance Act*, the *Blind Persons Act*, the *Disabled Persons Act*, and the *Unemployment Assistance Act*. This legislation permitted the federal and provincial governments to share the costs of assisting low-income seniors, blind and severely disabled adults, and some unemployed people.<sup>60</sup> At the time, provincial and local governments provided allowances for single mothers and relief programs for others who were needy.<sup>61</sup>

In the 1960s, there were two major advances. The federal government introduced the Guaranteed Income Supplement (GIS) for low-income Canadians over 65. The GIS was simply added to the Old Age Security

Pension for those who passed an income test. It has changed markedly the rates of poverty among seniors in Canada.<sup>62</sup>

For people under 65, the CAP in 1966 overtook the scatter of programs operated and funded by both levels of government, replacing it with a scheme that meant “for the first time ever, welfare was available everywhere in Canada to all people who were unable to provide for their own needs.”<sup>63</sup>

Since that time, the CAP, a federal statute, has been the vehicle for federal-provincial cost sharing for social assistance, and for national standard setting in the welfare field. Peter Hogg says: “Without the federal initiative, and the federal sharing of costs, it is certain that at least some of these services would have come later, at standards which varied from province to province, and not at all in some provinces.”<sup>64</sup>

The CAP was adopted by Parliament in order to encourage provinces to develop social assistance programs that met national standards. In its preamble the CAP stated:

WHEREAS the Parliament of Canada, recognizing the provision of adequate assistance to and in respect of persons in need and the prevention and removal of the causes of poverty and dependence on social assistance are the concern of all Canadians, is desirous of encouraging the further development and extension of assistance and welfare services programs throughout Canada by cost-sharing more fully with the provinces in the cost thereof.

The CAP authorized the federal government to make payments to provincial governments, to enable them to finance and administer social assistance programs and other welfare-related services, subject to contractual conditions,<sup>65</sup> or in other words, standards. The standards included:

- accessibility: provide financial aid or other assistance to any person in need;<sup>66</sup>
- adequacy: provide an amount that is consistent with a person's basic requirements.

(The CAP defined basic requirements as “food, shelter, clothing, fuel, utilities, household supplies and personal requirements.”<sup>67</sup> In other words, the CAP established a minimum national standard of substantive adequacy for provincial social assistance programs.)<sup>68</sup>

- universality: impose no residency requirement as a condition of eligibility to receive or to continue to receive assistance;<sup>69</sup>
- right of appeal: provide a procedure for appeals for applicants for assistance from decisions of welfare agencies;<sup>70</sup> and
- right to refuse work: impose no requirement that recipients of assistance provide labour in a federal-provincial cost-shared work project.

The importance of the standards set out by the CAP cannot be overemphasized. Although, in our view, they were significantly incomplete, they provided basic entitlements. Because of these standards, residents anywhere in Canada were entitled to social assistance. Since the 1960s, Canadians have not been required to have a particular status, such as widowed mother, or to have a particular condition, such as blindness, to qualify for social assistance, but only to show that they meet an income test for eligibility.<sup>71</sup> Also, applicants were entitled to appeal decisions of the welfare-granting agency. Finally, the CAP, while not barring it completely, put a definite chill on workfare. Each one of these standards was essential to the dignity of those who found themselves without means.

Collectively, the CAP protections constituted crucial elements of a social safety net for people living in poverty. They were useful because they represented a kind of commitment by governments that they do not usually ignore lightly. Under the CAP, any provincial government that violated a funding agreement knew it was vulnerable to involvement in expensive litigation. An individual could sue the federal government, as Jim Finlay did in the early 1980s, for failing to require a province to meet the conditions of the CAP.<sup>72</sup> Provinces were also vulnerable to a withdrawal of federal funding.<sup>73</sup> Thus, the CAP gave social assistance beneficiaries a reasonable expectation that the CAP standards would be enforced by the federal government and respected by provincial governments.

As well as providing 50:50 cost sharing for social assistance, the CAP also provided 50:50 cost sharing of important welfare-related social services, including:

- homemaker services for the elderly, to assist them with shopping, cooking, cleaning;
- attendant services for people with disabilities, to allow them to live independently;
- child care services to assist parents with the care of young children while they completed their education, got training, or worked;
- services to unemployed people to assist them to enter or re-enter the workforce, by paying for start-up costs, such as transportation and clothing, or tools;
- child welfare services to assist children who are neglected or abused;
- services for women fleeing male violence and abusive relationships, such as shelters and transition homes;
- counselling services for individuals, couples, families, and children, to assist them with personal, health-related, or employment problems;
- information and referral services to direct people in need to counselling, training, shelters, or emergency support;
- respite services to assist parents caring at home for children with severe disabilities; and
- assistance in covering the costs of medically prescribed diets, wheelchairs,

special eyeglasses, and prostheses for people unable to purchase these necessities on their own.<sup>74</sup>

There was an incentive under the CAP for provincial governments to provide the services that were eligible for 50:50 cost sharing because for every 50 cents they spent, they could provide a dollar's worth of services for the residents of their province.

The CAP also committed the federal government to pay 50 percent of the real costs of social assistance and CAP-funded services in each province.<sup>75</sup> In other words, the CAP contemplated that the amount of money contributed by the federal government would vary in proportion to the levels of need experienced in a province.

Additionally, the CAP regulations required that funds contributed by the federal government under the CAP were available only as reimbursement to the provinces for actual expenditures on social assistance and social services;<sup>76</sup> that is, federal funds designated for social assistance programs and welfare services were not available for provinces to spend on other initiatives that might be more popular among the less needy residents of a province.

The National Council of Welfare estimates that in March 1994 there were about 3.1 million people on welfare, or about 11 percent of Canada's population, with one of the largest groups being single mothers and their children.<sup>77</sup> Two-thirds of CAP dollars have gone directly into social assistance and to legal aid for family and other non-criminal cases; the other third has been directed to administration and to CAP-funded services.<sup>78</sup> The National Council concludes that CAP-funded programs have, over 30 years, helped many millions of Canadians.<sup>79</sup>

### **The Impact of the *Budget Implementation Act***

Under the *BIA*, four things are lost:

1. The CAP standards are gone. The requirement that social assistance programs adhere to substantive and procedural standards is eliminated, along with the reasonable expectation that the federal government will enforce those standards.<sup>80</sup> Canadians no longer have an entitlement in every jurisdiction to social assistance, to an adequate standard of social assistance, to appeal decisions made by welfare agencies,<sup>81</sup> or to challenge in the courts transfers that do not meet the CAP conditions. And it is clear that provinces have been given the “flexibility” to require work for welfare. The only condition that survives in the CHST is that no residency requirement can be imposed on applicants for welfare.

By contrast, in the *BIA*, the *Canada Health Act* is retained with its five standards. This provides a clear indication that while the federal government considers medicare standards national icons, not to be vandalized overtly, the CAP standards do not have the same status and can be abolished without political penalty.

2. The 50:50 cost sharing for social assistance and social services is gone. Funds for social

assistance are now part of a block fund for health, post-secondary education, and social assistance, and each province receives funds in the same proportion as the 1995–96 transfers under the EPF and CAP.

The loss of 50:50 cost sharing for social assistance and social services is significant. Block funding does not reimburse for 50 percent of actual expenditures. It does not allow for the fact that welfare is a more volatile social program than health care or post-secondary education, and that funds required to adequately support it fluctuate with economic cycles and with rises and falls in the rate of unemployment.<sup>82</sup> Also, the loss of cost sharing means that an important incentive to provide the CAP-funded social services is gone, because now provincial governments have to pay the whole cost of those services.

3. The specific allocation of funds for social assistance and social services, which the CAP provided, is gone. Now, funds for social assistance and social services are rolled in with those for health and post-secondary education to provide to the provinces one comprehensive Canadian Health and Social Transfer. Further, despite its name, there is no condition requiring the provinces to spend *any* of the Transfer funds on health, post-secondary education, or social assistance. Consequently, provinces can allocate the transfer monies to health, post-secondary education, and welfare in whatever way they wish, or they can allocate the monies to none of these. Only if they spend some CHST money on health do they have to conform to the *CHA* standards, and only if they spend some CHST money on social assistance do they have to respect the no-residency-requirement rule for social assistance.
4. Finally, the amounts transferred to the provinces under the CHST are cut. Thomas Courchene notes that,

... the 1995 budget ... imposed two substantial cuts on the overall CHST entitlement — first a \$2.5 billion cut in 1996/97 from what the overall funding levels would otherwise have been (that is, beyond the previous cuts announced in the 1994 federal budget), and then a further \$1.8 billion cut in the overall CHST entitlements between 1996/97 and 1997/98. The result is a level for the CHST entitlement ceiling in 1997/98 of \$25.1 billion.<sup>83</sup>

Under the terms of the 1995 budget, the cash portion of the transfer was to be \$6.6 billion less in 1997–98 than in 1994–95, bringing the cash payments under the CHST to about \$11 billion for 1997–98.<sup>84</sup> As an election promise, the Liberal government cancelled the planned 1997–98 cut in April 1997, leaving the cash floor for the CHST at \$12.5 billion.<sup>85,86</sup>

### **The Controversy Over Financial Arrangements**

The 1995 budget cuts are not the federal government's first unilateral cuts to transfer payments for social programs, but rather the latest in a series. As Courchene points out, the federal government has been an unreliable and unpredictable partner in the financing of social programs for some time.<sup>87</sup>

In particular, after the initial financial formula was set in 1977 for the EPF transfers for health and

post-secondary education, a steady string of financial restraints was imposed on provincial entitlements between 1983 and 1995, with the result that federal cash transfers for health fell from paying for 36.5 percent of provincial health expenditures in 1980 to 21.1 percent in 1995.<sup>88</sup>

Also, the 50:50 cost-sharing formula of the CAP was changed abruptly in 1990 when, in the federal budget speech, without any prior notice, Finance Minister Michael Wilson announced a “cap on CAP” for the three wealthiest provinces: Alberta, British Columbia, and Ontario. Ottawa indicated that it would no longer be bound by the 50:50 formula; in these provinces it would limit any increase in its CAP contribution to 5 percent a year.

The CHST entrenches these cuts and adds to them. One of the problematic elements of the financial arrangements has been that the cash portion of the transfer is vanishing. The CHST is an extension of the EPF model, so it too is a combination of tax points and cash. Because under this formula the federal government calculates the current value of the tax points that were transferred in 1977 and subtracts this amount from the current value of the entitlements, the amount of the cash transfer is reduced as the value of the tax points rises. The combination of restraints on the overall amount of the entitlements and the rising value of the 1977 tax points means that the federal government has been gradually reducing the amount of the cash transfer. The cuts that were part of the 1995 budget made this reduction in the cash transfer dramatic. Without change, the cash transfers to the provinces would run out in about another decade.<sup>89</sup>

The provinces argue that only the cash transfers are felt as direct federal contributions to social programs, because the provinces consider the tax room transferred in 1977 to be a permanent part of their revenue base now.<sup>90</sup> As far as they are concerned, only the cash portion of the transfer matters. And, as the federal government's cash contribution diminishes, so does its ability to set or enforce any standards, including those in the area of health. The federal government has little leverage as its contribution declines. This is evident, for example, from the statement of the Western Premiers in November 1995: “All provinces agreed that it is unacceptable for the federal government to unilaterally prescribe structure and standards for social policy while abandoning their commitment to support social programs with adequate, stable and predictable funding.”<sup>91</sup>

There is, in fact, no reason for the CHST cash transfer to run out. Taking the deficit agenda at face value, the provinces have made a big contribution to reducing the federal deficit, and, as the federal government contemplates impending surpluses, there is no fiscal argument to support continuing reductions.<sup>92</sup> In fact, after the 1995 budget, the federal government indicated that it may not allow the cash portion of the transfer to decline to zero. As noted, during the 1997 election campaign, the Liberals promised to keep the floor for cash payments at \$12.5 billion.

One of the results of the history and the changing structure of fiscal federalism is that currently there is an intense, sometimes acrimonious, federal-provincial and interprovincial struggle under way over fairness. Because of the combination of the original 50:50 cost-sharing formula, the series of freezes and cuts to EPF, the cap on CAP, and the CHST allocation of payments to the provinces based on their 1995–96 level of EPF and CAP funds, the provinces do not receive equal per capita grants under

the CHST. Added to other reasons for tension, levels of payments are a hot issue, with vying claims of unfair treatment. How the CHST funds should be allocated after 1997–98 is an issue of nation-wide dispute.

There are many signs of this ongoing disagreement. For example, because of the effects of the cap on CAP,<sup>93</sup> the British Columbia government claimed that it had been treated unfairly by the federal government. It unsuccessfully challenged the cap on CAP in court. Subsequently it imposed a three-month waiting period on applicants for social assistance, contrary to the one CAP rule that survives in the CHST. The federal government held back \$47 million in payments as a penalty. British Columbia explained its actions by stating that it supports equalization payments, but it does not support the federal government taking funds from British Columbia in every program to redistribute to the poorer provinces. It complained that “Ottawa discriminates against the trio of prosperous provinces by failing to provide equal levels of funding for health, post-secondary education and welfare programs. ... Under the CHST, British Columbia is receiving \$472 per capita compared to Newfoundland's \$594.”<sup>94</sup>

In August 1996, writing for the Ontario government, Thomas Courchene developed a new model for an interprovincial economic and social union and a new structuring of transfer payments. He proposed that there should be a complete federal withdrawal from the funding of social programs by converting the CHST cash transfers into “additional equalized tax-point transfers.”<sup>95</sup> This was greeted with outrage by the Premiers of the poorer provinces, and it led Premier John Savage, of Nova Scotia, to make an impassioned speech to the Empire Club in October 1996 entitled “Two Canadas: The Have Canada and The Have-Not Canada.” He reported that in August 1996 at the First Ministers' Meeting,

Courchene was thrown from the train. ... Thomas Courchene's controversial paper on re-balancing federal-provincial social responsibilities gave us a defining moment. For the first time Nova Scotia and five other have-not provinces voiced a resounding and harmonious “no” to an option which obviously has some appeal to Canada's rich provinces. We said “no” to the Courchene scenario in which Ottawa would completely get out of social programs like health care and turn its cash transfers into equalized tax points for the provinces.

... The plain truth is Nova Scotia can't afford to let Ottawa vacate the social welfare field because, on its own, our province doesn't have the money to bankroll a takeover. Ontario, Alberta and British Columbia do. ...

It should be remembered that if every have-not province paid full fare for its social programs, this country's existing disparities would be greatly magnified. ... As our east-west economic links slacken to take advantage of the continental north-south pull, it's generally agreed we must maintain social bonds, like medicare, which Canadians recognize as national family traits — as entitlements of citizenship and unifying features of this country.

... Canadians in richer provinces should not have substantially better social programs than

those in poorer provinces.

It is important to note here that not only have contributions to social programs been cut, and national standards for social assistance repealed, with the exception of the no-residency-requirement rule, but the federal government also has imposed limits on its own use of the spending power with respect to any new programs. In the 1996 Throne Speech, the federal government announced:

The Government of Canada will not use its spending power to create new cost-shared programs in areas of exclusive [provincial] jurisdiction without the consent of the majority of the provinces. Any new program will be designed so that non-participating provinces will be compensated, provided they establish equivalent or comparable initiatives.

The federal government is backing away from using its spending power to create and set standards for social programs in spite of the fact that this practice is supported by the *Constitution Act, 1867*. Provincial programs for health, welfare, and post-secondary education fall within provincial jurisdiction. However, the federal government is permitted to spend in these areas, and to attach conditions to its expenditures in the form of national standards that bind the provinces. This issue has been squarely addressed by the courts.

In the case of *Winterhaven Stables Ltd. v. Canada (A.G.)*,<sup>96</sup> an Alberta taxpayer challenged the constitutional validity of various government spending statutes, including the CAP, on the grounds that they impinged on the legislative authority of the provinces. The taxpayer argued that by the power of its purse, the federal government unconstitutionally coerced the provinces into participating in certain programs in the fields of health, welfare, and post-secondary education.

The challenge was rejected in its entirety by the Alberta Court of Appeal, which held that the federal government has the constitutional authority to spend on social programs and to attach conditions to those expenditures. Moreover, the constitutional validity of the challenged spending statutes, including the CAP, was specifically upheld. The Court recognized that “... Canada, over many years, has established a robust posture in negotiating with provinces towards establishing these cost-shared programs which are intended to provide Canadians with common national standards of services.”<sup>97</sup> The Court even went so far as to acknowledge that the consequence is to “impose considerable pressure on the provinces to pass complementary legislation or otherwise comply with the conditions,”<sup>98</sup> and nevertheless upheld the federal government's standard-setting authority, commenting on the potential harm of federal retreat from cost sharing. The Court said: “To hold that conditions cannot be imposed would be an invitation to discontinue federal assistance to any region or province, destroying an important feature of Canadian federalism.”<sup>99</sup>

In short, *Winterhaven Stables* accords judicial recognition to the spending power of the federal government. Leave to appeal in *Winterhaven Stables* was denied by the Supreme Court of Canada.<sup>100</sup>

What conclusions should we come to? First of all, the federal government's authority to set and enforce



national standards is based on money. Historically, it has converted provincial programs into national ones by the use of its spending power, and also used this power to set and enforce national standards. Its right to do this has been constitutionally confirmed. However, if its contributions decrease, its power to shape or maintain a Canadian social union also diminishes. Many commentators have concluded that “[n]o federal cash means no enforceable conditions, no national standards, no realizable objectives for medicare or an income safety net.”<sup>101</sup>

The Liberal government acknowledged this problem, in part, during the 1997 election by promising that the cash portion of the transfer will not disappear and that a floor of \$12.5 billion for the cash payments will be maintained. It stated that while other federal parties have called for elimination of cash transfers to the provinces in favour of a transfer system based on tax points alone, “this would amount to an abandonment of the federal government's authority to uphold the fundamental principles of medicare. By continuing to provide significant cash transfers to the provinces, we will be able to retain this authority under the *Canada Health Act*.”<sup>102</sup> This statement is significant. While the Liberal government seems to concede that the federal spending power is an essential tool for maintaining and enforcing national standards, only national standards for health care now exist and only these receive attention.

With respect to other standards, the CHST directs the Minister of Human Resources to invite representatives of all the provinces to consult and work together to develop, through mutual consent, a set of shared principles and objectives for social programs.<sup>103</sup> This apparently envisions federal-provincial agreement on “principles and objectives” as a substitute for national standards for social assistance and social services. The federal government and the provinces have formed a Ministerial Council on Social Policy and Renewal. The provinces appear to believe that they can develop pan-Canadian standards that can be implemented effectively without the federal government using its spending power to enforce them. The provinces' resistance to the use of the federal spending power to enforce standards was demonstrated again at the December 1997 meeting of First Ministers on the social union. At that time, First Ministers, with the exception of Premier Lucien Bouchard, appeared to be in agreement about first steps for developing a new framework for Canada's social union. However, in reporting the results of the meeting, it became apparent that they disagreed over how the national standards in the *Canada Health Act* will be enforced in future. The Premiers thought it was a question open for negotiation; the Prime Minister responded that the federal government would continue to enforce the *Act* through the use of the spending power as before.<sup>104</sup>

There are many reasons to be sceptical about the provinces' ability to develop pan-Canadian standards that can be effectively implemented in the absence of federal enforcement through spending power. As Michael Mendelson points out, the track record on interprovincial agreement is poor, and provincial governments are not likely to agree to national standards that are meaningful and substantial. If consensus is required, this is likely to block agreement on standards that are more than mere platitudes. If they did agree on standards with substance, it is not clear how those standards would be enforced since the provinces would not have the ability to impose financial penalties on each other as the federal government has.<sup>105</sup> It is difficult not to conclude that there is no simple, effective alternative to the federal spending power to turn to for establishing and enforcing national standards

for social programs.

Secondly, social values have become lost in the fiscal struggle. Whereas fiscal arrangements were originally the vehicle for creating a comprehensive and equitable social safety net for Canada, they are now the main concern. There is no new social vision here, and what governments (although not the people) are most concerned about is whether they are, relative to each other, carrying a fair share of the cost of social programs. Governments are now arguing about “equality.” But the subject is not the “equality” of Canadian residents; rather it is the “equal treatment” of governments.

Keith Banting notes: “In most Western nations, debate focuses primarily on the role of social policy in redistributing income between high and low income groups. However, in Canada, the political intensity of linguistic and regional divisions ensures that social policy debate is also concerned with interregional distribution.”<sup>106</sup> He concludes that the 1995 budget is concerned principally with interregional, not interpersonal distribution, even though “Canadians ... have obligations to each other that go well beyond an interregional laundering of money.”<sup>107</sup>

Finally, there is a very strong decentralizing thrust to the CHST. Canadians may be left with 12 very different health and welfare programs and a federal government that, in the field of social policy, is only an instrument for some interregional equalization.

### **Why Should Standards Be National?**

Clearly, if we believe that social programs and social services are vital to women, and that standards are necessary to ensure the availability and adequacy of those programs and services, it follows that those standards should apply to all programs for all women. However, this brings us to the “national unity debate.”

Women's organizations have had more comfort than other groups with the idea that there could be differences among the powers allocated to different provincial governments. The National Action Committee on the Status of Women (NAC) and some other women's organizations have supported a “three-nations” position since the Charlottetown Round of Constitutional Talks, recognizing that Canada can be thought of, and governed as, three nations, with Quebec and Aboriginal peoples enjoying levels of sovereignty that would not be enjoyed by other provincial and territorial governments.<sup>108</sup> In February 1994, NAC described the perspectives of these “three nations” in its brief to the Standing Committee on Human Resource Development in this way:

Social programs are valued by all Canadians. At the same time, Canada's constitutional debates have demonstrated that English-speaking Canadians, aboriginal peoples and the people of Quebec have distinct perspectives on the role of particular governments in the management and delivery of social programs. A restructuring of social programs must respect these differences and not attempt to impose a formula which meets the needs of one national community onto the others. With respect to English-speaking Canada, this means respecting the desire of most Canadians outside of Quebec to have the Canadian government play a strong role in social programs. With respect to Quebec, this means recognizing that

the majority of Quebecers look to the Quebec government for the management and delivery of their social programs. With respect to aboriginal peoples, this means respecting their desire for self-government which includes control of social services. Furthermore, the multi-racial and multi-cultural makeup of Quebec and the rest of Canada must be recognized in the design and delivery of anti-racist and culturally appropriate social services.

Accepting these different perspectives, it is important to permit Quebec to develop social programs suited to its distinct cultural and social needs, and it is just as important to permit the rest of Canada to retain and improve “national” standards for its social programs, rather than abandoning them and blaming Quebec for their loss. Barbara Cameron points out that “there is a conflict inherent in existing Canadian federalism between the social rights of English Canadians and the national rights of Quebec.”<sup>109</sup> At present, Canadians in Quebec and the rest of Canada are being offered solutions that satisfy neither interest — too little provincial autonomy for Quebec and too much provincial autonomy for the rest of Canada.

In the rest of Canada, women experience the current shove towards decentralization, not as a new opportunity to increase the powers of the government nearest to them, but as the triumph of territorial interests over those of disadvantaged Canadians. Many women harbour a deep suspicion of the commitment of male-dominated provincial governments in the rest of Canada to values or policies that will assist women in the long term. Provincial governments do not advocate for more powers for themselves on the grounds that this power will enable them to provide more progressive social programs or advances for women. In fact, they do not try to persuade residents that decentralization is best for them on the terrain of values at all. Instead, they argue that further decentralization will eliminate duplication and “confusion,” or that they are defending the honour of their province by not allowing any other province to get more (money, or powers). Women see the need for national standards as a way to speak across regional interests, which, in the rest of Canada, often seem petty, parochial, and male.<sup>110</sup> They care about a strong role for the federal government not because they believe that the federal government will necessarily have women's interests closer to its heart, but because, by definition, its role is to cut across territorial interests. This provides an opening for some other values to be asserted.

Because women are so directly affected by social programs and social services, and by cuts to them, women need coherence, certainty, and adequacy. These cannot be provided without standards that provide parameters and guarantees for all women. While women in Quebec are likely to remain in Quebec in order to live and work in French, women in the rest of Canada move from one province to another, often not because of their own choice, but because of the dictates of family members or a spouse's work requirements.<sup>111</sup> This means that security for women in the rest of Canada requires that social programs are adequate in all the provinces and territories. The spectre that is raised for women, if there are no national standards, is of trying to lobby effectively nine provincial (not counting Quebec) governments, two territorial governments, and an increasing plethora of regional and community boards to whom responsibility for health care and social programs is being devolved. Far from bringing democracy closer to the people, this dispersion of responsibility makes it increasingly difficult for politically marginalized groups to have any impact.

Also, it is not the experience of women that the geographical proximity of a seat of government translates into greater government responsiveness. The gulf between women and governments is a gulf created by a lack of adequate mechanisms for women's democratic participation, and a lack of willingness on the part of government to create them.

The irony of the current impasse is that women in Quebec and women in the rest of Canada want the same thing from governments — practical realization of commitments to eradicating their inequality. Yet women in the rest of Canada are being told that they cannot have national standards for social programs that might ensure that practical realization, while women in Quebec are being told that they cannot have the national powers for their government that might ensure it. Any solution that actually satisfies the interests of Quebec and the rest of Canada will have to have two characteristics: (1) real content that expresses shared values and a commitment to addressing disadvantage, and (2) asymmetry with respect to powers in order to recognize the sovereignty of Quebec in the area of social programs, the desire of Aboriginal peoples to control social services in their own communities, and a central role for the federal government in social programs for the rest of Canada.<sup>112</sup>

At the time of the Charlottetown Round of Constitutional Talks, women argued against the principle of same treatment for the provinces as an unworkable version of equality to apply in a complex nation. Since that time, however, it has become more accepted, and in the 1997 elections the Reform Party presented its divisive version of it under the rallying cry of “equality of provinces and citizens.”

Slogan to the contrary, Preston Manning's vision of a new Canada is profoundly anti-egalitarian. To Preston Manning, “equality” simply means “same treatment,” and therefore, in his mouth, equality stands for a blatant refusal to deal with cultural difference, regional disparities, or disadvantage. “Equality of provinces and citizens” is a code for a form of devolution that elevates identical treatment for provincial governments to the status of a core social value, while abandoning a collective sense of responsibility for the well-being or equality of Canadians.

Central to the reasons that many women opposed the Charlottetown Accord was that it did not satisfy the demands of Quebec; it proposed to make new social programs more difficult to initiate by requiring that they have the support of seven provinces and 50 percent of the population; and it proposed to devolve powers to the provinces in the rest of Canada without speaking to the issue of maintaining standards for health, education, social assistance, or the environment. Though the Charlottetown Accord was defeated, it seems clear that the Accord is being implemented nonetheless through administrative decisions and budgets.

### **The Premiers' Principles and Executive Federalism**

The CHST has spawned the Ministerial Council on Social Policy Reform and Renewal. Established by the federal government and the provincial Premiers in 1995, all provinces and territories, except Quebec, appointed a Minister to this Council. The Premiers, who have taken the lead role so far in this configuration, asked the Council to “formulate common positions on national social policy issues” and “draft a set of guiding principles and underlying values for social policy reform and renewal.” The Council produced a report in December 1995, which was adopted by the Premiers in March 1996.

In the *Report* adopted by the Premiers, 15 “Principles” are offered to guide social policy reform and renewal. These principles are vague and sometimes contradictory. It is not clear in what way they can “guide” social policy reform and renewal.

The obfuscation of the gendered character of poverty and economic inequality is a feature of the *Report to Premiers*. Women appear in the last of the 15 Principles, but the language is reminiscent of the references in *The Federal for Gender Equality Plan* to the need for “gender-based analysis.”<sup>113</sup> Ironically, the need for gender-based analysis was acknowledged by the federal government at just about the same time as the CAP was repealed. The analysis of the impact of social policies on women is essential,<sup>114</sup> but we already know a lot about the inequality of women. Gender-based analysis will not be valuable if, rather than being a vehicle for making women's advancement a central goal of policy formulation now, it is used to provide backward-gazing reflections on the reasons for lack of progress.

With the exception of this fifteenth Principle, women appear in the remainder of the *Report to Premiers* as an unnamed social phenomenon. The *Report to Premiers* cites as one of the reasons for social policy reform the fact that “the family's role and the structure of society itself are changing.” To illustrate this, the *Report to Premiers* indicates that “the number of children per family is decreasing and the number of families headed by single parents has increased dramatically in the past few decades. As well, the percentage of two parent families with both parents working outside the home has increased significantly.”<sup>115</sup>

The fact that these changes in the “family's role” and the “structure of society” are principally a reflection of the changes in the lives of women over this period is obscured. The number of families headed by single parents has increased dramatically, and over 82 percent of these families are headed by single mothers.<sup>116</sup> The percentage of two-parent families with both parents working outside the home has increased significantly because women have gone out to work in the paid labour

## **The Premiers' Principles**

1. Social policy must assure reasonable access to health, education and training, income support and social services that meet Canadians' basic needs.
2. Social policy must support and protect Canadians most in need.
3. Social policy must promote social and economic conditions which enhance self-sufficiency and well-being, to assist all Canadians to actively participate in economic and social life.
4. Social policy must promote active development of individuals' skills and capabilities as the foundation for social and economic development.
5. Social policy must promote the well-being of children and families, as children are our future. It must ensure the protection and development of children and youth in a healthy, safe and nurturing environment.
6. Social policy must reflect our individual and collective responsibility for health, education and social security, and reinforce the commitment of Canadians to the dignity and independence of the individual.
7. Partnerships among governments, communities, social organizations, business, labour, families and individuals are essential to the continued strength of our social system.
8. There is a continuing and important role, to be defined, for both orders of government in the establishment, maintenance and interpretation of national principles for social programs.
9. The ability to fund social programs must be protected. Social programs must be affordable, sustainable, and designed to achieve intended and measurable results.
10. The long-term benefits of prevention and early intervention must be reflected in the design of social programs.
11. Federal constitutional, fiduciary, treaty and other historic responsibilities for assurance of Aboriginal health, income support, social services, housing, training and educational opportunities must be fulfilled. The federal government must recognize its financial responsibilities for Aboriginal Canadians, both on and off reserve.
12. Governments must coordinate and integrate social programming and funding in order to ensure efficient and effective program delivery, and to reduce waste and duplication.
13. Social policy must be flexible and responsive to changing social and economic conditions, regional/local priorities and individual circumstances.
14. Governments must ensure that all Canadians have access to reasonably comparable basic social programming throughout Canada, and ensure that Canadians are treated with fairness and equity.
15. Social policy must recognize and take into account the differential impact social programming can have on men and women.

force in growing numbers. Governments are unlikely to devise social programs that will lead to equality for women when they do not identify women separately from “family” or from “the structure of society.”

The *Report to Premiers* also states that the Council is building a framework that “increases appreciation for the strength of families and communities, and the role which they can play with other partners, such as business and labour.”

In practice, women know that “families and communities” means them; that “increasing appreciation for the strength of families and communities” is a way of saying that governments, after an all too brief period of relieving women of some of their burden of caregiving through public social programs, are in the business of downloading caregiving to women once more. “Social policy reform” seem to be code words that mean women will be expected to do more, not less, unpaid caregiving in their families and in their communities. Apparently lost in these Principles is the comprehension that social programs and services are essential to women's equality.<sup>117</sup>

The weakness of the Premiers' Principles is very disturbing, as is the fact that principles are what is on offer. The message is that national standards, as Canadians have known them, are not a part of the future, as far as the provinces are concerned.<sup>118</sup> The provinces state that the use of the federal spending power should not allow the federal government “to unilaterally dictate program design.” Instead, both orders of government will have a role, to be defined, in the “establishment, maintenance and interpretation of principles for social programs.” This statement is no substitute for standards that must be met as a condition of funding.

The *Report to Premiers* is now the basis for dialogue with the Prime Minister on the future of Canada's social safety net, and the basis for establishing a national framework for the reform process in areas of provincial/territorial responsibility. The key elements of this framework are: (1) the principles; (2) the agenda for reform being developed by the Ministerial Council with input from sectoral Ministerial Committees;<sup>119,120</sup> and (3) a mechanism for settling differences and monitoring national progress on social policy reform and renewal. The dialogue between the Prime Minister and the provinces apparently began in earnest in December 1997 when Prime Minister Chrétien and the Premiers of all provinces, except Quebec, agreed to start negotiating a new framework agreement for Canada's social union.

Unfortunately, this dialogue is premised on a report that, in its content, is disturbingly weak. Also, the *Report to Premiers* takes for granted a form of decision making that is disturbingly private.<sup>121</sup>

Decision making by the Ministerial Council on Social Policy Reform and Renewal, in combination with the First Ministers, constitutes a form of governance reminiscent of the Council of the Federation, an institution that was proposed by the federal government in 1991 during the Charlottetown Round of Constitutional Talks. The Council of the Federation was to be given the power to decide on issues of intergovernmental coordination and collaboration, including on the use of the federal spending power on new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial

jurisdiction. It was rejected by many at the time because it would be an institution of governance that lacked transparency and accountability, while being given authority over crucial decisions.

In the Ministerial Council on Social Policy Reform and Renewal and the Premiers' and First Ministers' Conferences that follow its work, executive federalism is being established as the vehicle for making decisions about social policy, the financing of social programs, and the distribution of responsibilities between levels of government. These are decisions that are central to women and to all Canadians. The problem with executive federalism is that the decision-making process is opaque; those who are affected have no access to participation; and decisions are not reviewed or confirmed by the Parliament and the legislatures.

This form of executive federalism is all too familiar, but the situation is worse. Women were sceptical of the proposed Council of the Federation at the time of the Charlottetown Round of Constitutional Talks because of the way in which constitutional talks had taken place in the 1980s. Women were excluded then, and women are being excluded now, when unprecedented shifts in social policy are taking place.

Ministers are, once again, dealing with vital questions behind closed doors; weak principles are proposed as a substitute for abandoned national standards; the federal government's clout has diminished; and groups affected by the decisions have no access.

This means that the federal government has stepped back, and the provinces have stepped into the centre of the social policy arena. While the provinces have an essential role to play, they are not capable of setting and maintaining enforceable standards for social programs for the rest of Canada. They lack the will to enforce against each other binding, meaningful standards, and they have no tangible and effective tool, such as the spending power, with which to do so.

This decentralization is not inevitable; the federal government could continue to play a strong role. But that would require an open and strong commitment to all social programs, not just health care, a willingness to provide secure long-term funding, the determination to develop and enforce meaningful standards, and the courage to make an asymmetrical arrangement with Quebec.

## **Conclusion**

Although the full implications of the CHST and the *BIA* have not yet made their way into social programs and services, the impact on women of this restructuring is already clear: It increases women's social and economic vulnerability.

Women's rates of poverty are disproportionately high. And women's vulnerability to poverty is higher than men's. Single mothers, Aboriginal women, women of colour, women with disabilities, and older single women are particularly likely to live their lives in poverty. Many women are only one beating, one marriage breakdown, or one non-standard job away from needing welfare. Many women count on the social services that have been funded under the CAP, such as child care, home care services, counselling, and job re-entry costs, to fill in essential gaps, to keep themselves and their families



afloat. Also, access to legal aid for family law matters and to shelters and transition houses are a *sine qua non* of women's equality.

The cuts to caregiving services that are taking place across the country both eliminate paid jobs that are mainly held by women, and push more unpaid caregiving onto women. This increases women's workload, constrains their participation in paid work, and makes them more economically dependent. It is clear that women's equality depends on the willingness of governments to counterbalance the powerful dynamics of patriarchy that keep women poorer, dependent, and marginal to decision making. Social programs and social services are a central means of assisting women to contend with conditions of social and economic inequality.

What is most disturbing of all, then, in light of the tight connection between social programs and services and women's equality, is that the most drastic changes to social programs of the last 40 years have been presented as a purely budgetary matter, unrelated to the rights of women.

## Endnotes for Chapter 1

<sup>1</sup>These are terms used by different commentators. “Social Canada” is the term used by Thomas Courchene to refer to the social compact that Canadians will take care of each other and share resources in order to do so: “The Federal Provincial Dimension of the Budget: Two Cheers for the CHST” in Thomas J. Courchene and Thomas A. Wilson, eds., *The 1995 Federal Budget: Retrospect and Prospect* (Kingston, Ont.: John Deutsch Institute for the Study of Economic Policy, Queen's University, 1995) 107 at 108.

<sup>2</sup> Another recent decision of this kind is the introduction of family income testing, rather than individual income testing, for eligibility for Old Age Security. Monica Townson points out in *Independent Means: A Canadian Woman's Guide to Pensions and a Secure Financial Future* (Toronto: Macmillan, 1997) [hereinafter *Independent Means*] at 60 that “[f]or women, a family-income test for OAS is a major step backwards because it denies them economic autonomy. It also assumes that women have equal access to family income, which is not always the case — especially in families where there is wife abuse. A married woman's right to OAS, in most cases, will now depend on her husband's income, whether or not she works outside the home before retirement. That's because the average income of husbands usually far exceeds that of wives — even in retirement. So when you add a husband's income to a wife's, generally the husband's income will determine if either spouse gets OAS. The family-income test means that a woman who has spent most of her life as a full-time homemaker will no longer be able to count on an OAS benefit in her own name at 65. But it also means that women who spend most of their lives in the paid work force will not be able to count on an OAS benefit to meet part of their needs for replacement income in retirement.”

<sup>3</sup> Following the practice of the National Council of Welfare, we use “poverty” and “low income” interchangeably here, and references are to those living below Statistics Canada's low-income cut-offs, or LICOs.

There has been some debate recently about the use of Statistics Canada's low-income cut-offs as measures of poverty in Canada. Ivan Fellegi, Canada's Chief Statistician, in a recent op-ed piece indicated that the low-income cut-offs are not “official” poverty lines because they are not set by government. Fellegi indicated that defining poverty is political, “intrinsicly a question of social consensus [about what constitutes `poverty'], at a point in time and in the context of a given country.” According to Fellegi, Statistics Canada takes no position on how it should be defined in Canada now. Statistics Canada's low-income cut-offs measure who is “substantially worse off than the average” in Canada, and provide a way of keeping track of the characteristics of this worst-off group. See Ivan Fellegi, “StatsCan measures income, not `poverty” *The [Montreal] Gazette* (17 September 1997) at B3.

However, we note that the National Council of Welfare in its most recent report states:

The National Council of Welfare, like many other social policy groups, regards the low income cut-offs as poverty lines and uses the term poor and low-income interchangeably.

Statistics Canada takes pains to avoid references to poverty. It says the cut-offs have no official status, and it does not promote their use as poverty lines.

Regardless of the terminology, the cut-offs are a useful tool for defining and analyzing the significantly large portion of the Canadian population with low incomes. They are not the only measures of poverty used in Canada, but they are the most widely accepted and are roughly comparable to most alternative measures.

National Council of Welfare, *Poverty Profile, 1995: A Report by the National Council of Welfare* (Ottawa: Supply and Services Canada, 1997) [hereinafter *Poverty Profile 1995*] at 5–6.

<sup>4</sup> *Ibid.* at 84.

<sup>5</sup> When calculated by age and sex, women had a higher rate of poverty than men in all categories but one in 1995. The age categories are 18–24; 25–34; 35–44; 45–54; 55–64; 65–74; 75–84; and 85+. Only for women and men between the ages of 45 and 54 was the rate of poverty about the same. *Ibid.* at 34.

<sup>6</sup> *Ibid.* at 84.

<sup>7</sup> *Ibid.* at 85. The National Council of Welfare states that “most of the differences between the sexes can be explained by the high poverty rates of three family types: unattached women under 65, unattached women 65 and older, and single-parent mothers under 65 with children under 18.” Poverty rates for these “family types” are: single mothers under 65 — 57.2 percent; unattached women over 65 — 43.4 percent; unattached women under 65 — 38.7 percent. By comparison unattached men under 65 have a poverty rate of 33.2 percent and unattached men over 65 have a poverty rate of 21.3 percent.

<sup>8</sup> *Ibid.* at 2.

<sup>9</sup> *Ibid.* at 52.

<sup>10</sup> *Ibid.* at 75. Canada's record on child poverty has been commented on critically by a number of United Nations bodies, including the Committee that oversees the *International Covenant on Economic, Social and Cultural Rights* in 1993, the Committee on the Rights of the Child in 1995, and UNICEF in its *Progress of Nations Report* in 1996. UNICEF found that Canada has the second-highest number of poor children of 18 industrialized nations. Only the United States is worse.

<sup>11</sup> *Ibid.* at 76.

<sup>12</sup> *Women in Canada: A Statistical Report*, 3d ed. (Ottawa: Industry, 1995) [hereinafter *Women in Canada*] at 153, 123, and 138. The 16 percent figure given here is the figure for the rate of poverty among women overall given in this study. It is not as current a figure as that given in *Poverty Profile 1995*, *supra* note 3.

<sup>13</sup> *Ibid.* at 166.

<sup>14</sup> The inadequacy of data on welfare recipients in Canada is shocking. What we do not know far outstrips what we do know. The numbers of welfare recipients estimated for 1994 and 1995 are 3,100,200 and 3,070,900: National Council of Welfare, *Welfare Income 1995* (Ottawa: Supply and Services Canada, 1997) at 44. But because statistics on welfare recipients are kept differently by different provinces, there is no satisfactory national profile. There are no national statistics showing the representation among welfare recipients of women, or of immigrant women, visible minority women, Aboriginal women, and women with disabilities. There is information about “family types.”

<sup>15</sup> In *The 1995 Budget and Block Funding* (Ottawa: Supply and Services Canada, 1995) at 4–5, the National Council of Welfare reports that in 1994 children receiving assistance through their parents were 38 percent of welfare recipients, 15 percent were single parents, mostly single mothers, 12 percent were married parents, 5 percent were couples with no children, and 31 percent were single people. Frances Woolley in *Women and the Canada Assistance Plan* (Ottawa: Status of Women Canada, 1995) at 5 notes that women disproportionately make up the group of single parents on welfare by an estimated ratio of 9 to 1 in Canada, while men disproportionately make up the group of single people on welfare by an estimated ratio of 2 to 1. Woolley concludes that more than half the people supported through social assistance are women. This conclusion is also endorsed by academic literature on the feminization of poverty in Canada. See, for example, Martha Jackman, “Women and the Canada Health and Social Transfer: Ensuring Gender Equality in Federal Welfare Reform” (1995) 8:2 *Canadian Journal of Women and the Law* 371 at 373; Isabella Bakker and Janine Brodie, *The New Canada Health and Social Transfer (CHST): The Implications for Women* (Ottawa: Status of Women Canada, 1995) at 11 and 38; and Frances Woolley, *ibid.* at 1. As well, statistical information forwarded to us by the province of Saskatchewan shows one province's statistics for one recent month. In December 1996, 78,821 persons were welfare recipients. Of this number, 21,070 were women, and 40,732 were children. This means that more adult women than men were social assistance recipients. Saskatchewan Social Services: *Saskatchewan Assistance Plan: Distribution by Age Range, Sex of Head and Type of Case, for the Month of December 1996*.

<sup>16</sup> The largest single group of persons on welfare is children: *The 1995 Budget and Block Funding*, *ibid.* at 4–5. The National Council of Welfare notes that children are poor because their parents are poor. It also notes that while most poor children are living in two-parent families, the proportion of poor children living with single mothers has grown substantially in recent years. In 1980, 33 percent of poor children lived in families headed by single mothers. In 1995, 40 percent of poor children lived in families headed by single mothers. *Poverty Profile 1995*, *supra* note 3 at 75–77.

<sup>17</sup> *Women in Canada*, *supra* note 12 at 64.

<sup>18</sup> *Ibid.* at 65. This Statistics Canada report notes: “In 1994, 70% of all employed women were working in either teaching, nursing and health-related occupations, clerical positions, or sales and service occupations. ... Women also account for a large share of total employment in each of these occupational groups. In 1994 86% of nurses and health-related therapists, 80% of clerks, 63% of teachers, 56% of service personnel, and 46% of salespersons were women.” While women increased their representation in managerial and administrative positions between 1982 and 1994 from 26 percent to 43 percent, the statistics on this increase are not reliable because as much as 40 percent of this reported increase may be attributable to changes in occupational definitions. *Ibid.* at 67 and 70.

<sup>19</sup> Forty-four percent of women, compared to 51 percent of men are now covered by employer-sponsored pension plans. *Ibid.* at 89. However, since benefits are tied to earnings, women's benefits from these plans are lower than men's. Monica Townson also notes in *Independent Means*, *supra* note 2 at 98–100, that pension rules that discriminated against women in the 1970s and 1980s, by requiring women to work longer to be eligible for a pension or to retire earlier than men, still have a lingering effect on the amount of women's pension benefits or on access to a pension because when the rules were changed, those changes were not retroactive.

<sup>20</sup> See Isabella Bakker, “Introduction: The Gendered Foundations of Restructuring in Canada” in Isabella Bakker, ed., *Rethinking Restructuring: Gender and Change in Canada* (Toronto: University of Toronto Press, 1996) at 13–14 [hereinafter “The Gendered Foundations of Restructuring in Canada”]; Pat Armstrong, “The Feminization of the Labour Force: Harmonizing Down in a Global Economy” in Isabella Bakker, ed., *Rethinking Restructuring: Gender and Change in Canada*, *ibid.* 29; *Women in Canada*, *supra* note 12 at 86. See also “Canadian women closing wage gap” *The [Toronto] Globe and Mail* (23 July 1997) A6. Despite its misleading headline, this article, reporting on a new study released by the Canadian Council on Social Development, states that though Canadian women appear to be closing the wage gap, this advance “is threatened by cuts to job fields such as health and education that have boosted their earning power ... The narrowing of the wage gap ‘is limited’ and could be jeopardized by Canada's changing economy, including cuts to the public sector ... Also, the wage improvements that have been made are not flowing through to the younger generation.”

Katherine Scott and Clarence Lochhead state: “Preliminary analysis shows that the women who made wage gains over the last decade were the beneficiaries of a pool of good jobs in the health, education and social service sectors. However, as the structure of the economy continues to change, with the continuing polarization of job opportunities, there is a real danger that women's economic advances will be halted. And such a situation would herald greater economic insecurity for all Canadians.” See Katherine Scott and Clarence Lochhead, *Are Women Catching Up in the Earnings Race?* (Ottawa: Canadian Council on Social Development, 1997) at 2.

<sup>21</sup> *Women in Canada*, *supra* note 12 at 84.

<sup>22</sup> Canadian Advisory Council on the Status of Women, *Work in Progress: Tracking Women's Equality in Canada* (Ottawa: Canadian Advisory Council on the Status of Women, 1994) at 44.

<sup>23</sup> Many women work part-time because they cannot find full-time employment. In 1994, 34 percent of all female part-time workers indicated that they wanted full-time employment, but could not find it. See *Women in Canada*, *supra* note 12 at 66.

<sup>24</sup> Two indicators that women's care of children affects their participation in employment, and consequently their incomes, are that women with pre-school-aged children are less likely than those with school-aged children to be employed, and that single mothers are considerably less likely than women in two-parent families to be employed. See *Women in Canada*, *ibid.*, at 64 and 65; and Nancy Z. Ghalam, *Women in the Workplace*, 2d ed. (Ottawa: Statistics Canada, 1993), cat. no. 71-534E, at 22.

<sup>25</sup> Monica Townson, “Non-Standard Work: The Implications For Pension Policy and Retirement Readiness” (unpublished paper prepared for Women's Bureau, Human Resources Development Canada, 1996) at 11.

<sup>26</sup> *Ibid.* at 1 and 3.

<sup>27</sup> *Women in Canada*, *supra* note 12 at 138, 153, and 166.

<sup>28</sup> *Poverty Profile 1995*, *supra* note 3 at 85–86.

<sup>29</sup> “The Gendered Foundations of Restructuring in Canada,” *supra* note 20 at 18–19; Lisa Philipps, “Tax Policy and the Gendered Distribution of Wealth” in Isabella Bakker, ed., *Rethinking Restructuring: Gender and Change in Canada*, *supra* note 20 141 [hereinafter “Tax Policy and the Gendered Distribution of Wealth”].

<sup>30</sup> Judith L. MacBride-King in *Work and Family: Employment Challenge of the '90s* (Ottawa: Conference Board of Canada, 1990) reports at 12–13 that 60 percent of women, compared with 26 percent of men, indicate that they are primarily responsible for the care of dependent relatives; Statistics Canada (in its *General Social Survey, Initial Data Release from the 1992 General Social Survey on Time Use* (March 1993), Table 1; Tabulation from Statistics Canada, 1990 General Social Survey, Cycle 7: Time Use, unpublished data) reports that mothers spend more time on primary child-care activities than fathers.

<sup>31</sup> According to the 1991 Census, child care workers are the lowest paid occupational group, with an average employment income of \$13,518. This statistic is drawn from Statistics Canada, *The Daily* (13 April 1993), cat. no. 11-001E, and is cited in Donna S. Lero and Karen L. Johnson, *110 Canadian Statistics on Work and Family* (Ottawa: Canadian Advisory Council on the Status of Women, 1994) [hereinafter *110 Canadian Statistics*] at 38.

<sup>32</sup> For statistical information on child care in Canada, see *110 Canadian Statistics, ibid.* at 31–38.

<sup>33</sup> See *ibid.* at 6; see also “Non-Standard Work: The Implications For Pension Policy and Retirement Readiness,” *supra* note 25. Townson defines non-standard jobs as anything that does not fit the definition of a standard job, that is, a full-time, full-year job with a single employer on a permanent long-term basis.

<sup>34</sup> Marital breakdown has a different impact on women's incomes than on men's incomes. In *Family Income After Separation*, a study by Diane Galameau and Jim Sturrock cited in *Crossing the Low Income Line: Survey of Labour and Income Dynamics* (Ottawa: Statistics Canada, 1997), cat. no. 97-11, the authors report at 22–23 that “[a]fter separation, women experience losses in adjusted family income of approximately 23% between the year before and the year following separation. Men experience a 10% increase in adjusted family income. Five years after separation, women still record a 5% income shortfall, whereas men have made gains of approximately 15%. Women heading single-parent families experience the greatest losses.”

<sup>35</sup> Martin D. Dooley, “Women, Children and Poverty in Canada” in *Economic Equality Workshop: Summary of Proceedings* (Ottawa: Status of Women Canada, 1993) at 41.

<sup>36</sup> “The Gendered Foundations of Restructuring in Canada,” *supra* note 20 at 4. Bakker is quoting from Marjorie Cohen, “Democracy and Trade Agreements: Challenges for Disadvantaged Women, Minorities and States” in R. Boyer and D. Drache, eds., *Markets Against States: The Limits of Globalization* (London: Routledge, 1996) at 274.

<sup>37</sup> *Ibid.* at 3 and 4.

<sup>38</sup> *Ibid.* at 4.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.* at 5.

<sup>41</sup> Canada, *Improving Social Security in Canada: The Context of Reform, A Supplementary Paper* (Ottawa: Queen's Printer, 1994) at 8. See also Canada, *Reforming the Canada Assistance Plan: A Supplementary Paper* (Ottawa: Queen's Printer, 1994); and Canada, *Creating a Healthy Fiscal Climate: An Economic and Fiscal Update* (Ottawa: Queen's Printer, 1994).

<sup>42</sup> “The Gendered Foundations of Restructuring in Canada,” *supra* note 20 at 5.

<sup>43</sup> H. Mimoto and P. Cross, “The Growth of the Federal Debt” (1991) 3:1 *Canadian Economic Observer*. See also Gideon Rosenbluth, who argues that “[c]onservative deficit-phobia continues to be a convenient excuse for cutting social spending and following procyclical fiscal policies.” He suggests that an appropriate policy for keeping deficits under control would rely on low real interest rates,

and public investment in physical and human capital, to ensure that the interest burden does not rise more quickly than the tax base. Gideon Rosenbluth, "The Political Economy of Deficit-Phobia" in Gideon Rosenbluth and Robert Allen, eds., *False Promises: The Failure of Conservative Economics* (Vancouver: New Star Books, 1992) at 74. See also David Wolfe, "The Politics of the Deficit" in Bruce Doern, ed., *The Politics of Economic Policy* (Toronto: University of Toronto Press, 1985) 111.

<sup>44</sup> Lisa C. Philipps, "The Rise of Balanced Budget Laws in Canada: Legislating Fiscal (Ir)responsibility" (1996) 34:4 *Osgoode Hall Law Journal* 681 at 724. It is also worth noting that economists disagree about how the debt and deficit should be measured. Marilyn Waring and other feminist economists have argued there are severe deficiencies in the way that classical economics engages in accounting: Marilyn Waring, *If Women Counted: A New Feminist Economics* (San Francisco: Harper & Row, 1988). One conclusion that flows from the work of Marilyn Waring is that the failure to include women's unpaid labour in the Gross Domestic Product (GDP), results in an exaggeration of debt. The extent of the debt is calculated by comparing the size of the deficit with the size of a country's GDP. However, if women's labour were included in the GDP, it is estimated that the GDP would rise between 15 percent and 50 percent. This would reduce the ratio of the deficit in comparison. See also Julie Nelson, *Feminism, Objectivity and Economics* (New York: Routledge, 1996).

<sup>45</sup> See, for example, Canadian Council on Social Development, *Roundtables on the Canada Health and Social Transfer: Final Report* (Ottawa: Canadian Council on Social Development, 1996), and from that report, in particular, Michael Mendelson, "Establishing a Social Investment Framework" 129; David Cameron, "Comments" 137; Marcia Rioux, "The CHST: From Pathology to Social Investment" 141; Michael Wolfson, "Comments" 151.

<sup>46</sup> In this book, though sometimes we use the word "gender," generally we prefer to talk about women. References to "gender equality," "gender neutrality," and "gender analysis" are common in Canadian discourse, but we believe it is important to continue to point out that the topic is women, and it is women who are unequal in Canadian society.

<sup>47</sup> These studies are catalogued by Lero and Johnson in *110 Canadian Statistics*, *supra* note 31 at 4–8.

<sup>48</sup> Lisa Philipps, "Discursive Deficits: A Feminist Perspective on the Power of Technical Knowledge in Fiscal Law and Policy" (1996) 11:1 *Canadian Journal of Law and Society* 141 at 155.

<sup>49</sup> Isabella Bakker and Janine Brodie, *The New Canada Health and Social Transfer (CHST): The Implications for Women*, *supra* note 15 at 1.

<sup>50</sup> Martha Jackman, "Women and the Canada Health and Social Transfer: Ensuring Gender Equality in Federal Welfare Reform," *supra* note 15 at 372.

<sup>51</sup> The following historical account relies heavily on Allan M. Maslove, *National Goals and the Federal Role in Health Care* (Ottawa: National Forum on Health, 1995), Appendix A at 32–41.

<sup>52</sup> *Ibid.* at 33.

<sup>53</sup> A debt of gratitude is owed to Lisa Philipps for providing this explanation of tax room and tax points. Lisa Philipps, "Tax Points" memorandum to Gwen Brodsky and Shelagh Day, 2 May 1997, on file with the authors.

<sup>54</sup> Maslove, *National Goals and the Federal Role in Health Care*, *supra* note 51 at 35.

<sup>55</sup> *The 1995 Budget and Block Funding*, *supra* note 15 at 9.

<sup>56</sup> *National Goals and the Federal Role in Health Care*, *supra* note 51 at 35.

<sup>57</sup> *Ibid.* at 36.

<sup>58</sup> *Ibid.* at 37–38.

<sup>59</sup> *Ibid.* at 38.

<sup>60</sup> *The 1995 Budget and Block Funding*, *supra* note 15 at 2.

<sup>61</sup> *Ibid.*

<sup>62</sup> See Jillian Oderkirk, “Old Age Security” (Spring 1996) *Canadian Social Trends* 3, cat. no. 11-008E.

<sup>63</sup> *The 1995 Budget and Block Funding*, *supra* note 15 at 3.

<sup>64</sup> Peter Hogg, *Constitutional Law of Canada*, 3d ed. (Toronto: Carswell, 1993) at 146.

<sup>65</sup> We note that Sherri Torjman and Ken Battle in *Can We Have National Standards?* (Ottawa: Caledon Institute of Social Policy, 1995) at 5–10 make a distinction between conditions and standards. The requirements that provinces had to meet to receive CAP funds, they call conditions, while we call them standards. They consider standards to be “benchmarks by which to judge the adequacy of programs or services.” We believe that the CAP conditions did set important standards, as they define that term, for social assistance. Most clearly, they set a standard for availability. We agree, however, that CAP’s specification that social assistance meet “basic requirements” does not set a clear enough standard for the adequacy of the social assistance provided.

<sup>66</sup> See the CAP, s. 6(2)(a). In the case of *Alden v. Gagliardi et al.*, [1973] S.C.R. 199, [1973] 2 W.W.R. 92, 30 D.L.R. (3d) 760, the Supreme Court of Canada held that it is the test established by the provincial legislation which must be taken as the measure of a “person in need.”

<sup>67</sup> See the CAP, s. 2(a).

<sup>68</sup> The CAP stated that the provincial plan must “take into account” the “basic requirements of the person.” These words have been interpreted by the Supreme Court of Canada as indicating actual provision of an amount that is “compatible or consistent with” an individual’s basic requirements, not mere “consideration” of basic requirements. *Finlay v. Canada (Minister of Finance)*, [1993], 1 S.C.R. 1080, 101 D.L.R. (4th) 567, 150 N.R. 81, 63 F.T.R. 99 (note), 2 D.M.P.L. 203.

<sup>69</sup> See the CAP, s. 6(2)(c).

<sup>70</sup> See the CAP, s. 6(2)(e).

<sup>71</sup> *Can We Have National Standards?*, *supra* note 65 at 5.

<sup>72</sup> In effect, the CAP also created for persons in need a right of access to the courts to obtain review of the substantive adequacy of welfare payments made by a province. This was established by the Court in the case of *Finlay v. Canada (Minister of Finance)* [1986], 2 S.C.R. 607, which arose in Manitoba. The Supreme Court of Canada held that possible violations of the CAP were reviewable by the courts at the behest of welfare beneficiaries. Although the Court was not prepared to grant standing to Jim Finlay as a matter of right, he was nonetheless granted standing, on the basis of the public interest in compliance with the CAP standards. Moreover, the Court explicitly recognized that welfare recipients have a direct, personal interest in provincial compliance with CAP standards.

However, this CAP enforcement mechanism was cumbersome in that it did not, in itself, confer on welfare beneficiaries rights and remedies against provincial governments. Where a provincial government was alleged to be in non-compliance with CAP funding conditions, the welfare beneficiary’s cause of action lay against the federal government for having made an unauthorized payment to the province. The shortcoming of this approach is that the welfare recipient was in a funding relationship, not with the federal government, but rather with the provincial government. It is the provincial government that actually controls the funds that go to social assistance recipients. And yet, the CAP did not give welfare recipients the ability to go to court to compel provincial governments to make payments in accordance with the CAP. Awkward and indirect as the CAP enforcement mechanism was, it nonetheless gave the beneficiaries of social assistance programs an avenue of legal redress, when CAP protections were or may have been violated.

To clarify, the *Finlay* avenue of redress arose directly out of the CAP, and related to the terms and conditions of funding agreements between the federal government and the provinces. It must not be confused with provincial welfare appeal mechanisms that the CAP obligated provincial governments to provide, and that give welfare recipients an avenue of redress against provincial government officials who do not properly interpret and apply provincial welfare legislation.

<sup>73</sup> Over the period that the CAP was in place, at least three provincial governments (Saskatchewan, Quebec, and Manitoba) had to change their programs in order to qualify for federal cost sharing. In each case, it was the “needs” requirement that was in issue. For example, in 1974 Saskatchewan introduced a family income plan to supplement the incomes of the working poor with dependent children. However, the federal government objected to sharing 50 percent of the cost because recipients were not required to pass a means test. Similar programs introduced in Quebec in 1979 and Manitoba in 1981 were also ineligible under the CAP. See Richard Bird, “Federal-Provincial Fiscal Transfers in Canada: Retrospect and Prospect” (1987) 35 *Canadian Tax Journal* 118 at 132.

<sup>74</sup> See Sherri Torjman, *The Let-Them-Eat-Cake Law* (Ottawa: Caledon Institute of Social Policy, 1995).

<sup>75</sup> This does not mean that the federal government was precluded from placing a ceiling on its contribution. In *Reference Re: Canada Assistance Plan (B.C.)*, [1991] 2 S.C.R. 525, 58 B.C.L.R. (2d) 1, 1 Admin. L.R. (2d) 1, 6 W.W.R. 1 [hereinafter *Re: CAP* cited to S.C.R.], the Supreme Court of Canada held that CAP could be unilaterally amended by the Parliament of Canada, and that the federal government of the day could not bind Parliament so as to preclude it from making such a legislative amendment in the future. The effect of this decision was to allow the federal government to depart from the 50:50 cost-sharing formula, which it did by capping its contributions to certain provinces in 1990.

<sup>76</sup> *Canada Assistance Plan Regulations*, C.R.C. 1978, c. 382, s. 13.

<sup>77</sup> *The 1995 Budget and Block Funding*, *supra* note 15 at 4.

<sup>78</sup> *Ibid.* at 5.

<sup>79</sup> *Ibid.* at 6.

<sup>80</sup> The one exception is the residency requirement. The British Columbia government failed to comply with this requirement for a number of years and has only recently, with some federal government incentives, removed their provincial residency requirement. See Craig McInnes, “B.C. to Abolish Welfare Rule: Ottawa Agrees to Pay Sixty Million for Dropping of Controversial Residency Requirement” *The [Toronto] Globe and Mail* (6 March 1997) A1.

<sup>81</sup> Most provinces are likely to retain at least some elements of the appeal procedures they have in place; but there is no requirement under the CHST for them to do so. Section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [hereinafter the *Charter*] may be relevant here since it states that “everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” If “security of the person” includes economic security, then an appeal process may be necessary when a person is refused welfare. However, this has not been established yet.

<sup>82</sup> These arguments are made by Ken Battle and Sherri Torjman in *How Finance Re-Formed Social Policy* (Ottawa: Caledon Institute of Social Policy, 1995) at 10.

<sup>83</sup> Thomas Courchene, *Redistributing Money and Power: A Guide to the Canada Health and Social Transfer* (Toronto: C.D. Howe Institute, 1995) at 56 [hereinafter *Redistributing Money and Power*]. Michael Mendelson gives similar figures in *Looking for Mr. Good-Transfer: A Guide to the CHST Negotiations* (Ottawa: Caledon Institute of Social Policy, 1995) at 3 [hereinafter *Looking for Mr. Good-Transfer*].

<sup>84</sup> *Looking for Mr. Good-Transfer*, *ibid.* at 4.

<sup>85</sup> See “Liberals Will Strengthen Health Care Funding” Press Release, Liberal Party of Canada, (28 April 1997).



<sup>86</sup>In Canada's Third Report to the Economic, Social and Cultural Rights Committee on its compliance with the *International Covenant on Economic, Social and Cultural Rights*, the current funding arrangement is described this way: "In 1996, the Budget of the Government of Canada set out a five-year funding arrangement through which transfers are maintained and then grow. CHST entitlements are set at 26.9 billion in 1996–97 and 25.1 billion in 1997–98, and will be maintained at the 1997–98 level of 25.1 billion in 1998–99 and 1999–2000. For 2000–01, entitlements will grow at two percent less than the growth rate of GDP. The rate of entitlement growth will then accelerate in 2001–02, when growth will be at the GDP rate minus 1.5 percent, and in 2002–03 when growth will be at one percent less than the growth rate of GDP. The resumption of entitlements growth is projected to first stabilize, and then restore growth in the CHST cash component. To provide additional security against unexpected economic fluctuations, a legislated cash floor will ensure that the CHST cash component will total at least 11 billion a year throughout the five-year fiscal arrangement." See *The International Covenant on Economic, Social and Cultural Rights: Third Report of Canada* (Ottawa: Public Works and Government Services, 1997) at paragraph 83.

<sup>87</sup> *Redistributing Money and Power*, *supra* note 83 at 57.

<sup>88</sup> *National Goals and the Federal Role in Health Care*, *supra* note 51, Table 4 at 41.

<sup>89</sup> See Robin Boadway, "The Implications of the Budget for Fiscal Federalism" in Thomas J. Courchene and Thomas A. Wilson, eds., *The 1995 Federal Budget: Retrospect and Prospect*, *supra* note 1 at 95. Ken Battle and Sherri Torjman calculated this would occur by 2011–12 in *How Finance Re-Formed Social Policy*, *supra* note 82 at 7. Courchene estimated that they will fall to zero for the three "have" provinces by 2009–10 in "The Federal Provincial Dimension of the Budget," *supra* note 1 at 115. See Courchene also in *Redistributing Money and Power*, *supra* note 83 at 32–33.

<sup>90</sup> *Redistributing Money and Power*, *supra* note 83 at 12–13.

<sup>91</sup> Western Premiers' Conference, Premiers' Statement, November 1995 at 13.

<sup>92</sup> Mendelson in *Looking for Mr. Good-Transfer*, *supra* note 83 at 5–6, and Courchene in *Redistributing Money and Power*, *supra* note 83 at 59, both make this argument.

<sup>93</sup> The British Columbia government appealed the imposition of this cap unsuccessfully in *Re: CAP*, *supra* note 75.

<sup>94</sup> Barbara Yaffe, "Financially-strapped Ottawa views B.C. as a cash cow" *The [Vancouver] Sun* (22 June 1996) A3. This dispute was resolved in March 1997 when Ottawa and British Columbia made a deal. The federal government gave British Columbia \$60 million over three years to cope with the costs of settling immigrants, and in return, British Columbia agreed to drop its residency requirement for welfare and its \$47 million lawsuit against the federal government. The federal government also agreed to give back to British Columbia \$26.6 million of the \$47 million that it withheld. The difference between the \$47 million penalty and the \$26.6 million payback is the amount that British Columbia saved by not providing welfare to persons not resident for three months. See "Chrétien, Clark warming to each other" *The [Toronto] Globe and Mail* (7 March 1997) A7; "B.C. to abolish welfare rule" *The [Toronto] Globe and Mail* (6 March 1997) at A1, A4; "Election-minded Chrétien comes to B.C. bearing gifts," *The [Vancouver] Sun* (7 March 1997) at A1, A14.

<sup>95</sup> See Thomas J. Courchene, *ACCESS: A Convention on the Canadian Economic and Social Systems* (Toronto: Government of Ontario, 1996) at 17–18.

<sup>96</sup> (1988), 53 D.L.R. (4th) 413 (Alta C.A.)

<sup>97</sup> *Ibid.* at 432.

<sup>98</sup> *Ibid.* at 433.

<sup>99</sup> *Ibid.*

<sup>100</sup> Leave application dismissed, with costs, April 13, 1989.

<sup>101</sup> *Can We Have National Standards?*, *supra* note 65 at 1. It is important to note, however, that Lisa Philipps in “Tax Points,” *supra* note 53, finds that it is not inconceivable that the federal government could “take back” tax revenue from a province that was not honouring the agreement by which a tax point transfer had been established. To date, tax points have not been understood as a mechanism for enforcing compliance with national standards. However, tax points are not much different from cash transfers; both have an ascertainable dollar value and both are integral to federal/provincial revenue sharing. According to Professor Philipps, it is only the invisibility of tax points as a component of the federal contribution to social programming that prevents the full federal leverage from being explored.

<sup>102</sup> See “Liberals Will Strengthen Health Care Funding,” *supra* note 85.

<sup>103</sup> Section 13(3) of the *Budget Implementation Act*, 1995, S.C. 1995, c. 17.

<sup>104</sup> See *The [Toronto] Globe and Mail*, “9 Provinces to talk social policy” (13 December 1997) A1, A10; “Discord dominates message coming out of conference,” (13 December 1997) A10.

<sup>105</sup> Michael Mendelson, *The Provinces' Position: A Second Chance For the Social Security Review?* (Ottawa: Caledon Institute of Social Policy, 1996) at 11–12.

<sup>106</sup> Keith Banting, “Who ‘R’ Us?” in Thomas J. Courchene and Thomas A. Wilson, eds., *The 1995 Federal Budget: Retrospect and Prospect*, *supra* note 81 at 176.

<sup>107</sup> *Ibid.* at 179.

<sup>108</sup> In “Constitutional Reform: Canada’s Equality Crisis” in David Schneiderman, ed., *Conversations Among Friends: Women and Constitutional Reform* (Edmonton: University of Alberta, Centre for Constitutional Studies, 1991), Shelagh Day argued that Quebec and Aboriginal peoples present Canada with equality issues that cannot be resolved by applying a same treatment formula. Quebec and Aboriginal peoples ask for, and deserve to be given, asymmetrical treatment from other provinces and from non-Aboriginal individuals because of their histories, and their cultural and linguistic needs.

<sup>109</sup> Barbara Cameron, “Social Citizenship In A Multinational State: The Social Charter Revisited” (Paper presented to Federal Constitutions in Comparative Perspective: A Conference in Honour of Douglas V. Verney, May 1996, York University, Toronto) at 24.

<sup>110</sup> Glen Clark, British Columbia’s N.D.P. Premier, provides an illustrative example. *The [Toronto] Globe and Mail* reported that “freshly elected Mr. Clark seemed to bask in his unremitting British-Columbia-First persona. He boasted to several people that he had been east of the Ottawa River only twice in his life, once to change planes at Mirabel and once at a finance ministers’ meeting in Quebec City in the early 1990s. That was fine with him. He likened his limited experience of the rest of the country with that of his average constituent in Vancouver.” See “Chrétien, Clark warming to each other,” *supra* note 94.

<sup>111</sup> Jill Vickers, “Why Should Women Care About Federalism?” in Douglas M. Brown and Janet Hiebert, eds., *Canada: The State of the Federation 1994* (Ottawa: Institute of Intergovernmental Relations, 1994) at 139.

<sup>112</sup> Barbara Cameron, *supra* note 109 at 24.

<sup>113</sup> Status of Women Canada, *Setting the Stage for the Next Century: The Federal Plan for Gender Equality* (Ottawa: Status of Women Canada, 1995) at 16.

<sup>114</sup> See *Can We Have National Standards?*, *supra* note 65 at 6; and Isabella Bakker and Janine Brodie, *The New Canada Health and Social Transfer (CHST): The Implications for Women*, *supra* note 15 at 11 regarding the failure to keep statistics, disaggregated by sex, on recipients of welfare.

<sup>115</sup> Ministerial Council on Social Policy Reform and Renewal, *Report to Premiers* (Ottawa: December 1995) at 3 [hereinafter *Report to Premiers*].

<sup>116</sup> See Statistics Canada, *Families: Number, Type and Structure* (Ottawa: 1992), cat. no. 93-312, Table 2; Donna S. Lero, Alan R. Pence, Margot Shields, Lois M. Brockman, and Hillel Goelman, *Canadian National Child Care Study: Introductory Report* (Ottawa: Statistics Canada; Health and Welfare Canada, 1992), cat. no. 89-526E, at 44. These reports use data from the 1991 census, and indicate that women are 82 percent of all lone-parent families with unmarried children of any age. In 1988 women were 92 percent of lone-parent families with children under age 13.

<sup>117</sup> The argument of this book is that economic policy should take women's inequality into account because women have a right to equality that has been socially agreed upon. Ours is an argument based on justice and is a fully adequate justification for requiring that economic policy further the aspirations of women to overcome their inequality. Others may wish to add a different argument. For example, it is also arguable that greater social and economic equality for women has additional social benefits because it results in a better educated and more skilled labour force, and ensures that more women individually, and more families, can withstand economic shocks, preventing larger-scale dependencies and economic depression. While such arguments may be empirically valid and rhetorically powerful, we do not believe that proof of additional social benefits is a precondition to implementing economic policy that is good for women.

<sup>118</sup> Note Principle 8.

<sup>119</sup> We presume this means Ministers responsible for related areas — youth, status of women, health, education, and others.

<sup>120</sup> The two major items on this agenda currently are a new National Child Benefit System, and a federal/provincial framework to improve supports for persons with disabilities.

The National Child Benefit System, according to Ken Battle of the Caledon Institute, “is intended to provide a common child income benefit to all low-income families regardless of the source(s) of income.” The federal child benefits are being provided to working poor families in 1997, and will be extended to all low-income families, including those receiving welfare, in 1998. However, he also notes welfare families will not be allowed to keep the benefit. It will be deducted from their welfare payments. “[P]rovinces will deduct the increases in federal child benefits from welfare payments on behalf of children, but they must ‘re-invest’ these savings in other programs for low-income families with children, such as income-tested benefits, wage supplements, in-kind benefits (e.g. supplementary health care) and social services.”

Battle describes the re-investment agreement as a sort of “back-door, softly-softly form of conditional cost-sharing. The provinces agree to spend their federally-enabled savings on welfare benefits for children on other programs for low-income families ... [however] ... [i]t is hard to imagine the provinces, flush with their freedom of action in the new era of the Canada Health and Social Transfer, agreeing to any process which tried to develop and apply conditions or standards to their various programs and services for low-income families with children.” See Ken Battle, *The National Child Benefit: Best Thing Since Medicare or New Poor Law?* (Ottawa: Caledon Institute of Social Policy, 1997) at 3–15.

While Battle is cautiously supportive of this new program, Jane Pulkingham, Gordon Ternowetsky, and David Hay are much more critical. In “The New Canada Child Tax Benefit: Eradicating Poverty or Victimized the Poorest?” (1997) 4:1 *The Monitor*, they state: “[F]amilies who receive income assistance will be no better off than they are under the current system. Although there is no explicit ‘work test’ attached to the new federal CCTB, recipients of income assistance are nonetheless penalized by the provinces, in collusion with the federal government, because of the source of their income (welfare).” They also note that “[i]t is a mistake ... to treat this \$600 million [that will go into the program in 1998] as new money. Rather, it constitutes nothing more than a small repayment of funds that have been siphoned from federal transfer payments to the provinces for social assistance since the 1995–96 Liberal budget.”

<sup>121</sup> The exclusion of the public and the media from the First Ministers' meetings where the future of Canada's social union is being decided is highlighted in a press story by Scott Feschuk entitled “A day in the life of the Almighty Microphone,” *The [Toronto] Globe and Mail* (13 December 1997) A10. Feschuk describes the media waiting by the one “almighty” microphone for politicians to emerge from the meetings to make statements. Neither the public nor the media has any other access to information about the decisions being made.