Women, Tax and Social Programs: The Gendered Impact of Funding Social Programs Through the Tax System

By

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The research and publication of this study were funded by Status of Women Canada's Policy Research Fund. This document expresses the views of the author and does not necessarily represent the official policy of Status of Women Canada or the Government of Canada.

October 2000

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Canadian Cataloguing in Publication Data

Young, Claire F.L. (Claire Francesca Louise), 1949-

Women, Tax and Social Programs [computer file]: The Gendered Impact of Funding Social Programs Through the Tax System

Issued also in French under t.p.: Les femmes, l'impôt et les programmes sociaux : Répercussions, selon le sexe, du financement des programmes sociaux par l'entremise du régime fiscal
Issued also in print format.

ISBN 0-662-65028-X (Print format)
Cat. no. SW21-52/2000E (Print format)

Mode of access: WWW site of Status of Women Canada.

1. Women — Taxation — Canada.
2. Tax incentives — Canada.
3. Public welfare — Canada — Finance.

I. Canada. Status of Women Canada.
II. Title.
Title: Les femmes, l'impôt et les programmes sociaux : Répercussions, selon le sexe, du financement des programmes sociaux par l'entremise du régime fiscal

HV1448.C3Y68 2000 336.24'2'O82'0971 C00-980286-X

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ABSTRACT

This study examines the impact on women of funding social programs through the tax system. It does so using the framework of tax expenditure analysis, which allows one to view any departure from the normative tax system (i.e., those basic rules, such as the tax rate and the tax unit, that comprise the revenue-raising part of the system) as a spending measure. The analysis also takes into account the socio-economic realities of women's lives and concludes that many tax measures that are subsidies in respect of social programs do not benefit women to the same extent that they benefit men. Tax measures explored include the child care expense deduction, the Canada Child Tax Benefit, tax subsidies for retirement saving, the disability tax credit and tax relief for caregivers. The conclusion is that in many instances women have less access to these tax subsidies and, often, the amount they receive is less than the amount that men receive. The study concludes with a list of issues that should be considered by those involved in the tax policy process in order to ensure that women are not disadvantaged in comparison to men when tax subsidies are used to fund social programs.

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LIST OF ABBREVIATIONS AND ACRONYMS

CACSW	Canadian Advisory Council on the Status of Women
CAP	Canada Assistance Plan
CCSD	Canadian Council on Social Development
CCTB	Canada Child Tax Benefit
CHST	Canada Health and Social Transfer
CLC	Canadian Labour Congress
CPP	Canada Pension Plan
CRRU	Childcare Resource and Research Unit
DAWN Canada	DisAbled Women's Network Canada
GIS	Guaranteed Income Supplement
GST	Goods and Services Tax
NAWL	National Association of Women and the Law
NCW	National Council of Welfare
OAS	Old Age Security
OECD	Organization of Economic Co-operation and Development
PEMS	Policy and Expenditure Management System
QPP	Quebec Pension Plan
RPP	registered pension plan
RRSP	registered retirement savings plan

PREFACE

Good public policy depends on good policy research. In recognition of this, Status of Women Canada instituted the Policy Research Fund in 1996. It supports independent policy research on issues linked to the public policy agenda and in need of gender-based analysis. Our objective is to enhance public debate on gender equality issues, and to enable individuals, organizations, policy makers and policy analysts to participate more effectively in the development of policy.

The focus of the research may be on long-term, emerging policy issues or short-term, urgent policy issues that require an analysis of their gender implications. Funding is awarded through an open, competitive call for proposals. A non-governmental, external committee plays a key role in identifying policy research priorities, selecting research proposals for funding and evaluating the final reports.

This policy research paper was proposed and developed under a call for proposals in August 1998 on *Women and the Canadian Tax System.* Research was invited that would examine the tax system, its underlying assumptions about women's lives and whether it has a different impact on women and men. Status of Women Canada funded two research projects on this issue: one project providing a broad analysis and one that looks particularly at the impact on women as mothers and workers.

A complete list of the research projects funded under this call for proposals is included at the end of this report.

We thank all the researchers for their contribution to the public policy debate.

FOREWORD

As always, a project of this nature is not a one-person production. I owe thanks to several people, including my two excellent research assistants. Melinda Anderson did a magnificent job assembling many of the statistics used in this report and Beth Long provided outstanding research and editorial assistance. I also wish to thank Susan Boyd who has patiently read so much of my work and enriched it with perceptive insights.

Thanks are also due to the Social Sciences and Humanities Research Council of Canada which helped to fund some of the research used in this report by way of a grant provided through the Major Collaborative Research Initiative Program. This report was, however, primarily funded by the Policy Research Fund of Status of Women Canada. I wish to express my sincere appreciation to that organization and, in particular, the Director of Research, Zeynep Karman, for having the foresight to recognize how important it is to evaluate the impact of the tax system on women and for their assistance in bringing this project to fruition.

Some of the material is this report is based on my earlier work, including “Child Care—A Taxing Issue?” in the *McGill Law Journal* (1994), “(In)visible Inequalities: Women, Tax and Poverty” in the *Ottawa Law Review* (1994) and “Taxing Times for Women: Feminism Confronts Tax Policy” in *Tax Conversations* (1997).

This report was completed on October 26, 1999 and the law is that which was in force on that date, although there is reference to changes proposed in the 1999 federal budget.

EXECUTIVE SUMMARY

Since its inception in 1917, the Canadian income tax system has evolved into much more than a revenue-raising instrument. Over the years, it has become a most powerful social and economic tool, one that is increasingly implicated in the delivery of social programs. Just as the role of the tax system has shifted, so have some of the social and economic realities of women's lives. For example, more women than ever are working in the paid labour force, more women are living alone and fewer women are in relationships with men. Yet some things remain the same. Women's work in the home remains undervalued and is not considered productive work, women remain the primary caregivers for children, and a disproportionate number of single women live below the poverty line. To date, the issue of the impact on women of using the tax system to deliver social programs has not been analyzed in any detail. There is virtually no research in Canada that evaluates the effectiveness and fairness of using the tax system to subsidize social programs. The government publishes tax expenditure accounts that quantify the cost of each tax measure that is considered to be a spending measure rather than part of the normative tax system. A normative tax system comprises those rules that are viewed as part of the basic revenue-raising components of the tax system, such as the tax rate and tax unit. Other measures that depart from that normative base, such as tax deductions, credits and exemptions, are in fact spending measures. However, one major problem is that the tax expenditure accounts do not include any gender breakdown.

The focus of this study is consideration of the impact on women (as compared to men) of delivering social programs through the tax system. The study situates the analysis in the social and economic realities of women's lives, and recognizes that women are not a monolithic group. Their experience is affected by differences among them which are the consequence of social conditions such as race, age, sexual orientation, class and disability. While recognizing the value of the traditional tools of tax policy analysis in evaluating tax measures, this study uses equality among particular groups in society as the foundation of its analysis. An equality analysis is applied to those tax measures used to deliver social programs. The intention is to determine how those measures apply to women. Do women benefit to the same extent as men? How does women's socio-economic status affect their access and entitlement to tax subsidies? The tax measures that are the focus of this study are the tax subsidies related to children, dependence, retirement saving, and those for individuals with disabilities and their caregivers.

This study outlines the application of the tax rules and reviews the impact of those rules on women. Suggestions for changes that might reduce or eliminate the negative impact of a particular rule on women are put forward to stimulate discussion and possible reform. In some instances, the only solution to the problem is to remove the subsidy from the tax system and deliver it in another manner. In other instances, specific amendments to the income tax rules would improve the situation.

The child care expense deduction and the Canada Child Tax Benefit are discussed in detail. Given that women are the primary caregivers for children, these subsidies are very important for women. The conclusion is that both these subsidies have problems. For example, the child care expense deduction is inadequate in amount and is worth more in terms of tax dollars saved to those with higher incomes than to those with lower incomes. The limitations with respect to the definition of income to which the deduction can be applied have a negative effect on many women. The Canada Child Tax Benefit is targeted in a manner that disadvantages those women on social assistance in comparison to the working poor. Suggested options for reform to the child care expense deduction include increasing the amount of the deduction, removing restrictions on the nature of the income to which the deduction may be applied or converting the deduction to a refundable tax credit (as is done in Quebec). The key issue for consideration with respect to the Canada Child Tax Benefit is whether the tax system is the appropriate tool for delivering this program.

The tax system plays a significant role in subsidizing retirement saving; yet, for a variety of reasons, women do not have as much access to these subsidies as men. One reason is that the tax subsidies are provided for contributions to, and the income earned by, private pension plans, such as occupational pension plans and registered retirement savings plans (RRSPs). For a variety of reasons, many women are unable to contribute to these plans; if they do contribute, they often receive less of a tax subsidy than men. A primary reason for women's unequal access to tax subsidies for occupational pension plans is that access to these plans depends on participation in the paid labour force in jobs that provide these plans. For example, 70 percent of part-time workers are women, but these plans are not usually available to part-time workers. Tax breaks for occupational pension plans and RRSPs are also of no value to women who work only in the home, or who have no discretionary funds to contribute to an RRSP. Given that the role of universal pension schemes such as the Old Age Security (OAS) appears to be diminishing and that the government is encouraging more reliance on private pension plans, it is important to remedy women's lack of access to tax subsidies for retirement savings. One suggestion is to remove all tax preferences from the *Income Tax Act* and redirect the funds to the more "universal" plans such as the Old Age Security and the Canada Pension Plan (CPP). Alternatively, current tax rules could be reformulated to allocate the subsidy in a manner that ensures women are not disadvantaged in comparison to men, either in respect of their access to the subsidy or the amount they receive.

Tax subsidies related to dependence, such as the spousal tax credit, need to be rethought. These measures are a disincentive to women's participation in the paid labour force and undermine women's autonomy. The caregiver tax credit, which is intended to recognize women's caregiving in the home, also acts as a disincentive to women's participation in the paid labour force and should be restructured to remove this disincentive. The study discusses whether the tax system is the appropriate tool for delivering subsidies related to dependency and offers options for reform of the current rules. Suggestions include, for example, the removal of the spousal tax credit and the conversion of the tax deductions in respect of caregiving to refundable tax credits.

The study concludes with recommendations intended to assist those who prepare amendments to the *Income Tax Act*, including officials at the Department of Finance and the Canada Customs and Revenue Agency, to evaluate the gender impact of any proposed changes and to consider, in a more informed manner, the impact of those changes on women. The recommendations are also intended to provide women's groups and others interested in the issue of the impact of the tax system on women with information that might assist them in the preparation of submissions to the government on tax policy issues. In addition to a call for the use of statistical data on the socio-economic realties of women's lives in the setting of tax policy, Appendix A to this study includes a list of 10 questions that should be considered whenever changes to the income tax system are contemplated. The intention is that the questions will allow policy makers and others to determine if a particular measure might have a negative impact on women. If it does, how might that negative impact be avoided?

INTRODUCTION

> During the first fifty years of income taxation in Canada, there is no evidence that anyone paid any attention to the effects of these and other policies on women. Women were still largely disenfranchised, and certainly had virtually no access to political and bureaucratic processes. Nor did they have access to the legal, accounting, and taxation professions in any kinds of numbers or in any kinds of positions that would have made any kind of systematic inquiry possible (Lahey 1988: 378).

While consideration of the impact of tax policies on women has been the subject of some study in the 30 years that have elapsed since the period referred to in the quotation above, there is much more work to be done.[1] Since its inception in 1917,[2] the Canadian income tax system has evolved into much more than a revenue-raising instrument. Over the years, it has become a most powerful social and economic tool, one that is increasingly implicated in the delivery of social programs. Just as the role of the tax system has shifted, so have some of the social and economic realities of women's lives. For example, more women than ever are working in the paid labour force, more women are living alone and fewer women are in relationships with men. Yet some things remain the same. Women's work in the home remains undervalued and is not considered productive work, women remain the primary caregivers for children and a disproportionate number of single women live below the poverty line.

To date, the issue of the impact on women of using the tax system to deliver social programs has not been analyzed in any detail. There is virtually no research in Canada that evaluates the effectiveness and fairness of using the tax system to subsidize social programs.[3] The government publishes tax expenditure accounts that quantify the cost of each tax measure that is considered to be a departure from the normative tax system and, therefore, a spending measure.[4] However, these accounts do not include any gender breakdown. Tax expenditure accounts are limited in the knowledge they provide because they take a quantitative rather than a qualitative approach. That is, they do not examine the impact on differently situated individuals or groups of using tax expenditures to fund social programs.[5] This problem led the National Association of Women and the Law to recommend in 1991 that the "federal government should collect and disseminate data on the *impact* of the tax system, according to gender" (NAWL 1991b: 4, emphasis added).

The focus of this study is the impact on women (as compared to men) of delivering social programs through the tax system. The study situates the analysis in the social and economic realities of women's lives, and recognizes that women are not a monolithic group. Their experience is affected by differences among them, which are the consequence of social conditions such as race, age, sexual orientation, class and disability. While recognizing the value of using the traditional tools of tax policy analysis in evaluating tax measures, this study uses equality among particular groups in society as the foundation for analysis. An equality analysis is applied to those tax measures that are used to deliver social programs. The result is a discussion of the differential impact on women compared to men of tax expenditures used

to subsidize social programs. Rather than making specific policy recommendations, the study raises options for reform that suggest different ways in which the inequalities might be redressed. The intention is to encourage debate among those who make tax policy, women's groups and other interested parties about the most appropriate manner in which to proceed. The study also includes recommendations for tax policy makers and others that are intended to allow policy makers to consider directly the impact of proposed tax measures on women. These recommendations will help ensure that any gender disparity that may arise as a result of the impact of a particular tax provision is reduced and, if possible, eliminated.

Chapter 1 provides an introduction to the issues that are at the core of this study. It provides an overview of the income tax rules and reviews the purposes underlying the Canadian income tax system. It considers how we evaluate tax measures by reference to criteria such as equity, neutrality and simplicity, and discusses, in detail, the relevance of an analysis that focusses on equality. The concept of tax expenditures is discussed. A key point of this chapter is to draw attention to the need to examine issues respecting the impact of certain tax measures on women in a manner that considers the socio-economic realities of women's lives and the differences among women.

Chapter 2 examines tax subsidies related to children. These subsidies have a direct impact on women who tend to be the primary caregivers of children. The operation of the child care expense deduction and Canada Child Tax Benefit is discussed in detail, and the problems with these expenditures are reviewed.

Chapter 3 discusses tax subsidies for retirement saving. Tax breaks for contributions to, and income earned by, registered pension plans (occupational pension plans) and registered retirement savings plans are discussed. The chapter considers the relationship between this method of funding retirement saving and the poverty experienced by so many women in retirement.

Chapter 4 discusses other tax subsidies that have a differential impact on women compared to men. They include tax subsidies related to dependence, such as the spousal tax credit and the ability to transfer certain unused tax credits to a spouse. Tax subsidies for those with disabilities and those who care for family members are also discussed.

Appendix A consists of specific recommendations intended to assist those who make tax policy and women's groups in ensuring that any proposed tax measures do not have a more negative impact on women than men.

It is important to state, at the outset, the limitations of a study of this nature. First, the focus is the federal income tax system, not provincial tax systems, although because Quebec administers its own income tax system, some of the Quebec rules are discussed where they vary from the federal rules. Second, this study is limited to an analysis of those income tax rules that provide subsidies for social programs. The study is not a review of the impact of the tax system generally on women. Therefore, issues such as what the appropriate unit of tax should be and the non-taxation of imputed income[6] are not discussed in any detail. Finally,

not all measures that relate to the funding of social programs are included. The study focusses only on those measures that disadvantage women compared to men.

Endnotes

[1] There have been several research reports in the last decade or so that have focussed on women and tax. See, for example, CACSW (1987); Lahey (1988); NAWL (1991); and Ontario Fair Tax Commission (1992).

[2] *Income War Tax Act*, S.C. 1917, c. 28.

[3] A significant body of Canadian literature examines the use of tax expenditures but this literature does not take gender into account. See, for example, Bruce (1988); Domingue (1988); Doern (1989: 75-105); Maslove (1991); Lindquist (1994: 32-128); and Perry (1995).

[4] The concept of tax expenditure analysis and which tax measures can be considered to be expenditures is discussed in detail in Chapter 1.

[5] The most recent tax expenditure account is Canada 1999.

[6] Imputed income is earned income in kind. In this context, the argument is that the value of women's unpaid labour in the home is imputed income, and that ignoring its value for tax purposes is problematic. Unless the tax system recognizes the value of household production by either taxing it or giving tax relief to women who work outside the home in the paid labour force, those women who work outside the home are at a disadvantage compared to women who work exclusively in the home in an unpaid capacity. In effect, women who work outside the home have to purchase household services or forego leisure time in order to provide for themselves and their families. There has been some debate within the feminist literature on how to compensate for the non-taxation of these amounts. See for example, Staudt (1996).

1: AN INTRODUCTION TO TAX POLICY ANALYSIS

Overview of the Tax System

> There is much to be done to rid the income tax system of its overtly discriminatory provisions, as well as its systemic bias against women (Maloney 1987: 44).

Income taxes are levied both by the federal government, and by the provincial and territorial governments. Income tax is payable on an individual's worldwide income. The *Income Tax Act*[1] taxes on the basis of the source of that income with the result that different rules may apply in the computation of that income, depending on the source of the income. The main sources of income are employment income, business income, property income, other income and capital gains. The Act requires taxpayers to compute their net income by including certain amounts from each source in income and taking any allowable deductions. Taxable income is net income less any other deductions such as losses carried over from previous years. Federal tax payable is a percentage of taxable income. At present, there are three federal rates of tax (17 percent on the first $29,590 of income, 26 percent on the amount of income in excess of $29,590 up to $59,180 and 29 percent on the amount in excess of $59,180). Once federal tax payable has been calculated, the taxpayer may apply any non-refundable federal tax credits available. These will reduce the amount of tax payable. Examples of these tax credits include the personal tax credit, the marital (spousal) tax credit, the dependant tax credit, the charitable donations tax credit and the political donations tax credit. The next step is to calculate the federal surtax, which is three percent of basic tax payable up to a maximum of $250. Finally, tax is reduced by any refundable tax credits available and if taxable income is reduced to zero the credit can result in a refund to the taxpayer, even though no tax was payable. Examples of refundable tax credits include the Goods and Services Tax (GST) credit and the Canada Child Tax Benefit.

The federal government and all provinces except Quebec have entered into agreements whereby the federal government collects income taxes for the provinces.[2] Quebec imposes and collects its own income taxes, applying a system that is similar to the federal system in structure, although it is fully independent of the federal system. The provinces that have entered into tax collection agreements with the federal government levy an income tax that is a percentage of federal tax payable. The amount of the provincial income tax varies from province to province. For the 1998 taxation year, the rates ranged between a high of 69 percent in Newfoundland (plus a surtax of 10 percent on provincial tax in excess of $10,000) to a low of 42.75 percent in Ontario. The agreements also permit the provinces to provide certain tax credits to taxpayers that are provincial in nature.

In Quebec, there are three rates of tax: 20 percent on the first $25,000 of income, 23 percent on income in excess of $25,000 up to $50,000 and 26 percent on the amount in excess of $50,000. While the structure of the Quebec tax system is similar to that of the federal system, there are

differences in the specific provisions. This study discusses those Quebec tax rules that are designed to subsidize social programs and that differ from the federal rules.

Purposes of a Tax System

> [T]axation depends on choices made collectively about what goods and services should be provided through government, what proportion of the income of society should be redistributed among its members, how the revenue needed to provide those goods and services should be raised, and how the tax system should be used to influence the decisions of individuals (Ontario Fair Tax Commission 1993: 32).

An income tax system is a multi-faceted government program. Arguably, it is the government's most important policy instrument because its impact is so far reaching, affecting all Canadians on a daily basis in so many different ways. Obviously, one of its primary objectives is to raise revenue to be spent on government programs, but that is only part of its role. Increasingly, our tax system is being used to achieve other goals, although which goals take precedence over others varies from time to time as the political climate changes.[3] Some of the other functions of a tax system include redistributing economic resources when the private market fails in this regard, redistributing income to reduce the inequalities between rich and poor, imposing additional costs in order to fulfil a regulatory function and stabilizing the economy. Different tools are used to achieve different goals. Therefore, for example, progressive marginal tax rates are intended to ensure that there is a more equal distribution of disposable income than there would be if all taxpayers paid tax at the same rate regardless of their income. The function that is most pertinent to this study is the tax expenditure function of the tax system. Tax expenditures are used for a variety of purposes, including to redistribute income, to encourage certain economic behaviour and, in the context of this study, the highly important function of delivering subsidies for social programs. This tax expenditure function is discussed in detail later in this chapter.

Fairness of a Tax System

> The achievement of a fair tax system in a democracy is rightly regarded as a matter of high economic and social importance (Head 1993: 4).

Traditional tax policy analysis has judged the effect of tax measures and, to a certain degree, their fairness by reference to three particular factors—horizontal and vertical equity, neutrality and simplicity. Underpinning these criteria are the normative values of income taxation based on ability to pay which recognizes that some are more able to contribute than others, and the use of taxation as a tool for income redistribution. The hallmark of taxation based on ability to pay is the progressivity of the tax system. A progressive system is one that imposes graduated rates of tax with the result that those with higher incomes pay tax at a higher rate on that higher amount of income.

Horizontal equity is defined as the requirement that equals be treated equally. In other words, all persons in the same circumstances should be treated in the same manner. Therefore, for example, one can argue that two people with the same amount of income should pay the same tax. But horizontal equity is an increasingly difficult concept to pin down. The key issue when deciding whether this criterion is being adhered to is determining which individuals are "similarly situated." For example, as Neil Brooks (1993: 181-184) has pointed out, the long-standing tax policy view that two individuals with the same amount of income should pay the same amount of tax is being challenged in the name of lower taxes for the rich. The argument is that such a point of comparison means that the return on individuals' savings is included in income and that is unfair to the person with thriftier habits. Thus, the call is being made for the point of comparison not to be the amount of income each individual earns but rather the value of their consumption. This kind of analysis undermines the basic tenet of taxation based on ability to pay.

Vertical equity requires that persons in differing situations be treated in an appropriately different manner. Again, this criterion is closely connected to the principle of taxation based on ability to pay. One can argue that adherence to the principle of vertical equity has been eroded over time, especially since the 1987 "tax reform" process. At that time, the number of tax rates was reduced from 10 to three and the top federal rate from 34 percent to 29 percent. Even though we have seen an increase in top tax rates because of surtaxes, the system is not as progressive as it was prior to the 1987 reform.[4] In addition, the introduction of the GST—a flat rate consumption tax—has meant a further decrease in the progressivity of the tax system.[5] Furthermore, there are frequent calls from many quarters, including several provincial governments, for a general lowering of tax rates. Such a move could further detract from the progressivity of the system, thus further eroding the vertical equity of the tax system.

The criterion of neutrality requires that the tax system does not distort taxpayers' social and economic choices. For example, the decision whether or not to work in the paid labour force or the decision to spend money rather than save should not be influenced by the workings of the tax system. Underlying this concept of neutrality is the concern that distortion of economic choices may result in a misallocation of resources because taxpayers may choose to direct money into activities that receive preferential tax treatment, rather than those that do not. But it is not only economic choices that should not be distorted by the tax system. Social choices, such as the choice to marry or to live in a common-law relationship or to remain single, should not be made as a consequence of any preferential tax treatment that would ensue from choosing one lifestyle over another.

While the phrase "a simple tax system" may appear to be an oxymoron, it is clear that most people would support the idea that a tax system should be as simple as possible. It is important that taxpayers understand the impact of the tax rules on them and their activities. It is also important that the taxing authorities are able to administer the system, something that becomes more difficult as the system becomes more complex. Thus, simplicity is another criteria by which we judge the effectiveness of the tax system.

While the principles discussed above are an important foundation of our tax system, some authors have commented recently on how traditional tax policy analysis has, in the past, omitted a very important element—equality among particular groups in society.[6] Maureen Maloney (1994: 118), for example, has pointed out that "[w]hile current interpretations of equity, both vertical and horizontal, may catch class biases, they do not go far enough because the need for equity is generally recognized with respect only to the distribution of income." Evaluation of the tax system by reference to equality is not as limited in scope as some of the approaches discussed above. It requires an examination of the impact of the rules on particular groups in society to determine if they are treated in a prejudicial manner. In this study, the group examined is women, although, as I discuss later in this chapter, they are women with differing social identities.

Any analysis of the equal application of income tax rules must take into account that equality does not merely mean formal equality. Rather, the analysis must also encompass the concept of substantive equality. An approach based on formal equality would treat all individuals the same regardless of the differences between them. It has been said that this approach "is inadequate to the task of creating real equality because it does not encompass or even acknowledge inequality of condition. Substantive equality recognizes that in order to achieve equality, different groups in society may require different treatment" (Brodsky and Day 1989: 150). It has been put this way by the Supreme Court of Canada:

> In fact, the interests of true equality may well require differentiation in treatment. In simple terms, then, it may be said that a law which treats all identically and which provides equality of treatment between "A" and "B" might well cause inequality for "C", depending on the differences in personal characteristics and situations. To approach the ideal of full equality before and under the law—and in human affairs an approach is all that can be expected—*the main consideration must be the impact of the law on the individual or group concerned* [emphasis added].[7]

An example of formal equality in the tax context is the gender neutrality of tax legislation. Each provision applies to both men and women and yet, as I discuss, women suffer significant substantive inequalities when compared to men in terms of the impact of the system on them.

There is no doubt that the *Canadian Charter of Rights and Freedoms*,[8] particularly section 15(1),[9] has had a profound effect on our conception of what equality is and how it might be achieved. The consideration of what is "equal protection and equal benefit of the law" has been the subject of much debate and reflection both in the courts and elsewhere. In the tax context, there have been two section 15 challenges based on sex discrimination that have been heard by the Supreme Court of Canada in recent years. In *Symes v. Canada*[10] a practising lawyer argued that her child care expenses should be deductible as a business expense and in *Thibaudeau v. Canada (M.N.R.)*[11] a woman receiving child support from her ex-spouse argued that the requirement that child support payments be included in income discriminated against her on the basis of her sex. Both women lost their cases, but the

Charter, its application to women and the concept of equality all came under very close scrutiny. In determining whether or not there was inequality in the application of the Charter, L'Heureux-Dubé J. (in dissent) took an approach that I endorse in this study. In determining that to deny the deduction of child care expenses as a business expense was sexist, she considered the *impact* of the rule on Symes. Furthermore, she did so in a manner that took a contextual approach and considered the socio-economic realities of women's lives. She said:

> [I]t is clear that this area of law is premised on the traditional view of business as a male enterprise and that the concept of a business expense has itself been constructed on the needs of business*men*. This is neither a surprising nor a sinister realization, as the evidence well illustrates that it has only been in fairly recent years that women have increasingly moved into the world of business as into other fields, such as law and medicine. The definition of "business expense" was shaped to reflect the experience of businessmen, and the ways in which they engaged in business.… As a consequence, the male standard now frames the backdrop of assumptions against which expenses are determined to be, or not to be, legitimate business expenses. Against this backdrop, it is hardly surprising that child care was seen as irrelevant to the end of gaining or producing income from business but rather as a personal non-deductible expense.[12]

To date, federal and provincial tax policy analysis has not done an especially good job of considering the impact of the tax rules on women as a group. Canada is not alone in this regard. No member country of the Organization for Economic Co-operation and Development (OECD) has undertaken the task of reviewing the impact of its tax system on women in any systematic manner. Canada has, however, taken the lead in some respects by including classification by sex, as well as age, marital status, geographic location and income level in the Taxation Statistics (now renamed the Income Statistics). A further important step is the publication of the tax expenditure accounts that list the amount of all expenditures made through the tax system. These accounts do not, however, include any gender breakdown, a serious omission.

Tax Expenditure Analysis

> The use of the tax system as a method of enhancing people's standard of living is as old as the federal system of income tax itself. In sharp contrast to transfers through conventional social security or social welfare programs, whose cost and administration are part of the regular public monitoring, comment, and study, the benefits provided through the tax system have been hidden from public scrutiny (Guest 1997: 189).

The concept of tax expenditure analysis is key to this study. It is the theoretical framework that, together with the concept of equality, allows us to determine whether or not the tax rules discussed in this report operate in a fair manner in terms of their application to women.

In 1973, Stanley Surrey wrote the classic text in which he developed the tax expenditure concept. His thesis was that any measures, such as income exclusions, deductions, deferrals or tax credits, which depart from a normative tax system[13] are tax expenditures.[14] That is, rather than funding a particular activity or program by way of a direct grant, the subsidy is delivered through the tax system. The concept has captured the imagination of many, including the federal government that incorporates tax expenditure analysis in the budget process and publishes annual accounts that list the cost of every tax expenditure. The insights provided by this theoretical framework include a recognition that because the tax measures are part of a spending program, their effectiveness should be measured by criteria other than the traditional tax policy evaluative methods discussed above, such as equity, neutrality, economic efficiency and simplicity. Budgetary criteria, such as whether the measure is target efficient, should play a greater role in our evaluation of tax expenditures. I would submit that equality is also a key issue for consideration in the evaluation of a particular measure. Given that the allocation of a significant amount of money is at stake, it is important to identify who benefits from the expenditure and, of course, who does not.

The tax expenditure concept is based on an analysis that views the tax system as consisting of two components. There are the technical tax rules designed to raise revenue, which form the basis of the tax system (the benchmark or normative tax system), and the rules that deviate from that benchmark and which are expenditures. Therefore, deductions in the computation of income, exemptions from tax, deferral of tax and tax credits are tax expenditures to the extent that they depart from the benchmark. Perhaps the most controversial issue concerning tax expenditure analysis is the identification of those elements that constitute the benchmark and those elements that depart from it. Much has been written on this issue,[15] but at the end of the day, provided the criteria used to determine which measures are tax expenditures are clearly articulated, tax expenditure analysis is a valid analytical tool. The Government of Canada considers the benchmark individual tax system to consist of the tax rates and income brackets, the tax unit (the individual), the taxation period (the calendar year) and the fact that no account is taken of inflation (Dept. of Finance 1998: 35-38). Any measure that departs from this benchmark is a tax expenditure. For the purposes of this study, tax expenditures are considered to be those listed in the latest tax expenditure accounts issued by the Government of Canada (Dept. of Finance 1998: 35-38).

The value of each tax expenditure is calculated by reference to the revenue foregone by the government by reason of the particular measure. It is important to remember that when one compares the cost of tax expenditures to the cost of a direct grant, a dollar of a tax expenditure is often worth more than a dollar of a direct grant to the recipient. This situation arises when amounts received as direct grants are required to be included in income for tax purposes. For example, a tax expenditure comprising a $100 deduction in the computation of income would be worth $40 to an individual paying tax at a combined federal–provincial rate of 40 percent. Meanwhile, a direct grant of $40 would translate to only $24 of after-tax income, once the tax owing computed at a rate of 40 percent ($16) was paid.

Canada has been a leader in publishing tax expenditure accounts detailing the cost of each such expenditure. The first tax expenditure account was released in 1979 and, since 1992, these

accounts have been published on an annual basis.[16] Several provinces, including British Columbia, Saskatchewan, Manitoba, Ontario and Alberta, have published tax expenditure accounts from time to time (Lindquist 1994: 79-87). While Quebec has not issued a tax expenditure account, it did release a discussion paper in 1993 that listed several tax incentives designed to encourage economic growth and estimated the cost of those incentives (Quebec 1993).

Tax expenditure analysis has also become part of the federal government's budgetary process. In the late 1970s the federal government introduced the Policy and Expenditure Management System (PEMS). It was designed to ensure that more control was exerted with respect to tax expenditures. The idea was that tax expenditures would no longer be "free" money for departments to allocate. If a department was successful in convincing the Department of Finance that a particular tax expenditure should be made, then the cost of that expenditure through lost tax dollars was deducted from the total amount allocated to the department for all expenditures. There were also efforts made to diminish the power of the Department of Finance with respect to tax expenditures and to ensure that the Priorities and Planning Committee of the federal government played a greater role. It has been said, however, that "not only did PEMS never work according to plan, but only a shadow remains of the original system" (Lindquist 1994: 78). Furthermore, the Department of Finance remains the key player in the administration of current tax expenditures and the evolution of new ones.[17] Given the hugely important role of the Department of Finance as the department responsible for the formation of tax policy and the drafting of amendments to the *Income Tax Act*, Chapter 5 of this study includes guidelines intended to assist the Department in determining what the impact of any amendments to the Act that relate to the funding of social programs might be on women.

It is often said that business supports the use of tax expenditures while social policy activists do not favour the use of tax expenditures.[18] Some of the concerns that social activist groups have raised about the proliferation of tax expenditures include the hidden nature of tax expenditures, the fact that tax expenditures are often not well targeted and perhaps, most important, the favouring of high-income earners when subsidies are delivered through the tax system. The latter problem arises when tax expenditures are delivered as deductions in the computation of income. Deductions are worth more in terms of tax dollars saved to those who pay tax at a high rate than those who pay tax at a lower rate. For example, a $1,000 deduction in the computation of income is worth $500 to a high-income individual who pays tax at a federal–provincial combined rate of 50 percent, but it is only worth $200 to the individual with less income who pays tax at a rate of 20 percent. And, of course, a tax expenditure that is a deduction in the computation of income is of no value to an individual who pays no tax.[19] This state of affairs produces what is referred to as an "upside-down effect" whereby those who need the subsidy most by reason of their low incomes either receive no subsidy at all or receive less than those with higher incomes. This situation has led many social activists to argue that tax expenditures should be converted into direct subsidy programs (Ontario Fair Tax Commission 1993: 1034). Alternatively, if the use of the tax system to deliver social programs is to be retained, then the tax deduction should be replaced

by the tax credit, the amount of which is worth the same to all taxpayers regardless of their income level.

Recently, the position of social activists with respect to tax expenditures has become a little more ambivalent on the issue of whether tax expenditures have a role to play in subsidizing social programs. As one commentator has noted (Doern 1989: 91), social groups

> would like some of the favourable privacy and flexibility aspects that accrue when one delivers social programs through the tax system. Many social programs were demeaning because of the imposition of means tests. Social policy recipients dislike bureaucratic grant based interventions as much as do business persons. The logic of these developments was that many social groups saw the tax system as a less demeaning vehicle for social policies, especially if they were delivered as refundable tax credits.

What are the benefits of tax expenditure analysis? Put simply, drawing on the concept that many tax measures are spending measures, the debate becomes one that focusses on spending and not taxing. When the focus is spending, the evaluative criteria that we apply are very different from those applied when we view the tax system as only being about raising revenue and the redistribution of income. As Neil Brooks has stated: "To argue that a spending program should be repealed because it violates the tax criteria of horizontal equity or neutrality is simply a non sequitor [*sic*]. Its purpose could not be achieved without violating these norms."[20]

One of the first advantages of tax expenditure analysis is that we can quantify the amount spent on a particular program through the tax system. As previously mentioned, the Government of Canada now publishes an account of the amount of all tax expenditures on an annual basis and the figures used in this study are, unless otherwise stated, taken from the latest tax expenditure account which was issued in 1999. A second insight drawn from tax expenditure analysis is that an important question to be answered when one is evaluating a tax expenditure is whether the expenditure is target efficient. Does the tax measure accomplish its intended goals? Another issue is whether a particular tax measure is cost effective, or is there a cheaper way to deliver the program, such as by way of a direct grant? Perhaps the most important question to pose in the context of this study is whether subsidies delivered by way of a tax expenditure are allocated in a fair manner. That is, are there individuals who do not have access to the subsidy who should have that access? Are there individuals who receive less of that subsidy than others for no good reason? If the answers to those two questions are affirmative, that does not necessarily mean there is no role for the tax system and that a direct grant should be used in place of the tax expenditure. Rather, it may just mean that the tax measure should be redesigned to remedy the unequal access.

The issue of whether the tax system is an inappropriate tool for delivering a subsidy in the first place has been debated over the years. Neil Brooks (1986: 692) discusses the early position of Stanley Surrey who first applied the term "tax expenditure" to spending programs delivered through the tax system. Originally, Surrey was clearly in favour of removing tax

expenditures from the tax system entirely and delivering the subsidies directly. But, Surrey's position moderated as time went on, and he eventually reframed the issue as one of how government subsidy programs should be designed (Brooks 1986). In this study, many of the options for reform are based on retaining a tax expenditure while redesigning it to redress its unequal impact. There are several reasons that the study does not advocate removal of all tax expenditures. One is the increased visibility of tax expenditures in recent years with the publication of tax expenditure accounts. This increased visibility leads to more accountability by government for spending measures delivered through the tax system. Another important consideration is that, given political reality and the current budget process, it seems unlikely that tax expenditures that have an unequal impact on some individuals would be removed from the tax system. An easier course of action for a government that is committed to funding social programs through the tax system is to amend the particular provision in a manner designed to remedy its unequal application. Only if it appears that the strictures of the tax system prevent redressing the problem by way of amendment to the tax measure should the program be removed from the tax system and delivered in another manner, such as by way of a direct grant.

In conclusion, tax expenditure analysis is a valuable tool for evaluating those tax measures that are spending programs. Its use in the government's budget process is to be welcomed, and the publication of tax expenditure accounts is a vital measure that allows us to consider some of the implications of delivering subsidies through the tax system. In this study, I endeavour to consider the implications for women of delivering social programs through the tax system and, in so doing, add an element that is missing from the debate about tax expenditures—an analysis of the difference gender makes and how women are disadvantaged in comparison to men.

The Socio-Economic Context in which Women Live Their Lives

> 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 (Day and Brodsky 1998: 8).

Any analysis of the impact on women of delivering social programs through the tax system cannot be done in a vacuum. The socio-economic realities of women's lives must be part of the discussion because those realities directly affect both women's access to tax subsidies and the share of those tax subsidies that they receive. When the tax system was introduced in 1917, very few women worked outside the home. Many more women were married, and women depended more on others such as fathers and husbands for their financial well-being. Over the years, some things changed. But, as I demonstrate in this study, the tax rules have not kept pace with those changes. Some of the important socio-economic realities that must be borne in mind include the following.

- Women tend to earn less than men and they tend to be less wealthy than men.[21]

- Women of colour, Aboriginal women and women with disabilities earn less than their male counterparts and less than other women (Statistics Canada 1995: 138, 153, 166).

- More women than ever before are participating in the paid labour force, although many of these women are employed on a part-time basis.[22]

- Women with disabilities are less likely to enter the paid labour force than men with disabilities or non-disabled persons (Fawcett 1996: 24, 159-160).

- Women's work in the home remains undervalued and is not considered to be "productive" work. This factor also contributes to the undervaluation of caring work performed predominantly by women outside the home, such as child care. Women remain the primary caregivers for children.

- The number of lone-parent families in Canada is on the increase with women predominantly heading these families.[23]

- Aboriginal women and women of colour are more likely to be lone parents than White women.[24]

- Single mothers with children are disproportionately represented among the poor.[25]

- More women than ever before are living alone, and fewer women are living in relationships with men (Statistics Canada 1997a: 2, 6).

All these social and economic factors must be considered when analyzing the impact of funding social programs through the tax system because they are, as I discuss, directly implicated in determining whether or not women receive these subsidies and, if they do receive them, the amount that they receive. As I demonstrate, in many cases the social and economic realities of women's lives impede women's access to tax subsides in comparison to the access enjoyed by men and also result in differential access for differently situated women.

There are several other important issues that must be taken into account when considering the context in which women live their lives. In 1995, the government repealed the Canada Assistance Plan (CAP), a cost sharing program with the provincial governments, and replaced it with the Canada Health and Social Transfer (CHST).[26] The CHST is a block-funding program whereby the federal government transfers funds to the provinces for use in the areas of health, post-secondary education and welfare. The consequence of this measure is a devolution of financial responsibility to the provinces with a corresponding diminution of the role of the federal government as a monitor and protector of the Canadian social safety net. As Shelagh Day and Gwen Brodsky (1998: 11) state in their analysis of the impact of this restructuring of Canada's social programs:

> 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 the 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 authors proceed to demonstrate the especially negative consequences for women that emanate from this restructuring. Perhaps the most important conclusion that they reach in the context of this study is that “because social programs—and social and economic policy more broadly—are a central means of realising equality commitments and redressing women’s economic disadvantage, they must be designed with the goal of advancing women’s equality at their heart” (Day and Brodsky 1998: 3). This proposition is one that should apply to all social programs regardless of the vehicle used to deliver the program.

Canada’s restructuring of social programs is closely tied to the ongoing privatization of responsibility for economic well-being. Privatization is another part of the picture that must form part of the background as we consider the impact on women of using the tax system to fund social programs. The detrimental impact of the process of privatization on women has been well documented.[27] In the context of this study, it is important to recognize that social programs that are the focus of the study, such as child care and pensions, increasingly depend on the private sector for their existence. As I demonstrate in my examination of the tax rules that apply to social programs such as these, the tax subsidies are provided in a manner that requires the private family or the private market to play an increasing role in the delivery of these programs. Again, the implications of such a policy are, as I discuss, detrimental for women.

There is another very important aspect to placing the analysis in the context of the socio-economic realities of women’s lives. Women are not a monolithic group. Women have differing social identities. Any analysis of the impact of the tax rules on women must take into account the differences among women, such as race, ethnicity, sexual orientation, class and disability. Consequently, for example, while one might argue that, because of their low income, some women do not have the same access as men to certain tax expenditures, such as those for contributions to registered retirement pension plans, one cannot merely deal with the class dimension. A second question for consideration would be, for example: How is that lack of entitlement complicated for lesbians who are also adversely affected by the non-recognition of their relationships by the Act?

The lack of data is the most significant obstacle to including a thorough analysis of the variations in differences among women. The tax statistics published by the Canada Customs and Revenue Agency, which are based on information provided by taxpayers on their income tax returns, do not include any breakdown of the information by reference to race, sexual orientation or disability. Therefore, it is difficult to do more than make assumptions based on other socio-economic statistics and, using those assumptions, extrapolate the impact of

particular tax measures on different women. In a similar vein, very little has been written about the impact of tax rules on differently situated women.[28] For example, in Canada, there is no literature on the impact of the tax system on women of colour, and it is only recently that any such work has begun in the United States.[29] Given the dearth of statistics and literature on these important issues, it is clear steps should be taken to remedy this problem so an informed analysis can be made on the impact of the tax rules on all women, regardless of their social identity. While the primary focus of this study is gender and class, every effort is made to raise issues about the impact on differently situated women of using the tax system to fund social programs.

Identification of Tax Measures that Relate to Social Programs

The focus of this study is social programs subsidized by the tax system. A key question is, therefore, what constitutes a social program? Interestingly, the social welfare literature does not tend to define the term "social program." Rather, that literature seems to consider the meaning self-evident. For this study, I adopt a definition comprising four parts. Social programs "must meet specific human needs; they must be publicly administered; they must have full or partial public financing; and they must be available exclusively to residents of the jurisdiction providing the program" (Amanor-Boadu and Martin 1994: i). This definition is to be read in conjunction with the list of tax expenditures itemized in the latest tax expenditure account issued by the Government of Canada. Furthermore, this study is limited to a discussion of those tax rules that have a clear gendered impact and which disadvantage women in comparison to men. Therefore, for example, measures such as the education tax credit, the tuition fee credit, the student loan interest credit, the age credit, the pension income credit, the GST tax credit and the medical expenses tax credit are not analyzed in the study.[30] The federal tax subsidies discussed in this study include:

- the child care expense deduction;
- the Canada Child Tax Benefit;
- the tax deduction for contributions to a registered pension plan;
- the tax deduction for contributions to a registered retirement pension plan;
- the sheltering of income from tax in both RPPs and RRSPs;
- the spousal tax credit;
- the ability to transfer unused credits to a spouse;
- the disability tax credit;
- the infirm dependant tax credit; and
- the caregiver tax credit.

Quebec measures that are discussed include the refundable child care expense tax credit, the Quebec family allowance and the ascendant lodging tax credit.

It is also important to note that the federal and provincial governments fund social programs in several ways, including through the use of direct grants and subsidies other than tax expenditures. Because the focus in this study is the tax system, I concentrate on the impact of the tax rules on women, rather than an analysis of the interrelationship between tax-subsidized social programs and programs subsidized in another manner. Nevertheless, it is important to bear in mind that this interrelationship is a factor to be considered when decisions are made about how best to subsidize a particular activity or endeavour.

Endnotes

[1] *Income Tax Act*, R.S.C. 1985, (5th. Supp.) c. I-5, as amended, hereinafter referred to as the Act.

[2] *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8. s. 7.

[3] For an excellent analysis of the changing objectives of the tax system, see Brooks (1993).

[4] Indeed, the income tax rate structure has been steadily becoming less progressive. The earlier major tax reform in 1972 saw a reduction in the number of tax rates from 14 to 10, with a lowering of the top federal rate to 47 percent.

[5] An income tax credit with respect to the GST was implemented when the tax was introduced in an attempt to reduce some of the regressive effects of the flat rate tax (s. 122.5 of the Act.) Nevertheless, the credit does not mitigate entirely the regressive effect of the tax. See Brooks (1990).

[6] In Canada, the Canadian Advisory Council on the Status of Women first noted this omission. See Maloney (1987: 2).

[7] *Andrews* v. *The Law Society of British Columbia*, [1989] 1 S.C.R. 143 at 165 *per* McIntyre J.

[8] *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act*, 1982 (U.K.) 1982, c. 11.

[9] Section 15(1) reads as follows:

> 15(1) Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and in particular, without discrimination based on race, nationality or ethnic origin, colour, religion, sex, age, or mental or physical disability.

[10] [1993] 4 S.C.R. 695.

[11] [1995] 2 S.C.R. 627.

[12] [1993] 4 S.C.R. 695 at 798.

[13] See the discussion below concerning which rules are part of the normative tax system and, therefore, considered to be part of the benchmark. Deviations from that benchmark are tax expenditures.

[14] In a fascinating review of Stanley Surrey and Paul McDaniel's 1984 text, *Tax Expenditures*, Neil Brooks makes the point that while Surrey and McDaniel did coin the phrase "tax expenditures," the concept of the tax system as a spending tool was not a novel concept. Brooks traces the evolution of the concept back to 1863 and an attack by William Gladstone on the income tax exemption for charities. The arguments made by Gladstone bear an uncanny resemblance to many of the arguments currently made for not funding social and economic programs through the tax system. For example, Gladstone said of the tax exemption, "here we maintain from year to year and from generation to generation what we are pleased to term an exemption, that is to say a public grant, but a public grant which we never investigate, and never weigh. We plume ourselves in liberality; we leave this great expenditure in the dark." Gladstone continued, "If we have a right to give public money we have no right to give it in the dark. We are bound to give it with discrimination: bound to give it with supervision" as quoted in Brooks (1986: 684).

[15] See for example, Bruce (1988), a collection of papers on tax expenditures which address this issue in detail, and a series of articles published in *Canadian Taxation*, in which lawyers and economists discuss this issue. See Surrey (1979); LePan (1979); Smith (1979); McGillivray (1979); Lahey (1979).

[16] See Canada, Department of Finance (1979). Tax expenditure accounts were also published in 1980, 1985 and each year since 1992.

[17] On the issue of the demise of PEMS and the role of the Department of Finance, see Poddar (1988: 259-268).

[18] See, for example, Poddar (1988: 261).

[19] The only tax expenditures that benefit individuals who pay no tax are those delivered as refundable tax credits, such as the GST tax credit and the Canada Child Tax Benefit.

[20] See Brooks (1986: 686). This book review also includes an excellent response to those who would ignore the issue of tax expenditures when calling for decreases in government spending and who would resist the repeal or reform of tax expenditures on the basis that they perceive that approach to be a tax increase. As Brooks points out, the repeal of tax expenditures is simply one method of cutting spending.

[21] This issue is discussed in more detail in Chapter 3, but in 1995 the average total income for all Canadian women aged 15 or over was roughly $16,600 while the corresponding figure for men was $29,600. See Status of Women Canada (1997: 13).

[22] The participation rate for women aged 25 to 54 in the labour market rose from 75 percent in 1989 to 78 percent in 1998, and the employment rate for women aged 25 to 54 rose from 70 percent in 1989 to 73 percent in 1998. See Statistics Canada (1999c: 17, Chart 5).

[23] Figures from the 1996 Census show that lone-parent families headed by women outnumber those headed by men by more than four to one. See Statistics Canada (1997a: 2).

[24] For example, almost 15 percent of all Aboriginal women over the age of 15 and almost 18 percent of all women of colour over the age of 15 are lone parents in contrast to seven percent of all White women over the age of 15. See Statistics Canada (1992, Table 1.9).

[25] In 1997, 56 percent of lone-parent families headed by a female lived in poverty. See Statistics Canada (1999b: 34-35 and Text Table IV; also p. 187 and Table 67).

[26] *Budget Implementation Act*, 1995, S.C. 1995, c. 17. The Act provided that no payments would be made under CAP after April 1, 1996 and that no payment would be made to a province after March 31, 2000. CAP was repealed March 31, 2000.

[27] For example, see Boyd (1997).

[28] To the best of my knowledge an article that I wrote in 1994 is the only article that deals exclusively with the impact of the Canadian tax system on lesbians and gay men. While there is material in that article that highlights the gendered impact of some of the rules, and discusses how lesbians are doubly disadvantaged by their gender and their sexual orientation, the focus of the article is the differential impact of tax rules on lesbians and gay men as compared to heterosexual persons. See Young (1994: 534-559). An indication that there is a need for more work that considers the impact of the tax rules on differently situated women (and men) is that of all the work I have published to date, this is the piece that has received most attention both in the form of requests for copies and use in other publications.

[29] See, for example, Moran and Whitford (1996).

[30] In the case of the GST tax credit, it should be mentioned that the amount of this credit is inadequate to compensate for the costs of the GST, and this inadequacy has a harsher impact on women than men because, given that women tend to have less income than men, they need the credit more.

2: TAX SUBSIDIES RELATED TO CHILDREN

> The tax system, however, is an inefficient, inequitable, and crude mechanism for achieving any of the state objectives in relation to assisting families supporting children (Brooks 1996: 51).

This chapter focusses on two tax measures that relate to the welfare of children and their parents, namely the child care expense deduction and the Canada Child Tax Benefit (CCTB). The underlying purpose of the provisions is explored and the issue of whether or not these provisions achieve their intended effect is interrogated. The conclusion is that both these measures need to be rethought in an effort to ensure they meet their intended purpose, and the inequities that currently arise from the application of the provisions are eliminated.

Child Care Expense Deduction

Introduction

The use of the tax system to deliver a subsidy for child care in Canada came under intense public scrutiny when Elizabeth Symes challenged the non-deductibility of child care expenses as a business expense. That challenge, which began with a filing of a notice of objection to Revenue Canada's re-assessment for the 1983-86 taxation years denying the deduction of these expenses, culminated in a ruling by the Supreme Court of Canada in December 1993 that child care expenses are not deductible in the computation of business income.[1] The majority of the Court held that because section 63 of the *Income Tax Act* provides for a limited deduction for child care expenses, it precludes any further deduction under the Act. In this part, I review the issue of funding child care through the tax system by way of a deduction for child care expenses and the impact of this policy on women.

It is important to note that federal funding for child care in Canada is provided primarily through the tax system, particularly, through a deduction in the computation of income pursuant to section 63 of the *Income Tax Act*. Prior to April 1996, some funding was also provided through the Canada Assistance Plan, a cost-sharing program with the provincial governments, which provided limited assistance for "persons in need or likely to become in need."[2] That plan has, however, been replaced by the Canada Health and Social Transfer (CHST), a block-funding program by which the federal government transfers funds to the provinces in the areas of health, post-secondary education and welfare. What is not clear is the impact this change will have on child care programs and services previously funded under CAP, although one of the stated purposes of the CHST is "to finance social programs in a manner that will increase provincial flexibility."[3] One can assume that given the relative unconditionality of this new funding method, there will be less adherence to national standards.[4] It likely also means that the trend of the early and mid-1990s toward cutting back on provincial funding for child care will continue (Friendly 1995). Therefore, the role of the tax deduction for child care expenses as the major subsidy for child care becomes especially important.[5]

Section 63 of the Act

Section 63 of the *Income Tax Act* provides the only direct federal relief for child care expenses.[6] The provision, introduced in 1972, was apparently intended to assist women with children to enter the paid labour force. At the time of its introduction, the then Minister of Finance, Edgar Benson (1969: 10) said: "The new plan is intended to primarily benefit mothers who need to work to support their families." It has become clear that if this is the intention of the deduction it is, for many reasons, woefully inadequate. Section 63 permits a deduction in the computation of income for child care expenses paid with respect to an eligible child. Allowable child care expenses include amounts paid for babysitting services, day nursery services and boarding school and camp fees, although there are weekly maximum amounts prescribed for the latter two expenses. The child care expense must have been incurred to enable the taxpayer or supporting person who resided with the child to perform the duties of employment, carry on a business, carry on grant-funded research or attend a designated educational institution or secondary school, subject to certain conditions.[7]

Section 63 defines an eligible child as a child of the taxpayer or taxpayer's spouse, or a child dependent on the taxpayer or the taxpayer's spouse, whose income does not exceed $7,044 for the 1999 taxation year.[8] In addition, the child must be under 16 or a child in respect of whom the disability tax credit is claimed. For the 1998 and subsequent taxation years, the child care expense deduction is $7,000 for each child under 7 or a child in respect of whom the disability tax credit is claimed, and $4,000 for each child aged 7 to 15, or a child who is not eligible for the $7,000 deduction but who has a mental or physical infirmity.[9] The deductible amount is limited to the lesser of the amounts described or two thirds of the taxpayer's earned income for the year. In two-parent families, the deduction must be claimed by the person earning the lower income, except where he or she is a full-time student, in prison, incapable of caring for the children or living apart from the other person for at least 90 days by reason of the breakdown of their relationship. A recent change to rules introduced in the 1996 budget means that lone parents or couples studying full time (including at high school) are now permitted to deduct child care expenses against all types of income. This change is to be welcomed as it allows women, who may be retraining to return to work, to take advantage of the deduction.

History

The decision to fund child care partly through the tax system was implemented in 1972 as part of an overall tax reform process. Since then, numerous reports on the general issue of child care have been released. Despite the various recommendations made in these reports, there has been remarkably little change in government policy. In 1984, for example, the Commission on Equality in Employment, chaired by Rosalie Abella, argued that child care is a necessity and not a luxury. This theme underlies many of the reports which followed. In 1986, the Task Force on Child Care (the Cooke Committee) conducted the most comprehensive examination of child care to date (Status of Women 1986). It undertook 25 research projects, invited 1,200 groups to make submissions, received more than 200 briefs and made 53 recommendations. Perhaps its most important recommendations were that "the federal, provincial and territorial governments jointly develop complementary systems of child care and parental leave that are as comprehensive, accessible and competent as our

systems of health care and education," and that "all new financing initiated by the federal government be directed only to services that are licensed and monitored by provincial or territorial governments" (Status of Women 1986: 373). The government responded to the Cooke Committee's report by establishing a parliamentary special committee (Martin Committee), which proposed a $700 million child care package (Special Committee on Child Care 1987). The Martin Report parted company with the Cooke Report on many issues, most significantly in its recommendation that the child care expense deduction under section 63 of the *Income Tax Act* be replaced by a refundable child care tax credit at a cost of $414 million, thereby continuing partial reliance on the tax system to fund child care.

The Conservative Government's response to both these reports was its announcement, in December 1987, of the National Strategy on Child Care (Health and Welfare 1987). This program proposed to increase the amount of the deduction for child care expenses and to replace the day care provisions of the Canada Assistance Plan with a new scheme which would commit the federal government to spending $4 billion over seven years on capital and operating grants and increasing the number of day care spaces by 200,000. This plan was included in the Canada Child Care Bill,[10] introduced in 1986, but the legislation died on the order paper when a general election was called in 1988. The Conservatives won the election but on their return to power announced the withdrawal of the previously announced $4 billion investment to create new child care spaces. Two years later, the Government announced it was abandoning its National Strategy. In 1995, the year that the Liberal Government announced that the Canada Assistance Plan would be replaced by the CHST, it also announced that it would spend $630 million over the following three to five years to split the cost of expanding child care services for children 6 and under with the provinces (*Globe and Mail* 1995: A1). As discussed in Chapter 1, the impact of the demise of the CAP has had a profoundly negative effect on the provision of social services such as child care.[11] As yet, there is no national child care program, although there is some reason for optimism. In July 1999, a federal report proposing a $12 billion universal day care program was leaked to the press, although there have been no new announcements on this issue since that time (*Vancouver Sun* 1999: A6; *National Post* 1999b: B2). Given that there may be plans afoot to inject more money into the funding of child care, it is important to rethink the role of the tax system and consider the strengths and weaknesses of this method of funding.

Women and Child Care

Child care has been, and is perceived as, a women's issue, but we must be careful about identifying it solely as such, as this only perpetuates the notion that women should be responsible for the care of children. While research shows that child care is still performed primarily by women,[12] some feminists argue that the sharing of child care responsibilities by women and their male partners is an essential step in women's struggle for equality.[13] Nevertheless, studies show that although men are spending more time with their children and thus may be playing a more significant role in their lives, women still devote considerably more time than men to primary child care.[14] Statistics show that while 67 percent of mothers spend some time on these activities on a daily basis, only 33 percent of fathers do so (Harvey et al. 1991). It is also women who primarily make the child care arrangements for their children (Beach 1992: 7). Another example of the responsibility taken by women for children

during the regular work week is that the number of days women take off work for family reasons increased from an average of 1.9 days a year in 1977 to 5.2 days in 1990. Men's time off work for family responsibilities has remained relatively static during the same time period, increasing slightly from 0.7 days in 1977 to 0.9 days in 1990 (Akyeampong 1992). Finally, while 19.9 percent of women cited caring for their children as a reason for working part time, only 1.0 percent of men gave that as the reason for working part time (Statistics Canada 1999c: 33, Table 26). Furthermore, more women than men leave the paid labour force entirely to care for their children. Clearly, child care responsibilities have a significant impact on women's participation in the paid labour force.

The lack of affordable, accessible child care is a significant impediment to entry or re-entry in the paid labour force for women with children. For example, in Canada a report by the National Council of Welfare (1993: 41) makes the point that the shortage of adequate and affordable child care creates a serious disincentive for women to seek work. "In study after study, the usual finding has been that the presence of children, and particularly the presence of children younger than six years of age, substantially reduces both the probability that a woman will work and her expected hours if she does work" (Nakamura and Nakamura 1985: 178). Women who would normally receive low wages in the labour force and who face the high costs of suitable child care, which normally costs several thousand dollars a year or more per child, may find it more economical to stay at home. This reality is recognized by the Government of Canada (1994: 53) in its 1994 Discussion Paper that states: "In many cases, the lack of affordable, high quality child care is an insurmountable barrier to a job."[15] For some women, it means not working outside the home; for others, it means part-time work, shift work or work at a location close to home. Indeed, 1994 Canadian statistics indicate that women form almost 70 percent of the part-time labour force and 26 percent of employed women worked part time (Statistics Canada 1978b: 9). Further, one quarter of women aged 25 to 44 working part time cited personal or family responsibilities as the reason for working part time (Lero and Johnson 1994: 5). Along similar lines, 7.6 percent or 298,000 women aged 16 to 64 who were on welfare or Unemployment Insurance during 1988-1990 left their jobs because of "family responsibilities," the most common of which would presumably be caring for children. This is compared with a mere 1.2 percent, or 48,000 men, who cited family responsibilities as their reason for leaving their jobs (NCW 1993: 17-19).

The lack of available child care is clearly linked to women's economic inequality relative to men. As mentioned, women earn less than men. One contributing factor is that the part-time work so many women perform is less remunerative than comparable full-time work. Women may also work in jobs that require fewer overtime hours or that allow them unpaid leave during school vacation. Women without access to child care also forego education or training opportunities that could lead to jobs with higher salaries. It should be stressed that this is not just a workplace equality issue. Women's abilities to pursue other activities, both in and outside the home, are also affected by their child care responsibilities. This may manifest itself in several ways, including the inability of women with children to engage in remunerative activities in the home, such as artistic endeavours, or non-remunerative but socially vital activities outside the home such as volunteer work. In fact, one recommendation made by the Canadian Advisory Committee on the Status of Women (1986: 3) in its brief to the Cooke

Committee was that "child care services should be available to those parents who have no paid employment for a maximum of one day a week."

The Tax System

Given that the child care expense deduction is the primary method of funding child care in Canada, it is important to ensure that it operates in a fair and equitable manner and that it achieves its stated objective of removing the impediment to women's participation in the paid labour force. In fact, on close examination, the limitations of section 63, as an effective subsidy for child care, are readily apparent. Perhaps most notably, the amount that may be deducted does not reflect the actual cost of child care. Indeed, this limitation was readily apparent when Elizabeth Symes argued that she be permitted to deduct her child care expenses from business income. If successful, she would not have been subject to the current monetary ceiling on the deductible amount. As mentioned, that ceiling is extremely low. The maximum amount deductible under section 63 is only $7,000 a year for a child under 7. This translates to a subsidy of only $3,500 a year for a woman who pays tax at a high rate of 50 percent, while a woman who pays tax at a lower rate of 20 percent will receive even less, that is $1,400 as her subsidy. Given the high cost of child care in Canada, this amount is clearly inadequate. The cost of child care varies from province to province and is also affected by the nature of the care (i.e., whether it is provided in the home or in a child care facility). In 1988, the Canadian National Child Care Study estimated the cost of regulated child care at $7,188 a year for infants and $5,361 for preschoolers (Pence 1992: 396). Since that time, the costs have risen considerably with estimates running at a high of $9,396 for infants and almost $6,000 for preschoolers.[16]

The inadequacy of the amount of the section 63 deduction is exacerbated by the fact that section 63 provides a deduction from income, which ties the value of the deduction to the taxpayer's tax rate. This means that a woman paying tax at a high rate receives a larger tax subsidy than a woman paying at a lower rate. Such a system establishes a hierarchy of taxpayers which is in inverse relation to their ability to pay for child care. At the top are those with the highest incomes. Below them, in declining order, are taxpayers with lower incomes. At the bottom are taxpayers to whom the deduction is worthless because they have little or no income to which to apply the deduction. This problem is exacerbated by the fact that those with higher incomes tend to claim a greater amount as the child care expense deduction than those with lower incomes. For example, figures based on tax statistics for the 1996 tax year (latest figures available) show that the average amount deducted by women with an income of more than $50,000 was $2,511; women with an income under $20,000 deducted less than half that amount with an average deduction of $988.[17] Therefore, the tax system compounds the already existing problem of those with higher incomes getting a greater share of the tax subsidy.

The requirement that couples allocate the deduction to the lower income person also limits the value of the deduction. This problem arises because the deduction will be applied to reduce income that is taxed at the lower rate, thereby resulting in less taxes saved than would have been the case if the deduction was taken by the high-rate taxpayer.

As mentioned, the deductible amount is the lesser of the allowable portion of the expense and two thirds of the taxpayer's earned income. "Earned income" includes employment income, business income, disability payments made under the CPP/QPP, training allowances and scholarship monies. Employment Insurance benefits are not earned income, nor are spousal or child support payments, even though these amounts may be required to be included in income.[18] Therefore, a mother whose income is a combination of spousal support payments and employment income, for example, may only apply her child care expenses to reduce her employment income. This means that when her employment income is reduced to zero by the child care expenses, she may not apply the unused portion of the expenses to reduce the tax on her spousal support payments. Another problem with the requirement that child care expenses can only be applied to reduce earned income is that women who are looking for employment and whose only source of income is Employment Insurance cannot deduct child care expenses they incur while seeking a job. Again, the limitations of the tax provision mean there is no subsidy for the individual who may need it most.

Section 63(1) provides that in order to deduct child care expenses, a taxpayer must file receipts with the Minister of National Revenue and the receipts must include the social insurance number of the individual providing the child care services. Although Revenue Canada's administrative practice is that the receipts need not be submitted when the return is filed, the requirement to submit is a statutory requirement that can be enforced at any time. This is a highly unusual requirement given that for most other deductions, the legislation specifically provides that receipts need only be produced on the demand of the Minister. The problem with the requirement in the child care context is that, in many instance, receipts are not provided by the caregiver, reflecting the often informal nature of many child care arrangements. It has been stated that "most (63 percent) working mothers with preschool children do not get receipts for child care and do not plan to file a claim" (Cleveland and Hyatt 1997: 22). The requirement for receipts for an expense incurred so frequently in the informal market puts a far more onerous burden on a taxpayer than, for instance, the requirement for receipts for business expenses, which are generally incurred in the formal market where issuance of receipts is the norm. There is a second aspect to this issue. The statutory requirement that the receipt include the social insurance number of the child care provider is problematic.[19] Presumably, the reason is to minimize the number of fraudulent claims and to ensure that, where the deduction is taken, the payee includes the amount in her income. Yet why child care expenses are singled out for this restriction and not, for example, moving expenses deducted is not clear.

The requirement to include the social insurance number of the caregiver on the receipt is sexist because it is in respect of a deduction for an expense primarily incurred by women for services also primarily provided by women. There are also racial implications. Child care services, particularly in the private sector are often provided by immigrant women who are frequently women of colour.[20] By statutorily requiring child care workers to provide their social insurance numbers, while not requiring the same of providers of other tax deductible services, the government places an added burden primarily on these immigrant women. The rationale for this policy is questionable, particularly in light of the fact that child care workers are so grossly underpaid. Many of those providing the service do not earn enough to be liable for income tax, so the requirement for the provision of their social insurance numbers is not strictly a tax

enforcement measure. If, as one suspects, it is really an attempt to enforce the *Immigration Act*[21] and to ensure only those with legal status in Canada, who are consequently able to secure a social insurance number, may work in Canada, then it is highly inappropriate to use tax legislation in this manner. It is also probably ineffective. Denying the tax deduction to a woman who is trying to obtain child care in a market where the demand is significant and the supply limited does not automatically result in her use only of those providers who have social insurance numbers. It often simply means she resorts to the informal market and the provision of services in the underground economy. Surely, the rules that apply to other deductible expenses—that receipts be maintained and submitted on demand—should also apply to child care expenses.

Child care is only considered an eligible expense if it is not provided by a parent of the child or a person under 18 who is related to the taxpayer.[22] This restriction has a harsher effect on some women. First Nations children, for example, are often cared for within the extended family unit, and care may be given by siblings or other relatives under 18 years of age.[23] Low-income women who cannot afford to purchase child care services often rely on relatives, including siblings of the child, to provide child care at a cost less than that incurred in either the formal or extra-familial market. In both examples, because the *Income Tax Act* recognizes only those child care arrangements that fit within the traditional White middle class norm, the subsidy for child care is denied to those who may need it most. Whether the deduction should be available for care by a person under 18 is a complicated issue. But, it is important to recognize the limitations of the current rule with respect to what is an eligible child care expense, and its differential impact on the groups mentioned above, in order to determine what policy might be more appropriate to remedy these inequities.

The Symes *Decision*

The issue of subsidizing child care through the tax system received tremendous attention because of the Supreme Court of Canada's decision in *Symes.*[24] In *Symes* the taxpayer, a full-time practising lawyer and, at that time, a partner in a law firm, claimed that her child care expenses should be deductible as a business expense under section 9 and paragraph 18(1)(a) of the *Income Tax Act*. Section 9 provides that a taxpayer's income from business is the profit from the business and paragraph 18(1)(a) provides that no expense is deductible "except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business." Symes made a two-part argument. She contended, first, that the salary paid to the nanny who cared for her children was a business expense incurred to gain or produce income. Had she not had child care help, she would not have been able to practise law and, consequently, would have earned no income from her business. Second, she argued that to disallow her the deduction was to deny her equal benefit of the law on the basis of her sex. This disallowance was in contravention of section 15(1) of the *Canadian Charter of Rights and Freedoms*,[25] because it has a disproportionate impact on women who are primarily responsible for child care.

At the Federal Court (Trial Division),[26] Cullen J. held that Ms. Symes's expenses should be deductible for two reasons. He found, first, that the issue had to be interpreted in light of the "social and economic realities of the times."[27] He relied on the expert evidence of Dr. Patricia

Armstrong, a sociologist, that the influx of women with children into the work force in the 1970s and 1980s represented a significant social change. He then held that Symes had "exercised good business and commercial judgment in deciding to dedicate part of her resources from the law practice to the provision of child care"[28] and that, consequently, the child care expenses were deductible as a business expense. Even though he found for Ms. Symes on his interpretation of the Act, Cullen J. went further and held that Revenue Canada's denial of the deduction was discrimination against Ms. Symes on the basis of her sex, noting that as a result she was "not treated like a serious business person with a serious expense incurred for a legitimate purpose."[29]

That decision was overturned by the Federal Court of Appeal. Décary J.A., writing for the Court, held that child care expenses were not a business expense under paragraph 18(1)(a) because they were a "parental" expense under section 63 and were only deductible in accordance with that section.[30] He also rejected Ms. Symes's *Charter* argument because, unlike Cullen J., who viewed Ms. Symes as a businesswoman standing next to a businessman, Décary J.A. chose to compare Ms. Symes to other women who did not earn business income. He pointed out that Ms. Symes was not arguing that, if she were successful, the *Income Tax Act* would then discriminate against women employees in favour of self-employed women. He stated: "I am not prepared to concede that professional women make up a disadvantaged group against whom a form of discrimination recognized by section 15 has been perpetrated."[31]

The Supreme Court of Canada upheld the decision of the Federal Court of Appeal and, in so doing, split along gender lines with the majority of the Court consisting of all the male judges while the only two women on the Court, L'Heureux-Dubé and McLachlin JJ., were in dissent. [32] The majority held that the expenses were not deductible under section 9 and paragraph 18(1)(a) of the Act because, as Iacobucci J. wrote, "the *Income Tax Act* intends to address child care expenses, and does so in fact, entirely within s. 63."[33] He endorsed Décary J.A.'s description of section 63 as a self-contained and complete code for the deduction of child care expenses, which precludes any further deduction for these expenses. He also characterized the *Charter* issue in terms of whether section 63 of the Act disproportionately limited the deduction with respect to child care expenses incurred by women. He reached the decision that it did not. Iacobucci J. said: "[T]he appellant taxpayer has failed to demonstrate an adverse effect created or contributed to by s. 63, although she has overwhelmingly demonstrated how the issue of child care negatively affects women in employment terms. Unfortunately, proof that women pay the social costs is not sufficient proof that women pay child care expenses."[34] In her dissent, L'Heureux-Dubé J. strongly disagreed with Iacobucci J. saying that Symes "has proven that she has incurred an actual and calculable price for child care and that this cost is disproportionately incurred by women."[35]

Indeed, L'Heureux-Dubé J. disagreed on all these issues. She held that the child care expense was deductible under section 9 and paragraph 18(1)(a) as a business expense. She stated, first, that the presence of section 63 did not preclude the deduction of child care expenses under another provision of the Act. She then asked whether the expenses ought to be deductible as business expenses. She found that the necessity of child care for women with children who

wish to participate in the paid labour force should be acknowledged. L'Heureux-Dubé J. also discussed the gender-biased nature of the relevant tax provisions, describing the interpretation of "business expense" as one "wrought with male perspective and subjectivity."[36] She concluded: "The concept of business expense should be interpreted in a way that takes into account the realities of businesswomen's expenses in relation to child care."[37]

The facts in *Symes* illustrate many of the problems inherent in the operation of section 63, including the inadequate amount of the subsidy. Those problems form a subtext to the *Symes* case and the remedy sought by the appellant. Put generally, any legal challenge to a tool used to deliver a subsidy is first constrained by the limitations of that tool. In the case of child care, those limitations make it very difficult to deliver the subsidy in an equitable manner. Indeed, *Symes* provides a graphic illustration of this point.

Contrary to the reaction one might expect, many women applauded the decision of the Supreme Court. The reason was that had Symes been successful, only some women would have benefited. This is because while the Act allows self-employed taxpayers to deduct expenses incurred to gain or produce income, subsection 8(2) specifically prohibits the deduction of expenses incurred to earn employment income, unless they are specifically listed in the Act. Ms. Symes claimed a deduction for child care expenses in the computation of her business income, a deduction which, had she been successful, would not have been available to the vast majority of women. Women form only 32 percent of the self-employed in Canada.[38] If the Act is used to subsidize child care for the self-employed, the result is merely more privilege for the already privileged. Since the government has acknowledged that funding for child care is limited, success for Ms. Symes and a consequent diversion of existing funds (or a limited amount of new funding) to only the self-employed might have been inappropriate. It could have served to reinforce the inequitable division of the subsidy, to the detriment of those who are already economically or socially disadvantaged. Furthermore, if child care expenses had been held to be a deductible business expense, they would have been deductible by all business persons, including men. Because women earn approximately 70 percent of what men earn, it seems likely that in heterosexual couples in which both partners earn business income and incur child care expenses, the male partner would take the deduction since it would be worth more to the partner with the greater income. As men form over 67 percent of the self-employed,[39] it is also likely that the male partner would be the only one able to take advantage of this deduction. Obviously, this result would have been inconsistent with the policy underlying the current section 63 deduction for child care expenses, which is to reduce the disincentive for women to participate in the paid labour force.

Is There a Role for the Tax System?

The preceding analysis raises the issue of whether the *Income Tax Act* should be the vehicle by which the subsidy for child care is delivered. Opinion among child care advocacy groups and others is divided. The Cooke Committee, for example, was opposed to the provision of new funding for child care through the Act. The National Council of Welfare (1988: 31), responding to the Conservative Government's National Child Care Strategy, agreed stating: "Unlike the federal strategy, which perpetuates the old system of a mix of subsidies for child care and tax benefits for parents, our alternative puts all available resources into child care

services and none into tax breaks." The Canadian Advisory Committee on the Status of Women (1986: 10) also advocated less reliance on the tax system in its brief to the Cooke Committee. Members of the Women and Tax Working Group of the Ontario Fair Tax Commission were divided on the issue of using the tax system to deliver this subsidy.[40] Even a Supreme Court of Canada judge has had her say on this issue. In *Symes*, L'Heureux-Dubé J. raised the issue of whether section 63 of the Act could ever achieve its goals when she said:

> I am not unaware that income tax deductions are undoubtedly not the best way for the government to provide assistance with regard to the high cost of child care and that the allowed deductions under s. 63 are not representative of the real cost of child care. Perhaps child care should not even be subsidized through the tax system but, rather, provided for in another manner.[41]

Perhaps the most persuasive argument against using the tax system is that this method of subsidization contributes to the privatization of child care. Put simply, the funds allocated to child care are, through a combination of factors, being directed toward financing child care in the private sphere—either the family or the private market. Unlike direct subsidies paid in the form of operating or capital grants to non-profit child care facilities, tax subsidies are received by individuals and may be in respect of any child care expense. There are few limits on the forms of the child care that qualify for the subsidy. That is, they may be any child care service provided by any person, other than—in the case of the current section 63 deduction—the parent of the child or a relative under 18 years of age. But it is irrelevant for tax purposes whether the child care is provided by the private sector (through the family or other in-home caregivers) or the public sector (through licensed day care facilities) or, indeed, in unlicensed day care facilities that may be run for profit or not.

The problem is exacerbated by the lack of affordable, accessible child care in Canada, a problem that has been well documented.[42] It has been estimated that less than 17 percent of children 12 years of age or younger who require care for 20 hours a week are served by licensed child care arrangements (Harder 1995: 9). The raw figures are startling with 3.2 million children requiring child care and only just over 360,000 regulated child care spaces (Harder 1995: 8). It is little wonder that the majority of parents report difficulties in finding child care for their children. Taken together, the lack of spaces and the non-accountability for the nature of the child care that gives rise to the tax deductible expense results in recourse in many instances to family members as the provider of child care. As Sandra Harder (1995: 13) points out: "Unlicensed family home care is the most prevalent type of child care in Canada." While this state of affairs may be acceptable to some, it presents problems for others, including those without family members able to provide child care and those who prefer not to have to resort to their families for child care. The role of the government (using the tax system as the tool to deliver the subsidy) in this scenario is complex. It does provide a subsidy for child care and, in that respect, takes some responsibility for the provision of child care and recognizes that it is not the sole responsibility of the family. But, at the same time, the government ceases to play a direct role once that subsidy has been provided, leaving the availability and nature of the child care to the private sector—the family or the private

market. By channeling the subsidy in this manner rather than toward the construction and operation of licensed child care facilities, the government limits the options of women with respect to child care.

It is important to note that Quebec has taken a very different approach to the issue of funding child care. In 1997, the Quebec government created le ministère de la Famille et l'Enfance and introduced a new "family" policy. Part of that policy included the establishment of optional full-time kindergarten for all children 5 years old. Concurrently, in September 1997 early childhood centres were created to provide children under 5 with early childhood education and child care services. Since that time, the Quebec government has moved forward with its $5 a day child care program. Under this program, which is to be extended to all children under 5 by the year 2000, parents pay $5 a child for child care at an early childhood centre. Those parents who do not have access to those centres continue to receive the Quebec refundable child care tax credit under the Quebec *Taxation Act*.[43] Thus, Quebec has embarked on a policy that is moving away from using tax subsidies to fund child care to a recognition that a better approach is to fund child care directly.[44]

Options for Reform

Given the previous analysis, should child care funding be taken completely out of the tax system? Alternatively, can the current tax rules be improved to overcome the deficiencies described earlier? If improvements can be made, would they satisfy the concerns of those currently opposed to using the tax system to deliver this subsidy? These are key questions that must be answered in order to ensure that the subsidy for child care is delivered in the most efficient and fair manner possible.

My starting proposition is that child care funding through the tax system is not, and can never be, the total solution to the current child care crisis. It is important to recognize the role the tax system has to play as only one part of a multi-faceted strategy aimed at providing affordable, accessible child care. Despite the numerous reports and recommendations made over the years, many of which have recommended an approach to the funding of child care that is not so reliant on tax measures, the tax system remains its primary source of funding. In 1995, the total amount expended through section 63 of the *Income Tax Act* was $395 million and the estimate for the 2000 taxation year is that this amount will increase to $570 million (Dept. of Finance 1999a, Table 1). While there have been indications that the government is considering a more universal day care program (*National Post* 1999b: 20), there is no firm commitment to date. This factor, together with the inequities of the current tax deduction, indicates that it is time for an overhaul of the child care expense deduction.

Conversion of the deduction to a refundable tax credit

A major improvement that would redress some of the problems discussed above would be to convert the current deduction to a tax credit. Such a conversion would mean that two women who spend the same on child care but who pay tax at different rates would receive the same subsidy. In other words, the woman who pays tax at a lower rate would no longer receive less of the subsidy than the woman who pays tax at a higher rate. This is not a novel suggestion and has been suggested by many groups, including the National Council of

Welfare (1988: 20), the National Association of Women and the Law (NAWL 1991b: 6) and the Women and Taxation Working Group of the Ontario Fair Tax Commission (1992: 31). Furthermore, the credit could be made refundable, meaning that women who do not have taxable income could also receive a subsidy. Such a refundable tax credit could be modelled on the GST tax credit and provided by way of a quarterly payment. Providing the benefit up front and on a regular basis instead of delaying "payment" until a tax return is filed would recognize the recurring nature of child care costs. In this regard, it should be noted that, as mentioned above, Quebec provides a refundable tax credit for child care expenses. Many of the Quebec rules are similar to the federal section 63 deduction. A significant difference is that the amount of the refundable credit is calculated using a progressive rate structure based on family income. From 1998 onward, the tax credit is based on the excess net family income over a threshold of $26,000.[45]

Increase in the amount of the deduction

The amount of the credit should also bear a closer relationship to the actual cost of child care than does the current deduction. This latter change could also go some way toward remedying the undervaluation of child care work. In 1996, for example, the average salary of child care workers was $19,700, placing them among the 25 lowest paid professions in Canada (*Globe and Mail* 1998: A4). All indications are that child care remains highly undervalued. A recent report has found: "The income levels of the child care workforce are low and present a major human resource issue for the child care sector" (Beach et al. 1998: 77). The inordinately low salaries paid to child care workers are somewhat puzzling given the high demand for child care and the shortage of places in child care facilities. One would expect market forces to prevail and push salaries upward. That this has not happened is further evidence of the role that the invisibility of child care labour and its stereotyping as women's work plays in contributing to its undervaluation. Raising the amount of the tax subsidy would go some way to remedying this problem.

Remove restrictions on the definition of "earned income" and extend the availability of the deduction

An important question is whether the restrictions on the types of activity that currently qualify the taxpayer to claim the deduction should be retained. As mentioned, the *Income Tax Act* limits the deduction to taxpayers who need child care in order to work outside the home in the paid labour force, to take occupational training, to carry on grant-funded research or to attend a designated educational institution or secondary school. It is clear that for many women the government's stated policy of removing impediments to their full participation in the labour force is meaningless. For example, women with children who are actively seeking employment and women who take non-eligible training or skills-updating courses after childbirth cannot deduct their child care expenses. Furthermore, the definition of earned income also limits the availability of the subsidy. As discussed above, women who rely on spousal support for the bulk of their income cannot receive the subsidy even though they must include spousal support in their income. It is not earned income within the definition in section 63 and, therefore, they cannot deduct their child care expenses. Lack of affordable, accessible child care is more than an issue of workplace equality. The needs of women who choose to work in the home and care for their children in that environment should also be

recognized. Consideration should be given to drafting entitlement to the credit in a manner that does not tie it so closely to activities that are related to earning income outside the home. The subsidy for child care expenses should take into account the needs of all women with children who are studying or training prior to re-entering the paid labour force.[46]

Ensure that all those eligible claim the deduction
There is also evidence that many women eligible to claim the child care expense deduction do not do so. Indeed, a recent article states that less than 40 percent of those who should receive the child care expense deduction actually receive the benefit (Cleveland and Hyatt 1997: 22). Since the tax system is the primary method of funding child care, it would make sense for the Canada Customs and Revenue Agency to embark on an advertising campaign to inform women about the availability of the current deduction. If the deduction is converted to a refundable tax credit, it is even more critical that it be well advertised in order to encourage women with no taxable income who might otherwise not file a return to do so. Advertising entitlement to a tax credit is not a novel concept, having been undertaken with respect to the Goods and Services Tax credit.

As mentioned above, one barrier to access to the child care expense deduction is that the social insurance number of the caregiver must be provided on the receipt for the child care expenses. Consequently, removal of that requirement would improve access to the deduction. Indeed, it makes sense to treat the child care expense deduction in the same manner as other deductions in the computation of income and merely require that receipts for the expense be produced on demand by the Canada Customs and Revenue Agency.

Give tax incentives for the construction and operation of child care facilities
It is clear that the demand for places in licensed child care facilities significantly exceeds the number of places available. There is a role for the tax system in this regard. In addition to providing subsidies to individuals who incur child care expenses, other measures could be introduced with the aim of increasing the number of child care spaces in licensed facilities. One measure could be to provide an accelerated capital cost allowance for capital expenditures associated with the cost of constructing and operating child care facilities. This would permit those who construct or operate these facilities, often employers, to claim a deduction for depreciation of the assets at a rate in excess of the actual rate of depreciation. This could result in a significant tax saving. Capital cost allowance is, of course, available for these expenditures at varying rates depending on the nature of the capital asset. Increasing it to, for example, 100 percent for the capital costs associated with the construction of a building, would ensure a full deduction of those expenditures once the building was in use. Furthermore, if accelerated capital cost allowances were available for capital assets, such as equipment acquired during the operation of the child care facilities, the tax subsidy would continue beyond the period of immediate use and form an ongoing tax incentive.

Conclusion
In an ideal world, there would be a national child care program through which the state and society generally would take more responsibility for the regulation and provision of the service. Unfortunately, there has never been such a program in Canada. The demise of the

proposed National Strategy on Child Care and the absence of a replacement program suggest that creating such a program is not imminent. It is important to ensure, therefore, that the current system is not merely dismissed as flawed. Rather, steps should be taken to recognize its weaknesses and to improve tax measures so they are more fair and responsive to the needs of women with children.

Canada Child Tax Benefit

Introduction

The Child Tax Benefit, a refundable tax credit, was implemented effective January 1, 1993. It replaced the refundable child tax credit, the non-refundable tax credit for dependent children and the family allowances program. In 1998, it was revamped and renamed the Canada Child Tax Benefit (CCTB).[47] In order to get a sense of the parameters of the benefit and whether or not it applies in an equitable manner, it is necessary to trace its history.

In 1945, the *Family Allowances Act*,[48] Canada's first universal welfare payment program was enacted.[49] The espoused purpose of the program was to help redress the inadequacy of postwar wages by providing economic support to families with children. As Jane Ursel has commented: "Family allowances represented the compromise between capital and labour in its most naked form—subsidizing a wage system designed to ignore reproductive costs, only to perpetuate it."[50] In 1973, the *Income Tax Act* was amended to require the inclusion in income of family allowances.[51] While this measure was enacted in order to introduce some progressivity to the family allowance because individuals would be taxed at their marginal rate on amounts received, it also heralded the future demise of the universality of family allowances. Even though all taxpayers would receive the family allowance, the net after-tax value would vary depending on the taxpayer's marginal rate. In 1979, the federal refundable child tax credit was introduced, a measure that was intended, in part, to replace family allowance payments.[52] The child tax credit was tied to family income and the amount of the credit was reduced by five percent of the amount by which the income of the individual and the supporting person (usually the parents of the child) exceeded $18,000. The universality of family allowances was extinguished in 1989 when the tax-back of family allowances was introduced. From 1989 until the family allowance system was abolished in 1992, a tax-back rate of 15 percent applied to taxpayers' net incomes over $50,000 and in two-parent families, the tax-back was applied to the income of the taxpayer with the higher income in the relationship.[53]

The original Child Tax Benefit provided a basic benefit of $1,020 for each child which represented the amount of the maximum family allowance and the refundable child tax credit. There were supplements for families with more than two children, and the full amount of the benefit was paid to families with income up to $25,921. The amount of the benefit was gradually reduced for families with incomes above that amount. In addition, there was an earned income supplement as an added incentive to low-income working families. There is no doubt that the Child Tax Benefit was the subject of much criticism by social policy organizations and children's advocates. This critique was encapsulated by Ken Battle (1993: 429) who said: "Their major criticisms concerned the new scheme's lack of protection from

inflation, weak impact on family poverty, differential treatment of welfare and unemployed families, and lack of responsiveness to changes in family income, as well as its formal abolition of universal child benefits."

The Tax Rules

The 1997 federal budget proposed changes to the Child Tax Benefit and, effective July 1, 1998, it was reincarnated as the Canada Child Tax Benefit.[54] The CCTB includes a basic benefit, and the National Child Benefit is a supplement for lower income families (formerly the working income supplement). The CCTB is payable monthly to the parent who is the primary caregiver of the child, and the amount of the payment is reduced and eventually eliminated as annual "family" income increases beyond a threshold limit which, for the 1999 taxation year, is set at $27,750 and, for the 2000 taxation year, at $29,590. There is also a rebuttable presumption that the primary caregiver of the child is the "female parent," as the *Income Tax Act* describes it.[55] For July 1999, the amount of the basic benefit is $1,020 for the first child, supplemented by $785 per year for each child under 7 in respect of whom no child care expenses are deducted under section 63 of the Act. (A family with four children would receive a basic benefit of $4,230 with a supplement of $2,390.) For 2000, the supplement increases to $955 for the first child. If child care expenses are deducted, the amount of the supplemental amount is reduced by 25 percent of the expenses deducted under section 63.

Problems with the Canada Child Tax Benefit

Much has been written about the inadequacies of the Canada Child Tax Benefit.[56] As discussed elsewhere in this chapter, women are the primary caregivers for children.[57] Indeed, this role is recognized in the terms of the CCTB, which includes a presumption that in two-parent families the "female parent" is the primary caregiver of the child, and it is the primary caregiver who is entitled to the benefit. The importance of the CCTB for women is evidenced by the fact that more women than men head lone-parent families and the number of lone-parent families is increasing.[58] Aboriginal women and women of colour are more likely to be lone parents than White women (Statistics Canada 1992, Table 1.9), and single mothers with children are the poorest of the poor.[59] Women and children's poverty are inextricably linked. Any evaluation of the CCTB must take place in a manner that recognizes the role of women as the primary caregivers of children and the link between women and their children's poverty. The CCTB is a tax measure that is highly gendered in its impact, being one that is primarily targeted at, and enjoyed by, women.

Targeting problems

One major weakness of the CCTB is its limited application. The CCTB, particularly the National Child Benefit portion of the program, is targeted at the working poor. The 1997 changes did not address directly the needs of those women with children who receive social assistance. As Ken Battle (1999: 48) has pointed out, "the National Child Tax Benefit will not increase child benefits for welfare families and will augment child benefits only for low-income families not on welfare (i.e., working poor and low-income employment insurance families)." Women's ability to participate fully in the paid labour force is, as discussed earlier in this chapter, adversely affected by their primary caregiving role for their children. The result is that there are many women who cannot "afford" to participate in the paid labour force. Women

who cannot participate in the paid labour force receive less of a benefit than their counterparts who do participate in the paid labour force. Yet, in many instances it is women on social assistance who are most in need of financial assistance and statistics show that it is predominantly women who receive social assistance.[60] There is another dimension to this issue. Women with disabilities are particularly disadvantaged by the linking of the CTTB to work force participation. Statistics show that women with disabilities who have dependent children have a very low rate of participation in the paid labour force. In 1991, for example, only 48 percent of women with disabilities were in the paid labour force, and women with disabilities with dependent children were more unlikely than non-disabled women with children to be employed (Fawcett 1996: 159-160). The problem is that by tying the amount of the CCTB received to work status, the poverty of many women and their children is further entrenched.

Inflation

The CCTB is not fully indexed to inflation. Section 122.61(5) of the *Income Tax Act* provides that if inflation exceeds three percent in a given year, then the amount of the CCTB will be increased by the percentage that the Consumer Price Index exceeds three percent. This rule means that in any year that inflation is less than three percent, there is no adjustment to the amount of the CCTB, even though it has been eroded in value by the inflation. In years in which inflation is more than three percent, the value of the CCTB will drop by three percent because of the three percent floor imposed by section 122.61(5). This form of partial indexation is estimated to save the government $170 million a year (Battle 1999: 58). Because so many women with children rely so heavily on the CCTB, these funds should be redirected to enhancing the CCTB.

Reduction in the amount of the child care expense

The reduction in the amount of the CCTB received for each child under 7 by 25 percent of any child care expenses deducted under section 63 of the *Income Tax Act* is an added burden for those women who need child care to participate in the paid labour force. Given the lack of affordable child care and the inadequate amount of the deduction under section 63, any extra cost, such as losing part of the child care expense deduction in order to claim the full amount of the CCTB is unfair.

CCTB not claimed by all who are entitled to the benefit

A key issue with respect to a refundable tax credit, such as the CCTB, is that its success as a social program depends on individuals claiming the tax credit. Because the program is delivered as a refundable tax credit, payment depends on an individual filing a tax return and claiming the credit. In the case of an individual with a spouse, the spouse must also file a return because the amount of the CCTB is based on a calculation that takes “family” income into account. Unfortunately, many women are not claiming benefits to which they are entitled. In 1998, Revenue Canada confirmed that five percent of women who had a baby in 1995 or 1996 did not claim the Child Tax Benefit (the forerunner of the CCTB). And, almost 10 percent of potential Child Tax Benefit claimants had their benefits interrupted or did not receive benefits to which they were entitled because they or their spouses did not file income tax returns on time (Minister of Revenue 1998). These figures are unacceptable, given the importance of the CCTB to women and children. In addition, there is a class aspect to this

problem. It is very likely that those who do not claim the CCTB are those women who need it most, that is, low-income women. Because their income is so low, these women do not pay tax and, therefore, are less likely to complete a tax return. There are also many women, especially those on social assistance, who do not have a fixed address at which to receive the payments, and they too may not receive the amount to which they are entitled.

Options for reform

The fundamental issue when considering the effectiveness of the CCTB is whether the tax system is the appropriate tool by which to deliver the program. What makes this issue so pertinent is that it is only relatively recently that the tax system began to be used to deliver this subsidy. Until 1992, the family allowance was a direct grant made to the mothers of all children under the age of 18. The tax system was not used to deliver the subsidy, although as discussed above, it was used to limit the amount of the subsidy. Has the integration of the family allowance into the tax system contributed to a better targeted subsidy and improved its delivery? I would suggest, given the problems outlined above, that the answer is no. Consideration might be given to removing the family allowance portion of the CCTB from the tax measure and delivering it by way of a direct grant.

One aspect of the introduction of the Child Tax Benefit and its successor the CCTB that has drawn particular attention is the demise of the universality of the family allowance that came with the changes. The argument in favour of limiting access to social benefits, such as the family allowance, is that those with greater incomes should not benefit from a program to the same extent as those with lower incomes. High-income individuals are less in need of the economic support provided by the social program. But some commentators have pointed out the fallacy in this argument in the context of the demise of the universal family allowance and its replacement by the CCTB. "[I]n reality, ending universal child benefits delivered few benefits to very poor families, despite the fact that the reform was explicitly designed to 'give the greatest benefit to low and modest income families'" (Wooley et al. 1996: 37). These consequences have led some to call for a universal component to be restored to the CCTB.[61]

Finally, the targeting of the CCTB may need to be reconsidered. By targeting the working poor and not including those on social assistance to the same extent "[w]hat the government has done is bolster the distinction between the 'deserving' and 'undeserving' poor" (Pulkingham and Ternowetsky 1997: 206). Consideration should be given to redressing the inequities for those who, for reasons that may well include their responsibilities for their children, are unable to participate fully in the paid labour force.

Conclusion

Any consideration of changes that might be made to the CCTB could look to the policy adopted in Quebec. That province has, over the last few years, introduced a package of programs designed to assist families with the costs associated with children. These programs are delivered partly by tax expenditures and partly by direct grants. The measures that comprise the program include refundable and non-refundable tax credits, heavily subsidized child care in day care centres, including child care assistance for low-income families and the Quebec family allowance. The latter is a non-taxable payment in respect of children under 18,

and the amount is based on family income. It is paid monthly to the primary caregiver of the child, who also lives with the child. The main purpose is to target children in low-income families. In 1998, for example, over 652,000 families benefited from the Quebec family allowance (Quebec 1999). Indeed, it is estimated that for the 1999-2000 year, over $762 million will be spent on the family allowance (*Globe and Mail* 1999: A1). What is most important to note in the context of the discussion of whether the CCTB should be delivered by the tax system is that the Government of Quebec clearly believes that there is a role to be played by a more universal direct grant.[62] Consideration should be given to reconfiguring the CCTB so the "family allowance" part of that benefit can be delivered more directly.

Endnotes

[1] *Symes v. Canada* [1993] 4 S.C.R. 695.

[2] *Canada Assistance Plan Act*, R.S.C. 1985, c. C-1. Section 32 of the *Budget Implementation Act*, S.C. 1995, c. 17 provides for the repeal of the CAP, effective March 31, 2000.

[3] *Federal-Provincial Fiscal Arrangements Act* R.S.C. 1985, c. F-8, as amended by the *Budget Implementation Act*, S.C. 1995 c. 17, s. 48.

[4] On this point see, Jackman (1996). See also, Doherty et al. (1998) and Freiler and Cerny (1998).

[5] There is some debate about whether the deduction for child care expenses is a tax expenditure. This issue is dealt with in the most recent list of tax expenditures released by the Department of Finance. In that document the Department points out that child care expenses could be considered to be a cost of earning income and, therefore, part of the benchmark tax structure, or they could be considered not to be part of the benchmark and, therefore, to be a tax expenditure. Consequently, the deduction for child care expenses is listed as a "memorandum" item. See Canada (1998: 33). This issue is discussed by Block and Maslove (1994) who conclude that the child care expense is a tax expenditure because it is a subsidy intended to assist families in paying for child care.

[6] Another tax measure that gives some relief for the care of children generally is the Child Tax Benefit, introduced in January 1993. It is not, however, specifically directed as a subsidy for expenses associated with the provision of child care, although the amount of the benefit may be reduced if the child care expenses deduction is claimed. The Child Tax Benefit is discussed later in this chapter.

[7] Full-time students are eligible to claim the child care expense deduction, and the 1998 budget proposed that part-time students also be eligible for the deduction. It should be noted that none of the changes proposed in the 1998 budget have been enacted, although legislation implementing them is expected to be passed soon.

[8] This amount is the total of the basic personal amount ($6,456) under section 118(1) and the supplementary credit ($500) under section 118(1)B(b.1). The supplementary credit was proposed by the 1998 budget.

[9] These amounts were introduced in the 1998 budget but have not yet been enacted. Prior to the 1998 change, the amounts were $5,000 and $3,000 respectively.

[10] Bill C-144, *Canada Child Care Act*, 2d. Sess., 33d. Parl., 1986.

[11] For an excellent analysis of the impact of the demise of the CAP, see Day and Brodsky (1998), and for the impact of the demise of CAP on child care services, see Doherty et al. (1998).

[12] See for example, Eichler (1988); Hochschild and Machung (1989) and Harvey et al. (1991).

[13] See for example, Chodorow (1978) and Ferguson (1998: 207-208).

[14] “Primary child care is not merely interacting with children, but is defined as including activities like physically caring for children (dressing, feeding and washing); reading; talking or playing with children; helping, teaching or reprimanding children; and caring for children during illness and overseeing their medical care” (Harvey et al. 1991: 59).

[15] Canada 1994: 53. See also Cleveland and Krashinsky (1998: 41-49).

[16] See CRRU (Childcare Resource and Research Unit) <http://www.childcarecanada.org/ resources/CRRUpubs/factsheets/statsum3.html>. Accessed October 12, 1999.

[17] Canada (1998b), calculated by reference to statistics in Table 8.

[18] Section 56(1)(b) of the *Income Tax Act* requires that spousal support payments be included in income, and child support payments made under an agreement entered into before May 1, 1997 that has not been varied since that date must also be included in income.

[19] It should be noted that, in addition to the provision of the social insurance number on receipts, Form T778E (the child care expense deduction form) also requires that the individual claiming child care include the social insurance number of the child care provider in order to receive the child care expense deduction.

[20] For an analysis of the history of foreign domestic workers in Canada and their exploitation, see Macklin (1992). See also Evans (1998: 48) where the author makes the point that Black women have a long history of employment as domestic workers for White women.

[21] R.S.C. 1985, c. I-2.

[22] Section 63(3)(b)(ii) of the *Income Tax Act*.

[23] For an analysis of these issues, see Kline (1993: 306).

[24] Much has been written on this case. See, for example, Eansor and Wydrzynski (1993); Macklin (1992); St. Hilaire (1998) and Young (1994, 1995).

[25] Section 15, the *Constitution Act*, 1982, Schedule B to the *Canada A*ct, 1982 (U.K.) 1982, c. 11 (which came into force on April 17, 1982).

[26] *Symes v. Canada* (T.D.), [1989] 3 F.C. 59.

[27] *Ibid*. at 73.

[28] *Ibid*. at 71.

[29] *Ibid*. at 81.

[30] *M.N.R. v. Symes* (C.A.), [1991] 3 F.C. 507 at 525.

[31] *Ibid*. at 531.

[32] *Symes v. Canada* [1993] 4. S.C.R. 695.

[33] *Ibid.* at 750.

[34] *Ibid*. at 765.

[35] *Ibid*. at 821.

[36] *Ibid*. at 807.

[37] *Ibid*. at 816-817.

[38] Figures extrapolated from Statistics Canada, see <http://www.statcan.ca/english/ Pgdb/People/Labour/labor43a.htm>. Accessed October 5, 1999.

[39] *Ibid.*

[40] See Ontario Fair Tax Commission, (1992: 49) where the Women and Taxation Working Group said:

> A universally available, publicly funded child care system is one of the requirements for economic independence for women. Some working group members believe this form of child care will not be a reality for women in the near future. Consequently, tax delivered assistance should be redesigned to make it more equitable.... Other working group members believe public support for child care should not be delivered through the tax system.

In its final report, the Fair Tax Commission was not so equivocal on the issue. It recommended that "if Ontario gains more control over its personal income tax system…[it] should eliminate the child care expenses deduction and use the revenue recovered in direct program spending for child care. See, Ontario Fair Tax Commission (1993: 310).

[41] *Symes v. Canada* [1993]4. S.C.R. 695 at 823.

[42] The most recent major report on this issue is Pence (1992). See also Doherty et al. (1998).

[43] *Taxation Act*, R.S.Q., c. I-3, sections 1029.8.67 to 1029.8.82 and 1086.5 to 1086.8.

[44] For an excellent analysis of the Quebec approach to funding child care see, Tougas (nd).

[45] *Taxation Act*, R.S.Q., c. I-3, sections 1029.8.67 to 1029.8.82 and 1086.5 to 1086.8.

[46] The Reform Party has criticized the current rules because the child care expenses deduction is only available to dual-earning families or lone parents. See *National Post* (1999a: A19). This issue is a thorny one. One reason for the introduction of the child care expenses deduction was to put mothers who stay at home with their children and mothers who work outside the home on a more equal footing. This is done by effectively not taxing the mother who works outside the home on part of her child care expenses which are provided tax free by the mother who cares for her children in the home.

[47] Section 122.6 of the *Income Tax Act*, as amended by S.C. 1998, c. 21.

[48] S.C. 1944-45, c. 40.

[49] For detailed analyses of the family allowance program, see Guest (1997) and Ursel (1992).

[50] Ursel 1992: 198. For an excellent analysis of the history of the family allowance, including the policies underlying its introduction, see Ursel (1992: 190-198).

[51] *The Family Allowances Act*, S.C. 1973, c. 44.

[52] *An Act to Amend the Income Tax Act to Provide for a Child Tax Credit and to Amend the Family Allowances Act*, 1973.

[53] Family allowances were repealed by S.C. 1992, c. 48, s. 31.

[54] Section 122.6-122.64 of the *Income Tax Act*.

[55] The presumption that the female parent is the primary caregiver can be rebutted when it is clear that this is not the case and, therefore, the presumption will not apply in certain circumstances.

[56] See, for example, Wooley et al. (1996); Battle (1997a, b); Pulkingham and Ternowetsky (1997) and Durst (1999).

[57] See for example, Eichler (1988); Hochschild and Machung (1989) and Harvey et al. (1991).

[58] Figures from the 1996 Census show that lone-parent families headed by women outnumber those headed by men by more than four to one. See Statistics Canada (1997: 2).

[59] Using statistics from 1996, Ken Battle (1999: 39) has stated that “six in ten children (61.9 percent) in single-parent families led by women lived on low incomes at last count compared with one in seven (13 percent) children in two parent families.” In 1997, 56 percent of lone-parent families headed by a female lived in poverty (Statistics Canada 1999: 34-35 and Text Table IV; also p. 187 and Table 67).

[60] In 1997, for example, statistics showed that while 27 percent of single mothers were on social assistance, only three percent of single fathers received social assistance. See NCW (1998: 8).

[61] See, for example, NAWL (1992: 6-7).

[62] It should be noted that even though the amount of the Quebec family allowance varies according to family income, it is described by the Government of Quebec as a “universal” allowance. See Quebec (1997).

3: TAX SUBSIDIES FOR RETIREMENT SAVING

Introduction

> [T]he chief problem [with Canada's pension system] for women is that pension schemes in both the public and private sectors were developed with men in mind (Guest 1997: 197).

The Canadian Advisory Council on the Status of Women painted a bleak picture of the financial future for women currently in the 45 to 54 age range in its report titled *Women's Financial Futures: Mid-Life Prospects for Secure Retirement* (Townson 1995). The conclusion was that the benefits provided by the two main government pension programs—Old Age Security (OAS) and the Canada Pension Plan/Quebec Pension Plan (CPP/QPP)—are inadequate and, increasingly, women will have to rely on private sources of retirement income, such as employment pension plans, registered retirement savings plans and their personal savings.

Retirement income in Canada takes many forms and the Canadian pension system is often described as a pyramid (Donnelly 1993: 419) with the Old Age Security, a flat-rate monthly amount paid to those over 65 at its base, supplemented by the Guaranteed Income Supplement (GIS). The next level is the Canada Pension Plan and the Quebec Pension Plan both of which are intended to provide retirement income for those who have participated in the paid labour force. Because of the inadequacies of these government "public" pensions, recourse to "private" pensions is frequently necessary and, indeed, as I discuss later, being encouraged by the government. At the apex of the pyramid, are the two private pension programs that are heavily subsidized by the tax system, the registered pension plan (RPP), an employment-based pension plan, and the registered retirement savings plan (RRSP), a personal retirement plan.

In its report, *Women and Taxation*, the Women and Taxation Working Group of the Ontario Fair Tax Commission (1992: 22) said that "[t]he current system of tax-assisted savings for retirement results in systemic discrimination against women, as the benefits are disproportionately enjoyed by men." The result for many women is poverty in retirement. Elderly single women have consistently been disproportionately represented among the poor in Canada and are twice as likely as elderly men to live in poverty (Caledon Institute 1996, Appendix C). In 1997, almost 50 percent of single women over 65 lived below the poverty line (Statistics Canada 1999b: 34-35), a figure that has remained consistently high over the years.[1] In this part, I explore the contribution of the tax system to this phenomenon and suggest ways in which some of this discrimination might be eliminated. While my focus is the tax system, particularly, the tax expenditures that are allocated toward retirement saving, any analysis of these expenditures has to take place in the broader context of the ongoing "reform" of the public pension system in Canada. This includes the CPP/QPP and the OAS.

Old Age Security and the Canada and Quebec Pension Plans

The Old Age Security is a flat rate monthly sum paid to those over 65. It is supplemented by the Guaranteed Income Supplement (GIS) for those whose retirement income does not meet a minimum level. In 1989, the Conservative Government introduced a new tax which had the effect of clawing back part of the OAS for those who had incomes above a certain level.[2] This measure led to the demise of the universal nature of the OAS. By 1991, when the clawback became fully phased in, the demise of universality was complete as some top rate taxpayers no longer retained any of the OAS payment. In 1996, the Liberal Government introduced front-end income testing of these benefits which means that the amount of the OAS is reduced before the cheque is issued, a change that affected all senior citizens with net incomes above $53,215. Further, because the income threshold for the reduced payments is not fully indexed for inflation, the cutoff point at which one stops receiving the full amount of the OAS is slowly decreasing in value. The OAS is an especially important pension scheme for women who, as I demonstrate, do not benefit to the same extent as men from the more "private" pension plans. In 1993, for example, 58 percent of all OAS recipients were women, and that figure has been relatively unchanged over the years (CCSD nd.b).

It has been said that the CPP/QPP is an ideal pension plan for women (Townson 1995: 31). It is designed to be an income replacement plan and benefits are based on labour force participation. Consequently, all who work in the paid labour force, whether full or part time, employed or self-employed, must make contributions for which they receive a tax credit.[3] The CPP/QPP also takes women's work patterns into account by allowing women with children to take time out of the paid labour force without a loss of benefits.[4] But, there are problems with the system. Not only are women receiving considerably less than men as CPP/QPP payments, but fewer women than men contribute to the CPP/QPP, and the amount of their contributions is less than the amount contributed by men. For example, in 1993 only 45 percent of contributors to the CPP were women, and the amount of their contributions formed only 39 percent of all contributions (Statistics Canada 1996: 13). In 1994, only 45 percent of elderly women received CPP benefits (Oderkirk 1996: 11) and, by 1996, the average CPP retirement benefit for women was just a little over half that received by men.[5] These statistics are a reflection of the fact that women in the paid labour force tend to earn less than men and, therefore, contribute less to the CPP/QPP. Of course, the CPP/QPP is not available to those women who choose to work in the home and not in the paid labour force.[6]

Registered Pension Plans and Registered Retirement Savings Plans

Given the inadequacies of the OAS and the CPP/QPP, women are increasingly having to rely on the "private" pension plans which include the RPP and RRSP if they are to achieve income security in retirement. While these plans are often referred to as being "private" in nature, they are in fact subsidized extensively by the tax system through tax breaks for both contributions to, and income earned in, the plan, leading one author to describe them as the "third pillar" of the public pension system (Guest 1997: 283). It is clear that increased reliance on this third pillar is also a policy favoured and encouraged by recent federal governments. In 1989, for example, the Minister of Finance, Michael Wilson (1989) said: "A sound tax framework is

needed to encourage increased private saving now to meet pension needs in the future." More recently, the 1996 proposed reforms to the CPP are imbued with a sense that RPPs and RRSPs are to be the cornerstone of the pension system in Canada (Canada 1996). The tax system is also implicated in this trend. First, as mentioned, the tax system has been used to erode the universality of the OAS with the introduction of the clawback. Second, the contribution limit for RRSPs has increased significantly since the 1980s meaning that there is an opportunity to contribute much more to an RRSP. The preferential tax treatment of those contributions also gives taxpayers a significant incentive to contribute as much as possible.[7] All these events have led one author to comment: "The clear message is that individual initiative in planning for retirement will be rewarded by the government while collective (state) responsibility for economic well being in old age, reflected in the 'public' parts of the retirement income system, cannot be permitted to grow and must be contained" (Barnsley 1998: 149).

The Tax Subsidy

Given the increasing importance of RPPs and RRSPs as a tool to provide income security for the elderly, it is important to subject the tax rules that apply to these plans to close scrutiny to ensure that they operate in a fair manner. The tax subsidization of RPPs and RRSPs is extensive. Employers and employees who contribute to an RPP are permitted, subject to limits as to amount, to deduct those amounts in the calculation of their income, and the income earned by funds in the RPP is not taxable.[8] These measures result in a significant deferral of tax because the contribution is made with pre-tax dollars, and the resulting income is only taxed once it is received as a pension, and not as it is earned by the pension fund. For 2000, the value of both types of preferential tax treatment is projected to be over $12 billion, making it one of the largest personal tax expenditures for that year (Dept. of Finance 1999a, Table 1). Contributions to RRSPs, subject to limits as to amount, are also deductible in the computation of income and, like the RPP, the income earned by the funds accumulates within the plan on a tax-free basis. A taxpayer is also permitted to claim a deduction (subject to limitations as to amount) for contributions to an RRSP of which the taxpayer's spouse is an annuitant. As with RPPs, the value of the tax expenditure for RRSPs is significant, being projected to be over $14 billion for the 2000 taxation year, making it the single largest tax expenditure for that year. It is particularly striking that in 1995 (latest figures available) the cost of tax expenditures for RPPs and RRSPs amounted to 57 percent of the total value of all public expenditures on the OAS, GIS and CPP/QPP.[9] Given the massive amount of these tax expenditures and the increasing reliance by the elderly on RPPs and RRSPs for income security in retirement, it is especially important to ensure that this method of subsidizing retirement saving achieves its goals in a fair and equitable manner and that no one group is disadvantaged in comparison to another.

Women and Registered Pension Plans

Perhaps the most significant problem that arises from subsidizing retirement saving through the more private pension plans such as RPPs and RRSPs is that, unlike a more universal plan such as OAS, many are excluded from entitlement. As I demonstrate, it is women in particular who are either fully excluded from these schemes or who receive less in benefits than men. Ascertaining exactly what percentage of women receive income from occupational pensions to which they have contributed is difficult.[10] Nevertheless, it is clear that women

receive less income from RPPs (either as the contributor or as a spouse of a contributor) than men do. In 1993, 58 percent of men 65 and older received RPP income compared to 37 percent of women, and some of these women received this income as a spousal pension based on their male spouse's work history (Statistics Canada 1996: 30, tables 1-5 and 1-6). In 1994, elderly women received only 12 percent of their income from private retirement pensions while for men the figure was almost 25 percent.[11] While women's membership in RPPs has been increasing over the years,[12] it still lags behind that of men. Perhaps the most unsettling statistic is that even though the gap between the number of male and female RPP beneficiaries has narrowed over the years, the gap between the value of those pensions has widened. In 1982, the average pension for women was 67 percent of the average pension for men. By 1992, the value had decreased to only 60 percent of the value of the average pension for men (CCSD nd.c: 3).

Why are fewer women members of RPPs than men and, therefore, receiving less of the tax subsidy than men? One major reason relates to women's participation (or lack thereof) in the paid labour force. For example, when tax costs, such as the loss of the spousal tax credit and the inability to transfer unused tax credits to a spouse, are taken into account, there is a real disincentive for women in spousal relationships to enter the paid labour force.[13] Other factors contribute to this tax disincentive, including the lack of affordable, accessible child care and the costs of returning to the paid labour force after absences related to family responsibilities such as retraining costs. Even though more women than ever are working outside the home, the employment rate for women aged 25 to 54 was only 72 percent in 1998 (Statistics Canada 1999c: 17, Chart 5). For Aboriginal women or women with disabilities, the figures are significantly lower. The labour force participation rate for Aboriginal women is 49.7 percent and DAWN Canada (DisAbled Women's Network) estimates that 65 percent of women with disabilities who wish to work are unemployed (CACSW 1996: 90; CLC 1997: 5). Women who are not in the paid labour force have no access on their own account to an RPP or the tax benefits associated with such a plan, although as I discuss, some of them may be entitled to certain limited benefits if they have a spouse who is a member of such a plan. The result is that these women must rely on OAS (as supplemented by GIS) and their own savings for income in retirement which contributes to the poverty in which so many elderly women live.

It is not only women's lack of participation in the paid labour force that limits their ability to benefit from tax subsidies for RPPs. The kind of work women do is also a major factor. Only those who work for relatively large employers, economically able to provide a pension plan, will benefit. Those who work part time, in non-unionized jobs, or for small employers unable to finance these plans, or those who are self-employed or unemployed, do not benefit. Women are disproportionately represented in the group unable to take advantage of the tax benefits. For example, between 1976 and 1991 women consistently represented at least 70 percent of part-time workers (Statistics Canada 1995: 73). In 1994, women held 69 percent of all part-time jobs and 26 percent of employed women worked part time (Statistics Canada 1998b: 9). While some women cite personal and family responsibilities as the reason for working part time (Statistics Canada 1995: 74), over one third of women working part time are seeking full-time work (CLC 1997: 25). Furthermore, more women than men work in

non-unionized jobs (CLC 1997: 22), and women generally work in sectors where pension coverage is the lowest, such as retail trade, and community, business and personal services (Caledon Institute 1996: 22).

Another factor which contributes to women's lack of retirement income from RPPs relative to that of men is the fact that women change jobs more often than men (Caledon Institute 1996: 22). This mobility means that, in many instances, an employee's contributions may not be vested in the plan because of the short period of employment. In the past, a 10-year contribution period was often required for vesting. While that period has been reduced in most provinces to a two-year period, many women still leave a job without their contributions having been vested. If the contributions have not been vested, the employee is not able to transfer both the employer and employee contributions to another pension plan, and entitlement to the pension is lost. There is also clear evidence that women tend to withdraw from the paid labour force from time to time more often than men because of family responsibilities (Caledon Institute 1996: 24). For example, women are more likely than men to retire from the paid labour force before age 65 to take care of sick relatives (Statistics Canada 1996: 95). These withdrawals from the paid labour force mean that women are contributing fewer funds to pension plans than men and, therefore, are receiving smaller pensions than their male counterparts.

Without doubt, one of the greatest obstacles for women saving for retirement is that they earn less than men, and, therefore, contribute less to RPPs during their working lives. Thus, women have smaller pensions on retirement. Both the amount of employer and employee contributions to RPPs are based on a percentage of the employee's income. Because women earn on average 73 cents for every dollar earned by men (Statistics Canada 1999a: 27), the amount contributed by them and their employer on their behalf to RPPs is considerably less than that contributed by, and on behalf of, men. In 1996, for example, almost the same number of men and women claimed a deduction for contributions to an RPP, but the amount claimed by men was significantly more than that claimed by women.[14] The problem can also be illustrated by reference to figures that show that nearly two thirds of tax savings from the deduction for contributions to RPPs are attributable to the 40 percent of those who claim the deduction and who have incomes between $40,000 and $100,000 (St. Hilaire 1996: 17). Furthermore, access to pension plans tends to increase as income increases, with only a very small number of the lowest paid workers having access to contributory pension plans (NCW 1996: 38) and participation in RPPs being the highest for those with incomes between $30,000 and $79,000 (Maser 1995: 14-19). These figures all lead one to believe that tax subsidies for retirement are being enjoyed predominantly by men. There is another dimension to this issue. Statistics show that women of colour, Aboriginal women and women with disabilities tend to earn less than their male counterparts and than other women (Statistics Canada 1995: 138, 153, 166). Therefore, they are in an even more invidious situation and have less to contribute to RPPs than White able-bodied women.

Women and Registered Retirement Savings Plans

Women who do not have access to work-related pension plans may contribute to RRSPs, but the ability to take advantage of the preferential tax treatment afforded to contributions to

these plans depends on having funds with which to make the contribution. Given that women earn considerably less than men, they tend to have less discretionary income to contribute to an RRSP. This is evident when one looks at the statistics on who contributes to an RRSP and how much they contribute. In 1996, more men than women contributed to a RRSP, and although the disparity in the relative numbers of men (3,344,310) and women (2,655,690) who contributed was not particularly great, there was a significant difference in the amounts contributed. In total, men contributed over $15 billion that year while women contributed just over half that amount, at $8.5 billion (Canada 1998b: 103). As with contributions to RPPs, it is those in the higher income categories who contribute most to RRSPs. For example, in 1993 those with an income over $50,000 contributed, on average, approximately $6,700 to an RRSP while those with incomes of $20,000 and less only contributed an average of $1,662 (Canada 1998b, Table 2). The result is that women who tend to have the lower incomes have less funds in an RRSP and, therefore, are receiving less income in retirement from that source. In 1996, a poll conducted by Royal Trust determined that women had an average of $25,665 in their RRSP while men had an average of $38,095 (*Financial Post* 1997).

While these figures demonstrate that because women tend to earn less and contribute less to RRSPs, they are receiving less of the tax subsidy; there is a second dimension to the issue. The 1992 figures show that only 10 percent of tax filers reporting income of $25,000 or less contributed to an RRSP while over 72 percent of those earning over $100,000 made contributions, and that the amount contributed by those with less income is considerably less than that contributed by those with higher income. Using these figures, Barbara Austin (1996: 586) has calculated that:

> the average tax-filer earning over 100,000 dollars contributes *forty-four* times as much to an R.R.S.P. as the average tax-filer earning under 25,000 dollars. When the different marginal income-tax rates of these two groups are factored in, the average benefit received by high-income earners is *seventy-five* times that received by low-income earners.

Certainly, the fact that the higher one's income, the greater the amount that may be contributed to an RRSP disadvantages women in comparison to men because of women's lower incomes. Even if the contribution limits are increased for women to permit them to contribute more to their RRSPs, there is no evidence that such a measure would result in greater income in retirement for women. The problem is that women do not use all the RRSP room available to them. In 1993, only 31 percent of female contributors claimed 95 percent or more of their total room for the year (Frenken 1995: 25). Increasing that room by increasing the amount that can be contributed is not likely to make any difference to their ability to save for retirement through RRSPs. The main reason is that women do not have enough discretionary income to use their full contribution room.

Women and Spousal RRSPs

Neither RPPs nor RRSPs are likely to be of any benefit to women who work inside the home and do not participate in the paid labour force. These women do not have access to

employment-related plans and, with no income, are unlikely to be able to contribute to an RRSP. The tax system recognizes this problem and attempts to redress it partially by including special rules that apply to spouses. RPPs may provide survivor benefits (either pre- or post-retirement) which ensure that pension payments made to an individual can, on the death of an individual, be received by the individual's spouse. With respect to RRSPs, an individual may, subject to amount limitations, contribute to an RRSP in the spouse's name. The contribution may not exceed the individual's own contribution limit, less any amount contributed to the individual's own plan. The advantage of contributing to a spousal plan (rather than one's own plan) is that one is providing future retirement income for one's spouse and also splitting that income with the spouse. In other words, income that would have accrued to the individual and been taxed in the individual's hands on realization will be taxed in the hands of the spouse, who may well pay tax at a lower rate than the individual because of having less income. The general policy underlying the provision of survivor benefits and spousal RRSPs is to permit individuals to provide for retirement income for their spouses (primarily women) who are unable to contribute to an RPP or RRSP on their own behalf.

At first glance, the policy appears to be laudable, but on closer examination the difficulties become apparent. These problems led the Canadian Advisory Council on the Status of Women to lobby in the 1980s for an end to this system and for pensions for women in their own right (Guest 1997: 197). The major problem is that state-subsidized benefits are being provided to individuals solely on the basis that they are in a particular defined relationship with another person. Single persons and those persons whose relationships are not recognized by the tax system, such as lesbians,[15] are discriminated against. Yet, the number of people living in families is declining and more women than ever are living alone or with their children (Ontario Fair Tax Commission 1993: 263). Indeed, a recent report shows a 19 percent increase in the number of adults living without a partner between 1991 and 1996 (Statistics Canada 1997a). Given these demographic changes, basing entitlement to a tax subsidy on being in a heterosexual spousal relationship is no longer appropriate.

The Tax Deduction Issue

As with so many tax expenditures, the tax relief provided for contributions to RPPs and RRSPs is in the form of a deduction and not a tax credit. Therefore, as discussed elsewhere in this study, those who benefit most from the deduction are those with income taxed at the top rate of tax. Because men tend to earn more than women and be wealthier than women, they correspondingly receive greater subsidies. Indeed, the tax provisions relating to private pension plans establish a hierarchy of taxpayers with respect to the tax preferences for retirement saving which is in inverse relation to their ability to provide financially for their retirement. At the top are those with the highest incomes (predominantly men) and below them in declining order, are those taxpayers with lower incomes. At the bottom are those to whom the deduction is worthless, either because they do not have access to an RPP, they do not have funds to contribute to an RRSP, they do not have access through a spouse to a pension plan or simply because they have insufficient taxable income to benefit from the deduction. The tax system is merely reflecting and reinforcing the current economic inequality between rich and poor, and between men and women.

Options for Reform

What changes could be made to redress the problems for women that I have identified with the current system of tax-assisted retirement saving? Clearly, the problems are not merely flaws in the current rules that need fine-tuning. Indeed for some, the problems are so entrenched that there appears to be no easy solution. As Susan Worth Rowley (1986: 340-341) says:

> [A]s long as pensions are based on pre-retirement income, as long as pre-retirement income is allocated on the basis of a discriminatory wage scale, and as long as pension plans fail to recognize the value of work that women do for which they do not get paid—and which puts them at a further disadvantage when they do enter the labour force, either intermittently or later in life—the pension system will continue to be unconstitutional.

Others are more optimistic about the prospect of changes bringing about a meaningful improvement for women, and many suggestions for improvement of the current tax rules have been made.[16]

Before reviewing the possibilities, it is important to consider the policy objectives of the tax rules respecting retirement saving. They appear to be twofold. First, the intention is to ensure that Canadians have adequate income in retirement. Second, the rules are designed to encourage private savings for retirement and thereby remove some of the pressure from the state pensions such as the OAS and CPP/QPP.[17] A key issue is whether, given the preceding analysis, the tax system is the appropriate tool to use to subsidize retirement saving. Can the gender inequalities that arise ever be remedied by changing the current tax rules, or should subsidies for retirement saving be delivered in another manner? The answer depends, to a certain degree, on whether one believes the current "public" pension system should be enriched or whether the way forward is to encourage individuals to contribute to "private" plans such as RPPs and RRSPs. If one believes the former is the best approach, then the role of the tax system would be diminished. There is, however, no consensus on this issue. Indeed, the Ontario Fair Tax Commission, Women and Tax Working Group (1992: 18-22), exhibited this lack of consensus in its recommendations. Some members of the group believed that "public subsidies for retirement savings (both RRSPs and pension plan savings) delivered through the tax system should be redirected toward expanding and enriching the public retirement security system (OAS, GIS and CPP/QPP)" while other members took the position that "tax-delivered assistance to retirement savings should be maintained because private savings for retirement are an important component of an overall retirement savings policy."

One reason for the lack of consensus is that political reality dictates that in the current climate it is unlikely that more resources will be devoted to bolstering the OAS, GIS and CPP/QPP. Indeed, given the federal government's proposed changes to the CPP the importance of this plan as a primary provider of income in retirement will diminish.[18] As Monica Townson (1995: 60) says:

> [B]enefits are being cut back and policies are now directed to reducing the role of government and increasing the role of the individual in providing for his or her own retirement. In light of this, it would appear futile to make proposals that would increase the benefits from government programs, even though it would be the best way to improve the financial future of women.

Given this state of affairs, and the fact that the focus of this study is the tax system, the following suggestions for improvement address potential changes to the current tax rules that would help remedy the gender inequities discussed above. Four alternatives are discussed:

- removal of all tax preferences for retirement saving;
- reformulation of the tax rules to reduce the amount and availability of the tax preferences in a manner such as that recently adopted by Australia;
- placing a limit on the amount of contributions eligible for preferential tax treatment; and
- recasting the tax deduction for employees as a refundable tax credit.

Removal of All Tax Preferences

As long as there is economic inequality between men and women, which means that women do not have the same opportunities as men to take advantage of the tax preferences for contributions to private pensions, then an argument can be made that those particular preferences should be removed from the *Income Tax Act*. Barbara Austin has suggested elimination of the deduction for contributions to RPPs and RRSPs, while noting that if the deduction is removed, then it would be inappropriate to tax the pension payments received on retirement because tax would already have been paid on the portion that represents the contributed funds. She also points out (1996: 590) that "if the income of the funds is not taxed...the full exemption from tax of the pension benefit would result in a similar impact on tax revenue as the current system, although the timing of the tax payments would be advanced." One concern with such an approach is that it would be important to track the contributions to the plan in order to tax only the portion of the pension payment that represents accrued income.

The idea of taxing the investment income generated by RPPs and RRSPs has not received much attention. In my view, there are severe difficulties with such a course of action. First, it would be necessary to determine in whose hands the investment income would be taxed. Would it be attributed, and taxed to, the contributor? If so, there may well be a problem with liquidity; that is, the contributor may not have sufficient funds to pay the taxes because of not being in receipt of the income at the time the tax liability arose. This problem would be especially acute for those with lower incomes and, although there are several provisions in the Act that tax income even though it has not been received, such a change is likely to be highly unpopular. An alternative would be to have the tax paid by the pension fund, although as Austin (1996: 592) points out it would be "impossible to apply a single tax rate to retirement funds without either maintaining the increased tax benefits to high-income earners or penalizing low-income earners for participating." For these reasons, taxing the investment income earned by RPPs and RRSPs is not an attractive proposal.

Reduce the Amount and Availability of Tax Preferences

A less drastic measure is to reduce, rather than eliminate, the tax preferences for investment in pension plans. This approach has been taken in several countries. New Zealand, for example, has recently removed the deduction for contributions to superannuation (pension) schemes and commenced to tax all pension fund income, although pension income taken on retirement remains untaxed. This measure was taken, in part, to improve the equity of the tax system (Dilnot 1992: 63). In Australia, the emphasis has been on getting more employers to provide pension plans for their employees. The *Superannuation Guarantee Charge Act, 1992* requires employers to make contributions to a superannuation plan for each employee earning more than $900 a month. Tax relief is given by way of a deduction to employers for their contributions, a low rate of tax (15 percent) on earnings in the plan and a 15 percent tax rebate (credit) for income received from the plan by superannuated employees. From a tax perspective, the advantage of this approach is that the value of the tax subsidy for individual taxpayers, who are members of the plan, does not depend on their marginal tax rate because the tax deduction is only available to the employer, and the tax advantage to the retired employee is in the form of a credit, which is worth the same in terms of tax dollars saved to all taxpayers.

Limit the Amount of the Deduction for Contributions to RPPs and RRSPs

Another approach that would reduce some of the current gender inequities would be to limit the deductible amount of contributions to RPPs and RRSPs. This suggestion was the one most often made to the Finance Committee in its 1994 pre-budget consultations (Austin 1996: 588). Currently, the upper limit for these deductions is based on earnings at two and a half times the average wage of all workers which is three and a half times the earnings of a typical woman worker (Townson 1995: 63). The issue of how much should be deductible has been the topic of some debate. For example, in 1990 The National Council of Welfare (1990: 84) recommended that the limit on contributions to RPPs be no more than one and one-half times the average wage. This proposal was reiterated by the Ontario Fair Tax Commission (1993: 885) in 1993 and by the Canadian Advisory Council on the Status of Women which extended it to apply to all contributions to both RPPs and RRSPs in the same year (Townson 1995: 64). One problem with this approach is that even though it would limit the amount of the tax subsidy available for the high-income earner, it would do nothing to deal with the problem of the low-income earner who has no funds to contribute to a pension plan. If such a measure were to be adopted, it would be extremely important to ensure that the tax windfall to the government was applied to reduce some of the consequences of the historical inequities for women arising from the current system by, for example, redirecting the funds to improving the OAS. There is no doubt that any plan to reduce the amount that may be contributed to an RPP or RRSP would prompt a very negative reaction from many quarters. One only has to glance through the pages of financial newspapers before a budget, when the issue of the limitations on the contributory amounts arises, to see how significant the opposition is to such a proposal.

Convert the Deduction to a Refundable Tax Credit

An alternative approach, suggested by several commentators, is to replace the deduction for contributions to private pension plans with a tax credit.[19] The attraction of this proposal is

that it would increase the progressivity of the system because the tax credit would be worth the same to all taxpayers in terms of tax dollars saved, regardless of the rate at which they pay tax.[20] Such a credit could be made refundable which would ensure that many of those, with no access to the tax subsidies for retirement saving because they have no taxable income, would benefit. This proposal, however, does not address the problems of those with no funds to contribute in the first place.

Conclusion

The tax system plays a significant role in subsidizing retirement saving, and it appears likely that it will continue to do so. While implementation of any of the changes described above would go some way to remedying the inequitable application of the tax rules to women, none would be a complete solution. Nevertheless, as Monica Townson (1995: 60) has said:

> Benefits are being cut back and policies are now directed to reducing the role of government and increasing the role of the individual in providing for her or his own retirement. In light of this, it would appear futile to make proposals that would increase the benefits from government programs, even though that would be the best way to improve the financial future of women.

Political reality appears to dictate that the most likely improvement that can be accomplished with respect to improving the economic security of women in retirement is to increase women's access to tax-subsidized pension plans.

Endnotes

[1] For 1993, the figure was 56 percent and in 1996 it was 53 percent. See Oderkirk (1996) and Statistics Canada (1999a: 25).

[2] Section 180.2 of the *Income Tax Act*.

[3] The CCP and QPP are very similar pension plans. Residents of Quebec contribute to the QPP, but there is considerable integration of the CPP and QPP allowing, for example, individuals who work for part of their life in Quebec and part in another province to receive a pension based on contributions to both plans.

[4] The child-rearing "drop out" provision allows a woman to exclude the years that her child is under 7 years of age from the calculation of her average earnings. This provision does not require the woman to leave the paid labour force, but the advantage arises if she earns nothing or has a low income during this period. This fact will not adversely affect the level of her future benefits.

[5] Caledon Institute 1996, Table of Average CPP/QPP Retirement Benefit by Sex.

[6] For two excellent discussions of the issue of extending the CPP/QPP to homemakers, see Guest (1997: 205-207) and Cassels (1995: 173).

[7] For a discussion of this issue, see Barnsley (1998).

[8] Sections 147.2(1) and (2) and section 149(1)(o.1) of the *Income Tax Act*.

[9] For 1995, the value of all tax expenditures was over $24 billion and the value of all public expenditures on OAS, GIS, CPP/QPP and QPP was over $42 billion. See Canada, (1998: 14-15); and CCSD (nd.a: 2).

[10] There are several problems in identifying this source of income. First, the taxation statistics do not tell us whether the RPP income of an individual is an individual pension or whether it is a spousal benefit. In the case of the latter, the contributions would not have been made by the recipient but rather by the spouse of the recipient. Second, RPP income includes income from deferred profit sharing plans, registered retirement income funds, foreign pensions and survivor benefits. Third, income from RRSPs cannot be specifically identified because annuity income from RRSPs is included with investment income and registered retirement income funds.

[11] Statistics Canada 1997: 108. One reason that women are currently receiving less retirement income from RPPs is that women were often not allowed to join occupational pension plans until they reached a certain age, and that age was a later one than the one set for men. For an analysis of this problem, see Townson (1995: 44) While such practices are not permitted any longer because they offend human rights legislation, there are undoubtedly many women yet to retire who were adversely affected by these practices. From a tax perspective, these women had no access to a significant tax subsidy. That fact, combined with the prohibition on their ability to contribute to a pension plan for all or part of the time they spent in the paid labour force, means they will continue to be less well off than their retired male counterparts in the future.

[12] In 1985, women accounted for 35 percent of all RPP members; by 1995, that figure had risen to 44 percent (Statistics Canada 1998: 25).

[13] For a full discussion of this issue, see Young (1997).

[14] In 1996, 1.8 million men deducted just under $4 billion while 1.74 million women deducted just under $3 billion. See Canada (1998: 103). These figures do not take into account those individuals who were not able to claim the tax deduction because they had no taxable income. It is likely that more women fall into that category given that they tend to earn less than men and have less access to the labour market.

[15] It should be noted that as of the date of preparation of this study, section 252(4) of the *Income Tax Act* defines a spouse as a person of the opposite sex who cohabits with the taxpayer in a conjugal relationship and has so cohabited with the taxpayer for 12 months, or is the parent of a child of whom the taxpayer is also a parent and has cohabited with that person for 12 months. Therefore, the partners of gay men and lesbians are not included as spouses in this definition. In *Rosenberg v. Canada (Attorney-General)* 98 D.T.C. 6286 at 6293, the Ontario Court of Appeal held that the words “or the same sex” should be read into

the definition of spouse in section 252(4) as it applies to the registration of RPPs, with the result that lesbians and gay men now have "spouses" for the purposes of registration of RPPs. The ruling did not extend to RRSPs, although there is some indication that the federal government is considering changes to the definition of spouse for all purposes of the *Income Tax Act*.

[16] See, for example, Austin (1996: 588-594); Dulude (1981: 41-90); NCW (1990); Townson (1995: 61-66) and Ontario Fair Tax Commission (1992: 21-22).

[17] See, for example, Austin (1996: 577). It is important to note that there is a strong critique of the privatization of retirement saving. By abandoning universality in its pension program and making the system more private, the state is benefiting those who have higher incomes and are, therefore, in the best economic position to save for retirement at the expense of those who are less well off. These criticisms have led some to argue that this trend toward privatization of retirement saving should be abandoned and that there should be a move toward a more universal public pension system with less reliance on the private sector. See, for example, Austin (1996: 587); Dulude (1981: 41); NCW (1990: 22) and the Ontario Fair Tax Commission (1992: 21).

[18] For a discussion of this issue, see Guest (1997: 286).

[19] See, for example, Austin (1996: 591); Donnelly (1993: 447); NCW (1990: 84); Ontario Fair Tax Commission (1993: 332) and Townson (1995: 64).

[20] One critique of this proposal in the context of RRSPs is that a tax credit is generally given at the lowest federal rate and, if that were done in this case, in order to be fair, the tax imposed on funds when withdrawn would also have to be at the lowest rate which would give a benefit to those with higher incomes. If the tax on withdrawal were at a higher rate, then some of the incentive to contribute to an RRSP would disappear because the tax paid on withdrawal would be higher than the tax credit for contributions. Nevertheless, I suggest that the benefit of the sheltering of income from tax while it was in the RRSP would continue to attract investment in RRSPs.

4: OTHER TAX SUBSIDIES

Tax Subsidies Related to Dependence

> Dependency provisions should be eliminated. These provisions undermine the important contribution that women working in the home make to the economy. Equally important, they raise the costs of entering the workforce, thereby distorting their choices and undermining their autonomy (Maloney 1994: 146).

The focus in this part is on the impact on women of two particular provisions that relate to dependency: the spousal (marital) tax credit[1] and the ability to transfer unused tax credits to a spouse.[2] Both measures have been the subject of much criticism when viewed from the perspective of their impact on women.[3]

Spousal Tax Credit and the Transfer of Unused Tax Credits to a Spouse

The forerunner of the spousal tax credit was the marital exemption, introduced in the original *Income War Tax Act* in 1917. The exemption was available to married taxpayers and provided an exemption from tax of $3,000, in contrast to the personal tax exemption of $1,500. As Kathleen Lahey (1988: 378) has pointed out, "the personal and spousal exemptions had an important political and economic function: they effectively exempted working class men, single or married, from income taxation." In 1942, the marital exemption was revised to provide that even if a woman entered the paid labour force her husband was still entitled to the exemption, although in 1947 a limit ($250) was put on the amount a married woman could earn before her husband lost entitlement to the exemption.[4] In 1988, the marital exemption was converted to a tax credit, and effective January 1, 1992 it was extended to include persons living in common-law relationships.[5] For the 1999 tax year, the spousal amount is $5,718. This amount is reduced by the excess of the spouse's net income over $538. This reduction has the effect of eliminating entitlement to the credit when the spouse's income exceeds $5,918, meaning that if a spouse works in the paid labour force, entitlement to the credit is lost very quickly. Related to the spousal credit is the rule that an individual who is unable to use certain tax credits may transfer them to the spouse who may then apply them to reduce tax payable. Credits eligible for this transfer include the tuition tax credit, education tax credit, age credit, pension credit and disability tax credit.

There is a gendered impact to these rules. More women than men work in the home and not in the paid labour force; therefore, it is men who predominantly claim the spousal tax credit.[6] Furthermore, more than four times as many men use tax credits transferred from their spouse than women (Canada 1998b). Several issues arise when one considers the impact on women of provisions such as the spousal tax credit and the transfer of unused credits. The first issue is that provisions based on dependency are a disincentive to women's participation in the paid labour force. The theory is that when the tax costs (in this case the loss of the spousal credit and the inability to transfer unused credits to a spouse) are taken into account, there is a real disincentive to women in spousal relationships entering the paid labour force. This

disincentive is exacerbated by other costs, such as child care, travel, clothing and the monetary and non-monetary costs associated with replacing the household labour. Furthermore, when one considers that many women are the secondary earners in their heterosexual relationships,[7] and that they work for relatively low wages, the combination of these factors and the tax disincentives have a particularly detrimental effect on women's choice to work outside the home.

Despite the disincentives to women's participation in the paid labour force, more women than ever are working outside the home.[8] The main reason appears to be economic necessity.[9] Women are not, however, earning what men are and they are more likely to be engaged in casual or part-time work. This often means they continue to be the secondary earners in their relationships. In 1995, for example, the average total income for all Canadian women over 15 was roughly $16,600 while the corresponding figure for men was $29,600 (Status of Women 1997: 13). Therefore, any added penalty to women's participation in the paid labour force is unacceptable.

Another important critique of dependency provisions is that rules, such as the spousal tax credit, affirm that a woman's dependency on man deserves tax relief. Again, this undermines the autonomy of women and results in a certain privatization of economic responsibility for dependent persons. Tax policy has responded to women's lack of economic power by leaving it to the family (the private sector) to assume responsibility for women's lack of resources. Furthermore, in the case of the spousal tax credit, the tax subsidy is delivered to the economically dominant person in the relationship and not the "dependent" person who needs it. The manner of delivery assumes that income is pooled and wealth distributed equally within the relationship. However, studies show that this assumption is simply false. In reality, such pooling and redistribution of wealth does not occur in the majority of relationships.[10] Many women do not have access to, or control over, income earned by their spouse. Predicating tax policies on the assumption that they do is unfair.

There is also clear evidence that the living arrangements of taxpayers have changed considerably since the introduction of provisions such as the spousal tax credit. The number of people living in traditional nuclear families is declining, more women than ever are living alone or with their children, and the vast majority of lone-parent families are headed by women. Indeed, lone-parent families headed by women outnumber those headed by men by more than four to one (Statistics Canada 1997a: 2). As the Working Group of the Ontario Fair Tax Commission (1992: 9) says, "the concept of a couple as a life-long economic unit with joint income, wealth, and expenses may no longer be appropriate given changing family structures, increasing divorce rates, and falling marriage rates."

Section 252(4) of the *Income Tax Act* provides that a spouse of a taxpayer includes the person of the opposite sex who cohabits with the taxpayer in a conjugal relationship and:

- has so cohabited with the taxpayer for 12 months; or
- is the parent of a child of whom the taxpayer is also a parent.

The definition of spouse does not include the partners of lesbians or gay men and, therefore, a lesbian is not entitled to the spousal tax credit in respect of her partner. As I have discussed above, the spousal tax credit has some negative implications for women, but if it is to remain in the *Income Tax Act*, it should, at the very least, be amended to include same-sex relationships. Indeed, it may well be that the current definition contravenes section 15(1) of the *Canadian Charter of Rights and Freedoms* because it discriminates on the basis of sexual orientation. In *Rosenberg v. Canada (Attorney-General)*,[11] the Ontario Court of Appeal held that the words "or same-sex" should be read into the definition of "spouse" in the *Income Tax Act* as it applies to the registration of registered pension plans, with the result that lesbians and gay men are now spouses for the purposes of registration of those occupational pension plans. In *Rosenberg,* the Attorney-General conceded that the definition of spouse as it applied to pension plans contravened section 15(1) of the *Charter*.[12] It is difficult to see why the definition would contravene section 15(1) only in the context of its application to pension plans. Therefore, it is likely that the definition is discriminatory within the meaning of section 15(1) of the *Canadian Charter of Rights and Freedoms.* The issue would then be whether that discrimination can be justified in accordance with section 1 of the *Charter*, thereby saving the definition. The issue may be resolved soon. The Foundation for Equal Families, a lesbian and gay activist group, has begun legal action against the federal government on this issue. The argument is that the term "spouse" in 58 pieces of legislation, including the *Income Tax Act*, discriminates against lesbians and gay men contrary to section 15(1) of the *Charter* because it applies only to persons of the opposite sex and it cannot be saved by section 1.[13]

Options for Reform

What measures might redress the problems discussed above? A first step would be to reconsider the general issue of providing tax subsidies to those in spousal relationships. For example, in the United States, economist Julie Nelson (1996: 108) suggests that spousal status should not be the determinant of which relationships are relevant for the purposes of tax subsidies such as the spousal tax credit. She suggests the term should be expanded to include "individuals-in-relation" which would include the taxpayer and his or her dependant. A dependant would include a person unable to support himself or herself and the connection to the individual may or may not be a familiar one. The individual would claim the tax credit in respect of support of the dependant. While this suggestion would factor in different kinds of living relationships and thereby eliminate the current discrimination against lesbians and gay men who are not defined as spouses in the *Income Tax Act*, it would not address directly the problems of the disincentive to women's participation in the paid labour force, nor the fact that the subsidy is delivered to the economically dominant person in the relationship. More radical change is required.

The Ontario Fair Tax Commission struggled with this issue. The Women and Tax Working Group was split in the approach to be taken. Some members recommended that the spousal tax credit and the rules respecting the transfer of unused credits be repealed (Ontario Fair Tax Commission 1992: 111). In its final report, the Commission (1993: 271) recommended: "Ideally the marital credit should be removed at both the federal and provincial level" and the surplus funds redirected through a reformed credit process. This approach is one that, as the

quotation at the start of this chapter indicates, is also favoured by Maureen Maloney (1994). Those members of the Women and Tax Working Group who did not favour repeal of these provisions argued for the conversion of the spousal credit to a refundable tax credit that should be delivered to the spouse with the lower income. Such a measure would ensure that the economically dependent person in the relationship received the subsidy.

Conclusion

Whether to retain the spousal tax credit and the ability to transfer unused tax credits to a spouse is a difficult issue. As part of its Strategic Agenda, the Law Commission of Canada is soliciting input on the issue of personal relationships and the law.[14] Part of the work will involve examining issues such as redefining the terms of those relationships that should be of legal importance and, in this context, whether or not a tax system can be designed without reference to spouses and family units.[15] Given the broad scope of this project and its specific reference to tax law, it would make sense to wait for the conclusion of the work and the report of the Law Commission before making any changes to the Act.

Tax Subsidies for Those with Disabilities or in Respect of Individuals Being Cared for by Relatives

> Despite the extensive assistance available to the disabled, it is likely that many eligible individuals are not taking advantage of all the tax benefits available to them. One reason is the breadth and complexity of the rules. Most individuals, and even tax professionals, would find it difficult to unravel the network of legislation relating to credits and deductions for the disabled, as well as the eligibility criteria applicable to each case (Katz 1999: 690).

The tax system is increasingly being used to provide relief for those with physical or mental disabilities and those who care for persons with disabilities. Several measures have been included in the *Income Tax Act* and the purpose of the rules is to "'level the playing field' for people with disabilities who have earned income (not necessarily from employment) by allowing them to claim tax recognition of a proportion of their disability-related costs" (Library of Parliament 1997: 8). More recently, there has been a recognition that tax relief for disability is about more than merely horizontal equity. It has been said: "Disability-related tax assistance has been used to influence behaviour, to encourage employment, to promote community living as an alternative to institutional care, and to compensate people with disabilities for non-pecuniary hardships imposed by their disabilities" (Ontario Fair Tax Commission 1993: 313). The amount spent on tax measures related to disability and infirmity has increased significantly over the years. For example the cost of the disability tax credit has increased from $150 million in 1989 to a projected cost of $280 million in 2000 (Canada 1993; Dept. of Finance 1999a, Table 1). For 2000, it is anticipated that the infirm dependant tax credit will cost $7 million and the new caregiver tax credit $125 million (Dept. of Finance 1999a). Given these factors, it is important to evaluate how effective and fair the tax rules are.

The Tax Rules
Tax relief with respect to disability is provided by way of the disability tax credit,[16] the infirm dependant tax credit[17] and the caregiver tax credit.[18] Furthermore, the cost of attendant care may be a qualifying medical expense and, therefore, eligible for the medical expense tax credit[19] or it may qualify for the attendant care deduction.[20] The cost of institutional care for an individual may also qualify for the medical expense tax credit. The 1999 budget proposes that care in a group home be added to the list of eligible expenses for the purposes of that tax credit (Dept. of Finance 1999c, Resolution 14). Quebec also provides an additional refundable tax credit, the ascendant lodging tax credit.[21] While tax relief is provided through these measures, it should be noted that recipients of disability pension payments from the CPP/QPP are required to include those amounts in income.[22]

Disability Tax Credit
The specific rules relating to tax assistance for those with disabilities are, as the quotation at the beginning of this section indicates, extremely complex. Consequently, the following discussion does not cover all the details but provides enough information for the reader to determine how the rules operate in a general sense.[23] The disability tax credit is approximately $1,080 in amount. To qualify for the credit, an individual must have a severe and prolonged physical or mental disability, and the ability to perform the basic activities of daily living must be markedly restricted. A medical doctor or other specified health professional must certify that the individual meets this description, and the individual cannot have claimed remuneration for an attendant or care in a nursing home as a medical expense. The limited application of the credit is evident when one considers that significantly more individuals describe themselves as having a disability in Canada than claim the tax credit. For example, in 1991 (latest figures available), 4.2 million Canadians identified themselves as having a disability (Library of Parliament 1997) but, in 1996, only 462,830 individuals claimed the credit (Canada 1998b: 72). If an individual with a disability has little or no income and is, therefore, not in a position to use the non-refundable credit to offset taxes, the unused portion may be transferred to a supporting person such as a spouse, parent, grandparent, child or grandchild.[24] A transfer to a spouse is not permitted if the spouse has claimed either the spousal tax credit or a transfer of other unused credits in respect of the individual with the disability, or if another person has claimed the individual with the disability as a dependant.

Infirm Dependant Tax Credit
The infirm dependant tax credit may be claimed in respect of relatives over the age of 17 who are dependent on the taxpayer for support because of mental or physical infirmity. In order to be an eligible dependant, the individual with the disability must be a child, grandchild, parent, grandparent, brother, sister, aunt, uncle, niece or nephew of the claimant. The maximum amount of the credit for 1999 is $400; it is decreased if the dependant has income over $4,103, disappearing completely once the income of the individual with the disability reaches $6,456.

Caregiver Tax Credit
The caregiver tax credit was introduced in the 1998 budget.[25] It provides a credit to caregivers who maintain a self-contained domestic establishment that is the ordinary place of residence for the caregiver and the care recipient. The care recipient must be the child,

grandchild, parent, grandparent, brother, sister, aunt, uncle, nephew or niece of the caregiver. The credit is not available if the caregiver claims the equivalent to spousal tax credit, and the value of the credit is zero if the caregiver's income exceeds $13,853. Quebec provides a refundable tax credit—the ascendant lodging tax credit—intended to assist those who have elderly relatives living with them. The credit is $550 and is available to an adult taxpayer who lives with a parent, grandparent or great-grandparent aged 70 or older (or aged 60 or over if the elderly relative suffers from a prolonged severe mental or physical disability). What is interesting about this credit is that there is no requirement that the ascendant be financially dependent on the taxpayer, although the measure is clearly aimed at helping those who support elderly relatives.

Attendant Care

The cost of attendant care for a qualifying individual may either be treated as a qualifying medical expense for the purpose of the medical expense credit or taken as a deduction in the computation of income. A qualifying individual is someone who meets the conditions imposed with respect to eligibility for the disability tax credit. In the case of an individual who does not qualify in this manner, there is a provision that permits the cost of attendant care in the individual's home to be claimed as a medical expense for the purposes of the medical expense tax credit if the individual is mentally or physically infirm.[26] To qualify for the attendant care deduction, an individual with a disability must be eligible for the disability tax credit and must require the attendant care to work, The attendant care may not be provided by a spouse. There is a maximum on the amount that may be claimed. It is the lesser of the amounts paid to enable the individual to be employed, carry on business, or do research or similar work for which a grant was received and two thirds of the total amount included in income from those sources.

How do the rules discussed above affect women compared to men? There are three distinct forms of tax relief provided with respect to disability. First, there are measures that result in tax relief given directly to an individual with a disability, such as the disability tax credit and the attendant care deduction. Second, some measures direct tax relief to the caregiver, such as the infirm dependant tax credit, the caregiver tax credit and the Quebec ascendant lodging refundable tax credit. Finally, there is the ability to transfer any unused portion of the disability tax credit to a relative.

Tax relief provided directly to those with disabilities

Once again, women's lack of income and wealth relative to men affects their entitlement to these tax expenditures. The relief for the attendant care is provided by way of a tax deduction. This manner of provision means that, because the value of the deduction is tied to the rate at which an individual pays tax, those with higher incomes receive a greater share of the tax subsidy than those with lower incomes. As discussed elsewhere in this study, women are more likely to be in the latter group. In 1991, for example, one quarter of all women with disabilities lived below the poverty line while the figure for men with disabilities was only 18 percent (Fawcett 1996: 131). The problem with the disability tax credit is that because it is non-refundable, it is only of value to those individuals with taxable income. While the purpose of the credit is to allow persons with disabilities to defray some of the costs related

to their disability, that relief is not available to a considerable number of those who need this assistance. Persons with disabilities have incomes that are considerably lower than the incomes of non-disabled individuals. In 1991 for example, 43 percent of individuals with disabilities earned less than $10,000, and 26 percent earned less than $5,000 (Library of Parliament 1997: 2). For these individuals the disability tax credit is worthless.

Tax relief provided to caregivers

Increasingly, women are becoming caregivers for persons other than just their children. Many women care for elderly relatives in the home or family members with a disability. As the Women and Taxation Working Group of the Ontario Fair Tax Commission (1993: 41) noted, "for the most part, care is provided by wives, daughters and daughters-in-law." Frequently, the provision of this kind of care precludes these women from working outside the home in the paid labour force or, if they do work outside the home, it may be part time in order to ensure they have enough time for their caregiving duties. More women than men work part time,[27] and more than five times as many women over the age of 55 as men cite "family responsibilities" as the reason for working part time (Statistics Canada 1998a: 13, Table 2). Given the age of these women, it is most likely that those responsibilities include the care of relatives other than children. Furthermore, women's role as the caregiver in the family, including their responsibility for elderly relatives was given as a reason for 62 percent of interruptions in women's paid work (Statistics Canada 1997c: 4).

While the infirm dependant tax credit and the caregiver tax credit do go some way to recognizing the costs associated with caring for relatives, problems remain. These problems have a disproportionately negative impact on women who, as discussed above, tend to be the caregivers for the elderly and those persons with disabilities. First, the amount of the tax credits is low and does not reflect the cost to the caregiver of providing the care in the home. Second, these federal credits are of no value to a supporting person with no tax payable, to which they can be applied, because they are not refundable tax credits. Therefore, for example, a single woman who is caring for her elderly mother and has little or no income because she cannot work outside the home will receive no tax subsidy in respect of that care. Third, the new caregiver tax credit discourages the person being cared for from attempting to earn income outside the home, where possible, because entitlement to the credit diminishes so quickly.

Tax relief provided in the form of a transfer of the unused portion of the disability tax credit

While the ability to transfer any unused disability tax credit to a spouse appears to be a positive measure, it only applies to heterosexual couples and thereby discriminates against lesbians and gay men.

Options for Reform

Disability tax credit

An obvious measure that would bring some relief from the problems outlined above is to convert the disability tax credit to a refundable tax credit. There are several benefits to such a change. First, all persons entitled to the disability tax credit would receive it, regardless of

their level of income. Those who do not receive the subsidy because they have no taxable income would now be entitled to the tax credit. Another advantage is that there would be no need for the rule that allows any unused portion of the disability tax credit to be transferred to a spouse. The refundable tax credit would go to the person who needs it—the individual with the disability—and not the spouse. The current rule that permits the transfer of the credit to a spouse gives the tax subsidy to the economically dominant person in the relationship. This measure increases the economic dependence of individuals with a disability on the spouse and deprives them of what could be a small source of income. Making the tax credit refundable would alleviate this problem and direct the subsidy to those who need it most.

It is interesting to note that while the Ontario Fair Tax Commission (1993: 314-318) received many representations from groups favouring the conversion of the disability tax credit to a refundable tax credit, it chose not to make such a recommendation. One reason is that if the credit was made refundable, it would not necessarily result in a benefit to those persons on social assistance with disabilities, because their social assistance payments might be reduced because of the increased income. Therefore, the Ontario Fair Tax Commission (1993: 318) recommended that the disability tax credit be removed from the *Income Tax Act* and replaced with a flat rate, taxable benefit payable to all persons with disabilities.

If the subsidy for those with disabilities continues to be delivered by the tax system and is not converted to a refundable tax credit, then the discriminatory impact on lesbians (and gay men) should be remedied. As discussed above, the ability to transfer the unused portion of the disability tax credit is only available to individuals in heterosexual relationships. The definition of spouse in the *Income Tax Act* should be amended to include same-sex couples.

The caregiver tax credit

While the introduction of the caregiver tax credit is a very important move toward recognizing and valuing women's caregiving work in the home, improvements could be made to redress some of the problems discussed above. The National Association of Women and the Law has recommended several changes: the caregiver tax credit be delivered to the "primary caregiver" and a rebuttable presumption that the primary caregiver is a woman.[28] Such a change would merely recognize that caregiving work is performed primarily by women. This recommendation is not as unusual as it may seem given that the *Income Tax Act* already includes a rebuttable presumption that, for the purposes of the Canada Child Tax Benefit, the female parent is the person who primarily fulfils the responsibility for the care and upbringing of the child and, therefore, receives the benefit. Including such a presumption, whether it relates to the role of women as the primary caregivers for children or as the primary caregivers for the elderly and others, merely acknowledges the sociological evidence that many more women than men fulfil caregiving roles.

A further change that would improve access by women to the caregiver tax credit would be to convert the credit to a refundable credit so those with no taxable income would benefit from the subsidy. Such a move would parallel Quebec's approach to the provision of tax relief for those needing care because the ascendant lodging tax credit is fully refundable.

The Ontario Fair Tax Commission (1993: 321) also recommended that the attendant care deduction and the tax credit for disability-related medical expenses be eliminated and replaced with a direct spending program designed to subsidize these costs. These recommendations highlight the issue of whether the tax system should be used to deliver subsidies in respect of disability or whether a more direct approach would ensure that the policy objectives of the tax measures are accomplished in a more equitable manner.

Conclusion

A fundamental issue underlying the provision of subsidies to individuals with disabilities and those who care for them is whether the tax system is the appropriate tool for delivering these subsidies. While much of the debate to date has focussed on improvements that might be made to the tax rules, such as making the credits refundable, the Ontario Fair Tax Commission (1993: 1) rejected such an approach. Not only did it recommend replacement of the disability tax credit with a direct grant, it also recommended elimination of the attendant care deduction and the tax credit for disability-related medical expenses, and their replacement with a new program outside the tax system.

Why is the tax system viewed as such an inappropriate tool for delivering these particular subsidies? The answer is a combination of factors including the concern that any improvement to the tax rules intended to increase access to the subsidy might affect entitlement to social assistance. Another difficulty with using the tax system is that the tax rules respecting disability and caregiving are exceedingly complex, and there is no indication that there is any intent on the part of the government to make them more simple and user friendly. There is also concern that any program intended to alleviate some of the problems for those with disabilities should be highly visible—something not achieved when the rules are "hidden" in the tax legislation. In a similar vein, one might ask whether the Canada Customs and Revenue Agency is the appropriate vehicle for administering a program intended to improve the welfare of individuals with disabilities. Perhaps, the expertise is to be found elsewhere. All these factors raise the issue of whether the tax rules can ever be reworked to accomplish their goals in a fair manner.

Endnotes

[1] Section 118(1)(a) of the *Income Tax Act*.

[2] Section 118.8 of the *Income Tax Act*.

[3] See, for example, Maloney (1994); the Ontario Fair Tax Commission (1992); Brooks (1996) and Young (1997: 265-267)

[4] For an excellent analysis of the evolution of the marital credit, see Lahey (1988: 378-387).

[5] Section 252(4) of the *Income Tax Act*.

[6] Unfortunately, tax statistics only show the gender breakdown of the amount received for the spousal tax credit and the equivalent to spousal tax credit as one calculation. The

equivalent to spousal tax credit is given in respect of dependants, such as children, and may likely be taken by more women than men, given that more women head lone-parent families than men. Nevertheless, statistics for the 1996 taxation year show that more men than women claimed these two credits. See Canada (1998: 103).

[7] On this issue see Crompton and Geran (1995: 26-29).

[8] In 1991, 56 percent of married Canadian women were employed compared to 47 percent in 1981 (Ghalam 1993).

[9] For example, in 1991 the percentage of couples living below the poverty line in dual-earner families would have been 17.9 percent instead of 4.6 percent if the wives did not work in the paid labour force (Statistics Canada 1993).

[10] See Alderman (1995: 1); Brooks (1996: 63); Kornhauser (1993-94: 63-111) and Pahl (1986: 241-250).

[11] 98 D.T.C. 6286.

[12] The decision in *Rosenberg* turned on whether or not the discrimination in contravention of section 15(1) of the *Charter* was "saved" by section 1 of the *Charter*. Section 1 reads as follows:

> The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

[13] See Foundation for Equal Families (1999). It should be noted that redefining "spouse" to include same-sex couples presents problems. As I have discussed in other work, one consequence will be that couples in which both partners have low incomes stand to pay more tax. This problem arises because of loss of entitlement to the full GST tax credit and the Canada Child Tax Benefit because those tax credits are calculated on "family" income. See Young (1994: 535) for a full discussion of the class implications of including lesbians and gay men in the definition of spouse.

[14] Law Commission of Canada <http://www.lcc.gc.ca/en/contracts>.

[15] The Law Commission of Canada is funding two projects considering the issue of "spousal status" and the *Income Tax Act*. One project entitled "What's Sex Got To Do With It? Tax and the Family" is being prepared by the author, and Professor Kathleen Lahey, Professor of Law at Queen's University, Kingston, Ontario is completing a project entitled "The Role of the State: Adult Relationships and the Tax/Benefit Unit." Publication date for both projects is 2000.

[16] Section 118.3(1) of the *Income Tax Act*.

[17] Section 118(1)(d) of the *Income Tax Act*.

[18] Section 118(1)(c.1) of the *Income Tax Act*.

[19] Section 118.2(2)(b), (b.1) and (c) of the *Income Tax Act*.

[20] Section 64 of the *Income Tax Act*.

[21] Sections 1029.8.54 to 1029.8.61 of the *Taxation Act* R.S.Q., c. I-3.

[22] Section 56(1)(a) of the *Income Tax Act*.

[23] For a detailed analysis of the operation of the tax rules in respect of disability see Katz (1999).

[24] Sections 118.8 and 118.3(2) of the *Income Tax Act*.

[25] Section 118(1)(c.1) of the *Income Tax Act*. While this section was introduced in 1998, it has not yet been enacted.

[26] Section 118.2(2) of the *Income Tax Act*.

[27] Almost 70 percent of part-time workers are women and 26 percent of employed women work part time. See Statistics Canada (1998b).

[28] This proposal means that while the primary caregiver will be presumed to be a woman, if there are circumstances where it is clear that this is not factually true then the presumption can be rebutted (NAWL 1998: 17).

5: CONCLUSION

This study has focussed on the impact on women of funding social programs through the tax system. It has recognized that the tax system is not just a revenue-raising program, but over the years, it has become a most powerful social and economic tool, one that is increasingly implicated in the delivery of social programs. Consequently, the underlying theoretical framework of this study is tax expenditure analysis. The study also places the analysis in the context of the social and economic realities of women's lives. In so doing, the study recognizes that women are not a monolithic group, and their experience is affected by differences among them which are the consequence of social conditions such, as race, age, sexual orientation, class and disability. While recognizing the value of traditional tools of tax policy analysis in evaluating tax measures, this study uses equality among particular groups in society as the foundation of its analysis. An equality analysis is applied to those tax measures that are used to deliver social programs. The intention is to determine how those measures apply to women. Do women benefit to the same extent as men? How does women's socio-economic status affect their access and entitlement to tax subsidies?

The focus of this study is tax subsidies related to children, dependence, retirement saving and those for individuals with disabilities and their caregivers. These tax provisions were the focus of the study because the subsidies they deliver are of fundamental importance to women. As has been discussed, the current tax rules are replete with problems for women. Some of those problems include women's lack of access to the tax subsidies and the inadequate amount of the subsidies.

The fundamental question underlying the options for reform that conclude each chapter is whether the tax system should be used at all as a tool to deliver the particular subsidy. By highlighting the problems with the various rules, the intention is to allow the reader to consider that question, although it is beyond the scope of the study to make a definitive recommendation on that issue. The main focus in the options for reform, however, is consideration of those changes to the tax rules that would redress the inequities discussed in relation to the particular tax subsidies. These changes are put forward to stimulate discussion on the issues.

The child care expense deduction and the Canada Child Tax Benefit are discussed in detail. Given that women are the primary caregivers for children, these subsidies have a very important role to play for women. The conclusion is that both these subsidies have problems. For example, the child care expense deduction is inadequate in amount and is worth more in terms of tax dollars saved to those with high incomes than to those with lower incomes. The limitations with respect to the definition of income to which the deduction can be applied have a negative effect on many women. In the case of the Canada Child Tax Benefit, this measure is targeted in a manner that disadvantages those women on social assistance in comparison to the working poor. Suggested options for reform to the child care expense include increasing the amount of the deduction, removing restrictions on the nature of the income to which the deduction may be applied or converting the deduction to a refundable

tax credit (as is done in Quebec). The key issue for consideration with respect to the Canada Child Tax Benefit is whether the tax system is the appropriate tool for delivering this program.

The tax system plays a significant role in subsidizing retirement saving; yet women, for a variety of reasons, do not have as much access to these subsidies as men. One reason is that the tax subsidies are provided for contributions to, and the income earned by, private pension plans, such as occupational pension plans and registered retirement savings plans. For a variety of reasons many women are unable to contribute to these plans. If they do contribute, they often receive less of a tax subsidy than men. A primary reason for women's unequal access to tax subsidies for occupational pension plans is that access to these plans depends on participation in the paid labour force in jobs that provide these plans. For example, women comprise 70 percent of part-time workers, but these plans are not usually available to part-time workers. Tax breaks for occupational pension plans and RRSPs are also of no value to women who work only in the home or who have no discretionary funds to contribute to an RRSP. Given that the role of universal pension schemes such as the Old Age Security appears to be diminishing and that the government is encouraging more reliance on private pension plans, it is important that women's lack of access to tax subsidies for retirement savings be remedied. One suggestion is to remove all tax preferences from the *Income Tax Act* and redirect the funds to the more "universal" plans such as the Old Age Security and the Canada Pension Plan. Alternatively, the current tax rules could be reformulated in a manner that would improve women's accessibility to the subsidies for retirement saving.

Tax subsidies related to dependence, such as the spousal tax credit, need to be rethought. These measures are a disincentive to women's participation in the paid labour force and undermine women's autonomy. The caregiver tax credit, which is intended to recognize women's caregiving in the home, also acts as a disincentive to women's participation in the paid labour force and should be restructured to remove this disincentive. The study discusses whether the tax system is the appropriate tool for delivering subsidies related to dependency and offers options for reform of the current rules, including, for example, converting the tax deductions to refundable tax credits.

The study concludes with recommendations intended to assist those who prepare amendments to the *Income Tax Act*, including officials at the Department of Finance and the Canada Customs and Revenue Agency, to evaluate the gender impact of any proposed changes and to consider, in a more informed manner, the impact of those changes on women. The recommendations are also intended to provide women's groups and others interested in the issue of the impact of the tax system on women with information that might assist them in the preparation of submissions to the government on tax policy issues. In addition to a call for the use of statistical data on the socio-economic realties of women's lives in the setting of tax policy, the study recommends more consultation between the Department of Finance and individuals and groups who are able to provide information about women that would be relevant to the tax policy-making process when changes to the system are being considered. The study also includes an appendix which lists 10 questions that should be considered whenever changes to the income tax system are contemplated. The questions allow policy

makers and others to determine if a particular measure might have a negative impact on women and if so, how that negative impact might be avoided. The questions focus on issues related to the impact of a particular measure on women's participation in the paid labour force, the impact on women's autonomy, access to the tax subsidy and other issues intended to allow policy makers to take the socio-economic realities of women's lives into account when setting tax policy.

APPENDIX A: TAKING ACCOUNT OF WOMEN WHEN SETTING TAX POLICY

In 1992, the Women and Taxation Working Group of the Ontario Fair Tax Commission (1992: II) recommended that "any proposed changes to tax provisions should be analyzed for their impact by gender prior to implementation," and the analysis should be included in the budget in which the changes are introduced. The following material is intended to assist those who prepare amendments to the *Income Tax Act*, including officials at the Department of Finance and the Canada Customs and Revenue Agency, to evaluate the gender impact of any proposed changes and to consider, in a more informed manner, the impact of those changes on women. These recommendations are also intended to provide women's groups and others interested in the issue of the impact of the tax system on women with information that might assist them in the preparation of submissions to the government on tax policy issues.

Data

There is clearly a need for the collection and dissemination of more data on the social and economic realities of women's lives. For example, while the tax statistics provide a breakdown of information included on all tax returns by reference to age and gender, they do not include information on race, sexual orientation and disability. The reason for this omission is that taxpayers are not required to provide such data on their tax returns. This lack of data makes it difficult for tax policy makers and others to determine the impact of proposed tax measures on women. Consideration should be given to ensuring that tax policy makers have sufficient information about the social and economic status of women in order to make informed decisions about the impact of proposed policies on women. Data from the census could be used in this regard.

Consultation

There should be more consultation by the Department of Finance with individuals and groups who are able to provide information about women that would be relevant to the tax policy-making process when changes are contemplated to the income tax system. To date, groups such as the National Association of Women and the Law have been able to make representations to the House of Commons Standing Committee on Finance as part of the budget process, but that is not enough. The Department of Finance should consult with Status of Women Canada on an ongoing basis about women and tax policy. It should also invite submissions from interested groups such as the National Action Committee on the Status of Women, the DisAbled Women's Network and the National Association of Women and the Law when changes to the *Income Tax Act* are proposed. The expertise of these groups would be of great assistance to the policy makers.

Specific Questions to Be Considered

In order to take into account the full impact of a tax measure on women, certain questions should be addressed as part of the tax policy-making process. Some of these questions include the following.

- Does the proposed tax subsidy favour high-income taxpayers more than low-income taxpayers because the latter receive less of the subsidy than the former?
- Is the tax subsidy available to individuals who pay no tax?
- Is a tax subsidy more accessible to those who are employed in the paid labour force on a full-time basis than to those who work part time or only in the home?
- Will interruptions in work in the paid labour force adversely affect entitlement to the tax subsidy?
- Will the proposed tax measure act as a disincentive to women's participation in the paid labour force?
- Does access to the tax subsidy depend on the private market or the private family playing a role in its delivery?
- Does the tax measure contribute to the undervaluation of women's labour in the home?
- Is the subsidy only available to those in heterosexual relationships?
- Where the tax subsidy is in respect to an individual who is economically dependent on another, is it delivered to the economically dominant person in the relationship?
- Does the tax measure undermine the autonomy of women?

If the answer to any of the above questions is yes, could the subsidy be reconfigured to avoid the negative impact on women or should it be delivered in another manner, such as by way of a direct grant?

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* Some of these papers are still in progress and not all titles are final.