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WOMEN AND CHILDREN IN THE ECONOMY: REFLECTIONS FROM THE INCOME TAX SYSTEM

Faye L. Woodman*

I have been asked to speak on "women and economics" with specific reference to the Canadian tax system. It is my thesis that the economic vulnerabilities of women and children in this nation are reflected and reinforced in the tax system. Further, it is my view that societal attitudes about who should support, and how we should support, children contribute to a complex synergy within the economic/tax system. This has the potential to produce a new underclass of government dependents who are dependent because, paradoxically, they receive so little support. Finally, I end with a plea for a broader commitment to all our children, which goes well beyond, and is quite incompatible with, those programmes which define some children as a particularly problematic subset of the poor.

Before addressing the fundamentally important issues arising out of the tax system, I want to consider more generally the past and present positions of women and their children in the economic sphere. One place to start is the *Report of the Royal Commission on the Status of Women* which celebrated its twenty-sixth anniversary in the fall of 1996.¹ In a recent retrospective on the *Report*, broadcast on the CBC, it was interesting to hear the impressions of the women intimately involved with its drafting and the aftermath. One woman's impression was that the easy things got done quickly, and the politicians reaped their reward, but difficult issues of economic welfare remain unresolved. Today women and their children still suffer disproportionately from limited economic opportunities, poverty and their concomitant evils.²

Actually, and perhaps surprising to us today, the Royal Commission had virtually nothing to say about macro-economic conditions. The Commission was constituted in a much more benign economic climate.³ There was an optimism and expectation of generosity that sounds strange to our ears today. Cost estimates were in short supply in the report. Those given were unapologetic.

*Faculty of Law, Dalhousie University. This speech was delivered at the Ludlow Women in the Law Conference on 22 March 1997. I want to thank the two organizers, Candice Silver and Susan Wheeler (LL.B 1998). I have added footnote references in response to queries from the audience and later, from my students and other readers. This speech was dedicated to my parents, Cledith and Thomas Woodman, who, too often, have been the solution to my child care problems.

¹Canada, *Report of the Royal Commission on The Status of Women in Canada* (Ottawa: Information Canada, 1970) (Chair: Florence Bird).

²Canada, *A Report by the National Council of Welfare on Women and Poverty Revisited* (Ottawa: Supply & Services, 1990) at 6; Canada, *A Report by the National Council of Welfare, Poverty Profile 1995* (Ottawa: Supply & Services, 1997) at 84-86.

³Unemployment below 6%. Statistics Canada, *Historical Labour Force Statistics* (Ottawa: The Ministry of Industry, Trade and Commerce, 1973) at 233.

It is true that things have changed since then. Women now make 72 cents for every dollar a man makes compared to 60 cents in 1971 – a significant, if not sufficient, improvement.⁴ Indeed, in recent years, as our families have been under siege from unemployment, downsizing, and public sector cuts, some women's wages have increased as those of men have decreased or have been eliminated (although this trend appears to have recently been reversed).⁵ Further, the work participation rate of women with young children has increased from about 34% in 1971 to 63% today.⁶ Given the state of day care in this country, and the implications of the double shift for women and the care of their children, I do not think these changes, however constituted, are an unmitigated blessing for families.⁷

Today we face a profoundly changed economic landscape. Parts of it are bleak and harsh barrens, populated with women and children who have no place, no value and sometimes no home in the new global economy. It is a land of autonomous, self-actualizing and wealth-maximizing market participants.⁸ Women know they do not fit into this landscape. They do not need to be told that the opposite of the self-actualization of the profit maximizer is the self-abnegation of pregnancy and motherhood. Few women would understand the responsibility of looking after their children as altruism in the self-actualizing market sense.⁹

In this landscape, women face a fearful political ideology which reinforces the economic one. Demands for less government and, in their extreme form, pressures to dismantle the welfare state, reductions in the social safety net, and a new economic punitiveness underline the vulnerability of women and children.¹⁰ In Canada today the question – who is looking after the kids? – may reasonably be asked. The answer is ominous. More women are working to make ends meet and this increased workforce

⁴Statistics Canada, *Women in Canada: A Statistical Report*, 3d ed. (Ottawa: Supply & Services, 1995) at 86.

⁵B. Little, "Women Ahead in the Job Stakes of the Nineties" *The Globe and Mail* (14 April 1997) A6.

⁶Statistics Canada, *supra* note 4 at 64. It is noteworthy that until 1981 work participation rates for women with children under six were lower than women overall. However, in 1988, even the participation rate for women with children under three exceeded the rate for all women. Statistics Canada, *Women in Canada: A Statistical Report*, 2d ed. (Ottawa: Supply & Services, 1990).

⁷M. Eichler, *Families in Canada Today: Recent Changes and Their Policy Consequences*, 2d ed. (Toronto: Gage, 1988); A. Hochschild & A. Machung, *The Second Shift: Working Parents and the Revolution at Home* (New York: Viking, 1989).

⁸P. England, "The Separative Self: Androcentric Bias in Neoclassical Assumptions" in M. Ferber & J. Nelson, eds., *Beyond Economic Man* (Chicago: The University of Chicago Press, 1993) at 37.

⁹J. Nelson, *Feminism, Objectivity and Economics* (New York: Routledge, 1996) at 70. According to G. S. Becker, in *A Treatise on the Family*, enlarged ed. (Cambridge: Harvard University Press, 1991) at 24, the basic commodities produced and consumed by households which directly create utility include "children, prestige and esteem, health, altruism, envy and pleasures of the senses..."

¹⁰C. Pierson, *Beyond the Welfare State? The New Political Economy of Welfare* (University Park, Pennsylvania: The Pennsylvania State University Press, 1991); P. Pierson, *Dismantling the Welfare State? Reagan, Thatcher, and the Politics of Retrenchment* (Cambridge: Cambridge University Press, 1994).

participation has not been met with a societal commitment to universal day care.¹¹ Furthermore, many children in Canada today can expect to spend a significant period in a one-parent family. Most of these families are headed by women¹² and over 44% of mother-lead families live below the poverty line.¹³ It is noteworthy that the depth of their poverty is the greatest of all categories of poor people.¹⁴

Our societal response to this barren landscape has been wanting. What we have seen in the last ten years is the end of universality in Canada.¹⁵ Under the twin rubrics of affordability and efficiency, the social welfare system increasingly "targets" its recipients. The risk is declining political support and ultimately beggarly benefits.

The tax system cannot, of course, be separated out from the economic landscape. It influences and is influenced by that landscape. The present contours and future shapes of either may not bode well for the future – if the future is one of a functioning and effective welfare state. It is a landscape in which we can easily get lost. It is true that we must find our way to a fair and efficient tax system. However, as we focus on who should pay, we should not forget what we are paying for. We need a tax system that will support necessary investments in human capital, our mothers and kids, today and tomorrow. While there are limits to our capacity to pay, there are also limits to the viability of poorly resourced health, education, child care and social welfare systems.

Before examining provisions of the *Income Tax Act* of particular significance to women, I want to discuss the tax system as whole. I will refer to a few trends which

¹¹In response to the Cooke Report, *infra* note 34, in 1987 the Federal (Liberal) Government, proposed increases in the amount allowable as a child care deduction under section 63 of the *Income Tax Act*, and the replacement of the Canada Assistance Plan with a new federal-provincial cost-sharing programme. See Health and Welfare Canada, *National Strategy on Child Care* (Ottawa: Supply & Services Canada, 1987). The abandonment of the National Strategy on Child Care was announced in the February 1992 budget by the Progressive Conservative Government. The Liberal Government announced on 18 January 1993 that no child care programme would be put in place until the economy grew by 3 percent in a given year. (S. Delacourt, "Throne Speech Sets Modest Goals" *The [Toronto] Globe and Mail* (19 January 1994) A2).

The repeal of the Canada Assistance Plan (CAP) under the 1995 Federal Budget and its replacement with the new "Canada Health and Social Transfer" (CHST) will have a fundamental impact on programmes for women and children. See M. Jackman, "Women and the Canada Health and Social Transfer: Ensuring Gender Equality in Federal Welfare Reform" (1995) 8 C.J.W.L. 371.

Note, however, the comprehensive child care policy initiated by Quebec in 1997. By the year 2001 the cost for all children attending day care will be subsidized. See M. Philp, "Child-care Plan Makes Quebec Distinct" *The [Toronto] Globe and Mail* (17 June 1997) A1.

¹²Eichler, *supra* note 7 at 212.

¹³M. Gunderson, L. Nuszynski, & J. Keck, eds., *Women and Labour Market Poverty* (Ottawa: Canadian Advisory Council on the Status of Women, 1990) at 18.

¹⁴Statistics Canada, *supra* note 4 at 84.

¹⁵*Family Allowance Act*, R.S.C. 1985, c. F-1 as rep. by S.C. 1992, c.48, s. 31(1) and *Income Tax Act*, as amended by S.C. 1990, c. 39, s.48, appl. to 1989 and subsequent taxation years. Canada, *The Seniors Benefit: Securing the Future* (Ottawa: Canada Communication Group, 1996).

I find significant and problematic. They include the development of a hybrid system of taxation in Canada which is neither a consumption tax system nor an income tax system, the trend towards flattening tax rates, and finally, the emphasis on efficiency over equity.

I will comment first on the generous incentives for savings, particularly – but not exclusively – retirement savings, under our present income tax system. To reiterate my earlier point, most discussions of the income tax system focus on *who* should bear the tax burden. Many writings have been devoted to finding a principled justification for taxation. Some justifications concentrate on who benefits from civil society. This is a hard question to answer because defense, hospitals, education, transport, and other government services seem to cross gender and class lines. In the final analysis, those whose economic life is most enhanced by the presence of civil society, that is law, arguably benefit the most and, as a corollary, should pay the most tax. Nevertheless, among those who debate these issues, there has been a tendency to ascribe economic, if not civic, virtue to those who save over those who consume.¹⁶ Therefore, in the debate over whether we should have income taxes or consumption taxes, consumption taxes are often favoured.

Actually both systems have their merits, and both can, at least theoretically, be devised to provide equitable tax systems. However, in the *Income Tax Act*, we seem, in fits and starts, to be developing a hybrid system.¹⁷ Furthermore, the introduction of the GST, even with the GST credit, accentuates the tendency to exact a disproportionate amount of tax from those who consume more. Consumers include those who have high expenses, such as children, or low incomes, or both. This tendency to favour savings was demonstrated in the 1997 budget when parents who could afford to contribute to a registered education plan, and who furthermore could afford to set up their own private plans, were further privileged by being allowed to shelter unused investment income from their plans from taxation.¹⁸

Another aspect of the income tax system that women should be subjecting to scrutiny is the trend towards rate reduction.¹⁹ In many of the countries of the industrialized world, governments have adopted the mantra of international competitiveness for their tax systems. This has been interpreted to mean lower rates of

¹⁶J.E. Meade, Chair, *The Structure and Reform of Direct Taxation*, (London: The Institute for Fiscal Studies, 1978). It is noteworthy that the *Meade Report* recommended a general progressive expenditure tax. No sales tax in Canada incorporates comprehensive progressivity.

¹⁷See a discussion of this phenomenon from another perspective in C.F.L. Young, "Public Taxes, Privatizing Effects, and Gender Inequality" in S. Boyd, ed., *Challenging the Public/Private Divide: Feminism, Law, and Public Policy* (Toronto: University of Toronto Press, 1997) at 319-323.

¹⁸Notice of Ways and Means to Amend the *Income Tax Act*, February 18, 1997, sec. 4.

¹⁹See N. Brooks, "The Changing Economic Structure of the Canadian Tax System: Accommodating the Rich" (1993) 31 *Osgoode Hall L.J.* 137.

tax in both the personal and corporate sectors. Lowering rates has been touted as the way to increased savings and investment, and the creation of wealth. Cast in a slightly cynical light, we are told, in effect, that if we just let the rich get richer than we will all be better off, or at least we will all get poorer more slowly.

It is interesting to note that the disincentive effects of higher tax rates are not universally, or even generally, accepted by professional economists.²⁰ Although there are studies that argue for these disincentive effects, the jury is still out.²¹ Who is to say whether I will work more or less under any specific rate regime? I might get discouraged and reduce my hours of work or I might work more to maintain my standard of living. There are two questions with respect to savings. The first is whether higher taxes act as a disincentive to save. But even if higher tax rates discourage savings, it is not clear in an open economy like Canada, that savings promote growth and employment.

The final, more general, comment I want to make about taxes is the change in emphasis from equity to efficiency. I believe we can still look to the *Report of the Royal Commission on Taxation*, a document from the 1960s.²² It articulated principles of taxation which we could do well to remember. To quote from volume one of the *Report*:

We assign a higher priority to the objective of equity than to all others. ... We are convinced that unless this objective is achieved to a high degree all other achievements are of little account.

Unless a tax system is generally accepted as fair, the fundamental purpose of taxation is lost; for if fairness is not considered relevant there are certainly simpler means for the government to secure command over goods and services.²³

Times have changed. Consider the comments of the Macdonald Royal Commission on the Economy:

While equity remains an important goal, tax specialists now stress the need for a system that is calculated to encourage economic efficiency.²⁴

²⁰*Ibid.*

²¹J. Slemrod & J. Bakija, *Taxing Ourselves* (Cambridge: MIT Press, 1996) c. 4.

²²Canada, *Report of the Royal Commission on Taxation*, 6 vols., (Ottawa: Queen's Printer, 1966) (Chair: Kenneth L. Carter).

²³*Ibid.*, vol. 2 at 17.

²⁴Canada, *Report of Royal Commission on the Economic Union and Development Prospects for Canada* (Ottawa: Supply & Services, 1985) (Chair: Donald S. Macdonald).

Tax fairness based on ability to pay is now out of fashion.²⁵ In the late Doug Hartle's words:

[O]ne [would] not expect "tax specialists" to emphasize efficiency arguments for the simple reason that they purport to have special knowledge about efficiency issues but no greater insight into equity issues than anyone else?²⁶

At this point, having had the opportunity to examine the economic landscape and some of the general contours of the tax system, I will examine provisions of particular concern to women. I will identify three areas that raise questions about how we view women's economic and social natures. These areas are the deductibility of child care expenses, the non-deductibility (as of 1 April 1997) of child support, and the Child Tax Benefit.

The first provision that I will refer to is the child care expenses deduction.²⁷ Section 63 allows a deduction of \$5,000 per child for children under seven,²⁸ and \$3,000 per child for children between seven and sixteen.²⁹ The deduction cannot exceed two-thirds of a taxpayer's earned income,³⁰ and it can only be taken by the lower earner in a two earner couple.³¹ In 75% of the cases, Revenue Canada states that the person claiming the deduction is a woman.³²

I see a number of problems associated with the child care expenses deduction. My views, however, are not completely congruent with conventional tax theorists. Therefore, before discussing the provision, I will situate it within mainstream tax policy. Basically, the argument of tax theorists, and some feminists has been that the present tax system discourages secondary earner's (read women's) participation in the market place.³³ This is, among other things, the consequence of the non-taxation of home production. In other words, if I bake my bread and care for my own children then I am not taxed on this "production". If buy my bread in a store and pay someone to care for my children, however, then I pay with taxed (after-tax) money. The result, therefore, is that some women may be discouraged from entering the waged economy. The

²⁵D. Hartle, "Some Analytical, Political and Normative Lessons from Carter" in N. Brooks, ed., *The Quest for Tax Reform* (Toronto: Carswell, 1988) 397 at 401.

²⁶*Ibid.*

²⁷*Income Tax Act*, *supra* note 15, s. 63.

²⁸*Ibid.*, s. 63(l)(e)(ii)(A)(I).

²⁹*Ibid.*, s. 63(l)(e)(ii)(B).

³⁰*Ibid.*, s. 63(l)(e)(i).

³¹*Ibid.*, s. 63(2).

³²"Taxable and All Returns with Allowed Child Care Expenses" (9 April 1997), <http://www.rc.gc.ca/menu/EmenuKVC.html>.

³³N.C. Staudt, "Taxing Housework" (1996) 84 Geo. L.J. 1571.

solution is to ameliorate the costs of substituting home production with market production; hence, deductions like those for child care expenses. The child care expenses deduction permits the woman who cares for her own children and the woman who pays someone to care for her children to be put on the same tax footing.

There are a number of things wrong with this approach. Nonetheless, I am not advocating the complete elimination of the child care expenses deduction at this time. Even Katie Cooke rather reluctantly agreed to some role for such a deduction.³⁴ Furthermore, at the present time, the deduction represents the primary source of government funding for child care in this country.³⁵ However, it should be understood that the deduction is seriously and fundamentally flawed.

A very specific criticism of the child care expenses deduction is that it embodies a perverse characteristic that is called an "upside-down subsidy."³⁶ In other words, the richer you are, the more the government will subsidize your child care; the poorer you are, the less it will subsidize your child care unless you are really poor, in which case it will refuse to provide any subsidy at all. This is the result of the increasing marginal tax rates of taxpayers. A \$1,000 deduction to a taxpayer whose marginal rate (MR) of tax is 50% is worth \$500. The same deduction to a taxpayer whose MR of tax is 30% is worth \$300, and it is worth nothing at all to someone whose income is so low that she is not taxable.

Consider, for example, a woman lawyer working out of her own office. She may spend \$16,000 a year on a nanny, which, assuming she has two children under 7, would give her a deduction of \$10,000. In turn, the deduction might be worth approximately \$5,000 at her top marginal rate. Her receptionist, who also has two children under seven, might be able to put in place a fragile network of unlicensed or family care, or both. She might pay her sister-in-law \$3,000. Her deduction would be worth \$900 to her, assuming a marginal rate of 30%. The cleaning lady, who works at night so she

³⁴Status of Women Canada, *Report of the Task Force on Child Care* (Ottawa: Supply & Services Canada, 1986) [the *Cooke Report*]. The *Cooke Report* is probably the most comprehensive and important report on child care in Canada. There have, nevertheless, been other reports before and after. See: Canadian Advisory Council on the Status of Women, "Caring for Our Children" (Address to the Special Committee on Child Care) (Ottawa: Canadian Advisory Council on the Status of Women, 10 June 1986); National Association of Women and the Law, Address (Special Committee on Child Care) (Ottawa: National Association of Women and the Law, 10 June 1986); Canada, Special Committee on Child Care, *Sharing the Responsibility* (Ottawa: Queen's Printer, 1987); National Council of Welfare, *Child Care: A Better Alternative* (Ottawa: Supply & Services Canada, December 1988).

³⁵Department of Finance, *Government of Canada Tax Expenditures* (Ottawa: Supply & Services, 1995) at 27. For 1993, the child care expense deduction tax expenditure was estimated to be \$305 million. In approximately the same period federal government direct expenditures under CAP (Canada Assistance Plan) were about \$300 million reported by official, Human Resources Development Canada, Human Resources Investment Branch, Federal and Provincial Programs on May 27, 1997.

³⁶Surrey, *Pathways to Tax Reform: The Concept of Tax Expenditures* (Cambridge: Harvard University Press, 1973) at 134-137.

can have a neighbor look in on the kids while they sleep, pays about \$500 a year for which she does not get a receipt, and therefore cannot deduct, even assuming she has taxable income. Government support for her child care is zero. One could say that the cleaning woman is invisible in more ways than one.

The extension of the child care expenses deduction so that it is available for all child care expenses would, of course, only exaggerate these perverse effects. In *Symes v. The Queen*³⁷ the plaintiff argued for the complete deduction of her nanny's salary, amounting to between \$10,075 and \$13,173 a year from 1982 to 1984.³⁸ She contended that the *Income Tax Act*, by not permitting her to deduct all her child care expenses, violated women's equality rights guaranteed under the *Charter*. From Ms. Symes perspective, child care expenses for her were like business expenses for men and women. And yet, from another perspective, Ms. Symes was a favoured professional who paid for and received "carriage trade" child care. Further, her success was likely to assist only about 2% of other women.³⁹ Ms. Symes lost on narrow technical grounds that need not concern us here. Much was made at the time, however, of the fact that the two dissenting judges who supported the plaintiff were women.

But, is this the way we want to go? Even Madame Justice L'Heureux-Dubé had her doubts. 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...

Perhaps child care should not even be subsidized through the tax system but, rather, provided for in another manner.⁴⁰

Should we be seduced by market talk in attempts to ameliorate the proven problems of child care? I must confess that I am profoundly disturbed by the conceptionalization of the care of children as a business expense. Such talk risks recasting child care as a private problem with a completely private solution.⁴¹

³⁷*Symes (E.C.) v. R.*, [1993] 4 S.C.R. 695, [1994] 1 C.T.C. 40 (hereinafter cited as CTC), aff'd [1991] 3 F.C. 507, 2 C.T.C. 1, rev'g [1989] 1 C.T.C. 476 (Fed. T.D.).

³⁸*Ibid.* at 42.

³⁹But see M. Belcourt *et al.*, *The Glass Box* (Ottawa: Canadian Advisory Council on the Status of Women, 1991).

⁴⁰*Symes*, *supra* note 37 at 103.

⁴¹Various Canadian commentators have addressed the problem of reform of law or governmental institutions that fail to solve women's economic and social positions. See M. J. Mossman, "Child Support or Support for Children?: Re-Thinking 'Public' and 'Private' in Family Law" (1997) 46 U.N.B.L.J. 63. In England, Carol Smart, an English sociologist has done ground-breaking empirical work. See, for example, C. Smart, "Losing the Struggle For Another Voice: The Case of Family Law" (1995) 18 Dalhousie L.J. 173. Most recently see Young *supra*, note 17.

Of course the child care expenses deduction itself could be reformed to take out the nastier aspects. And indeed, there have been detailed and thoughtful proposals in favour of some form of a refundable tax credit.⁴² My point is, nevertheless, that the income tax system is not a good vehicle for providing child care. We should not be distracted from our main task, which is to support a fair tax system that will raise enough revenue to finance the social, educational and medical programmes that we and our children need. Further, we must resist the allure of tax deductions or transfers which will undermine our will and our ability to finance a universal, publicly-funded day care system accessible to all children.

Finally, I return to the analysis of some tax theorists. Their assumption, it must be emphasized, is that the economic vulnerability of women will be mitigated by more workplace attachment, so that deductions such as the child care expenses deduction must be a good thing. I will agree that the provision of subsidized child care is good because it gives women and children more options. However, tying child care so closely to jobs and income leaves a lot of women and children out in the cold.

I turn now to the new child support guidelines and the revised tax rules governing them which shall take effect in April.⁴³ It is not my intention to comment specifically on the guidelines, but I do want to address the changes in the tax rules that will govern the new regime. The present, soon-to-be-changed deduction/inclusion system permits the payor (usually Dad) to deduct child support payments made to Mom, who has to include them in her income.⁴⁴ The theory, to which I shall refer later, is that Dad has the higher MR of tax and Mom pays little or no tax. Hence, if he deducts and she includes there is an overall tax saving which, at minimum, should, but does not have to be, shared between the parents.

It is interesting to note that the soon-to-be-changed system was originally introduced in 1942 to give fathers a tax break. It was the opinion of the then Minister of Finance, J. L. Ilsley, that since divorce was permitted in very limited circumstances – remember this was in the middle of the social dislocation of WWII – it was only fair that the costs to a man of supporting two families should be recognized in the tax system.⁴⁵ It was only after many years of the operation of the deduction/inclusion system that the present focus on the woman's household developed.

However you look at it, the deduction/inclusion system's justification is based on a characterization of familial relations seen on TV when I was growing up. The

⁴²C.F.L. Young, "Child Care – A Taxing Issue?" (1994) 39 McGill L.J. 539.

⁴³*Federal Child Support Guidelines*, SOR/97-175.

⁴⁴*Ibid.*, paras. 56(l)(b) and (c) and paras. 60(b) and (c).

⁴⁵*House of Commons Debates* (17 July 1942) at 4360-61 as cited in *Thibaudeau (S.) v. R.*, [1995] 2 S.C.R. 627, 1 C.T.C. 382 at 414-415 (hereinafter cited to CTCs).

deduction/inclusion system was, I guess, a more modern take on *Father Knows Best*. Dad has left but he still can, and is, willing to support the family. Mom can, and is, willing to stay home and look after the kids.

Events have repainted this picture. There are many more family roles and family configurations, as we can see from the sitcoms today.⁴⁶ Indeed, as the Court found in the *Thibaudeau* case,⁴⁷ the soon-to-be-changed system could — even theoretically — benefit just over half of separated couples and their children. Women now work outside the home as well as in it (the so-called double shift), and approximately fifteen percent of women in dual income households earn more than their husbands.⁴⁸ Many others make enough market income that there is no substantial income differential and hence no significant income split.⁴⁹ Furthermore, and very importantly, even in those circumstances where the income differential is such that the deduction/inclusion system would be an advantage to separated partners and their children, there is no mechanism in the system to ensure that benefits are shared between the former partners and children. Indeed, anecdotal evidence suggests that the benefits were not shared, with men pocketing most of the tax subsidy.

Again we see, as we did in the child care expenses deduction, the difficulties of using *indirect benefits* from the tax system to provide *essentials* for women and children. The system does not work, and is illogical when applied to necessities. We have already discussed the upside-down subsidy inherent in the child care expenses deduction. The same effect is obtained with the deduction/inclusion system, but the irrationality is further compounded by the fact that the overall tax saving will depend on the relative incomes of the former partners. In layperson's language, the tax subsidy to divided households will go to the richest dads with the poorest wives and children, and yet those dads are under no obligation to share the tax subsidy with their kids.

Given all these criticisms that I have made of the soon-to-be-changed deduction/inclusion system, you might be forgiven for thinking that I support the soon-to-be-introduced system of no deduction for Dad and no inclusion for Mom. However, serious concerns about these changes do linger.⁵⁰

⁴⁶*Roseanne* (ABC television broadcast, 1997); *Murphy Brown* (CBS television broadcast, 1997); *Grace Under Fire* (ABC television broadcast, 1997).

⁴⁷*Thibaudeau v. Canada* [1995] 1 C.T.C. 382 (S.C.C.); *afm*'g. [1994] 2 C.C.C. 4 (F.C.); *afm*'g. [1992] 2 C.T.C. 2495 (T.C.C.). See E. Zweibel "Child Support Policy and Child Support Guidelines: Broadening the Agenda" (1993) 6 C.J.W.L. 371.

⁴⁸Statistics Canada, *supra* note 4 at 88.

⁴⁹*Thibaudeau*, *supra* note 47 at 417.

⁵⁰But see L. Philipps & M. Young, "Sex, Tax & The Charter: A Review of *Thibaudeau v. Canada*" (1994-95) 2 Review of Constitutional Studies 221 at 292.

My first concern is that in the process of legislative change, the government has further withdrawn from responsibility for children. The dreary statistics about the poverty of single-parent families are well known. As previously mentioned, over 60% of female-headed single parent families live below the poverty line.⁵¹ Not only do they live in poverty, but as a group they are the poorest of the poor. On average these single parents live over \$8,000 below the poverty line.⁵² Although the withdrawal of the tax burden from the shoulders of some of these parents may help in the short term, the real long term solution is not in the tax system. We need a national commitment to all children.⁵³ Poor children deserve our first attention and greatest efforts. But all children, as I shall argue later, deserve our support.

Secondly, I am uncomfortable with the non-taxation of child support. This is because women with the same means to support their children will pay different amounts of tax. Women who are not fortunate enough to have their partner assist with the costs of child-raising will have insult added to injury by having to pay more taxes than other women who receive tax free child support. I am not convinced that this is a matter we can, or should, ignore. It is unfair. The solution, of course, is to subsidize (because non-taxation is a subsidy) all children.

I turn finally to Mr. Martin's 1997 budget, the child tax benefit, and some proposed changes.⁵⁴ It is interesting that tax theorists have for many years had an ongoing debate over exactly where children fit into the tax system. Consider, for example, the hypothetical justification for a child care deduction described by one academic. To paraphrase, if you buy a baby elephant and it needs elephant-sitting, in the absence of an elephant-sitter, it can always be sent back to the zoo.⁵⁵ You cannot send kids back to the zoo – although I am sure most parents have sometimes felt that way about their offspring.

⁵¹Statistics Canada, *supra* note 4 at 85.

⁵²*Ibid.*

⁵³Note the *House of Commons Debates* (24 November 1989) at 6173. Hon. Edward Broadbent (Oshawa) moved:

That this House express its concern for the more than one million Canadian children currently living in poverty and seek to achieve the goal of eliminating poverty among Canadian children by the year 2000.

Passed Unanimously

One in five Canadian children under 18 years of age – 1.4 million children – lived in poverty in 1994, four years after this resolution was passed. *The Progress of Canada's Children 1996* (Ottawa: Canadian Council of Social Development, 1996) at 7.

⁵⁴*Income Tax Act*, *supra* note 15, ss. 122.6 - 122.64.

⁵⁵M.J. McIntyre, "Evaluating the New Tax Credit for Child Care and Maid Service" (1977) 5 *Tax Notes* 7 at 8 cited in *supra* note 38 at 61.

The fact that we even make such arguments reveals our profound ambivalence about our collective responsibility for the care and nurturing of children which, of course, includes economic ways and means. In the child care expenses deduction, and both the old and new ways of taxing child support, we see aid to children as irrational, ineffective and inadequate.

The provisions in the *Income Tax System* reflect the absence of a national policy about families.⁵⁶ In Canada, policies about families tend to be policies about poverty. Even our rhetoric is revealing. We do not support families. We support poor children, as if they exist alone in space. In European countries, we find explicit commitments to families, commitments that in the tax and tax transfer sphere put considerable emphasis on horizontal equity.⁵⁷ In other words, the costs of raising children are recognized and as between two units with the same income, the unit with children will pay considerably less tax than the unit without children, no matter what the income of the units of comparison. In Canada, on the other hand, the Child Tax Benefit begins to phase out at very low income levels, approximately \$26,000 for household income.⁵⁸ At the average income level of Canadian households, benefits are insignificant unless there is an unusually high number of children.⁵⁹ Fifteen percent of families with children do not benefit from even a nominal amount.⁶⁰

Economist call this narrow focusing of benefits "targeting." The argument is that when programmes are "targeted", only children who "need" benefits will receive them. Benefits will not be "wasted" on families with children who are not in dire straits. At higher income levels, the choice, as they say in the ad, is yours. You can have one Ford Escort and two kids or buy a Lamborghini instead. In either case, your tax position is the same.

It is important at this point that I reiterate my statement that our first priority has to be the unacceptable economic circumstances of many women and their children. Nevertheless, I am not prepared to throw over a societal commitment to all children. My reasons are both idealistic and pragmatic. Idealistic because I have a vision of an inclusive community that, where appropriate, transcends market values, and pragmatic because targeted benefits, despite the rhetoric, are often beggarly benefits. Furthermore, I should emphasize that even untargeted benefits do not bestow benefits

⁵⁶P. Girard, "Why Canada has No Family Policy: Lessons from France and Italy" (1994) 32 Osgoode Hall L.J. 579.

⁵⁷*Ibid.*

⁵⁸*Income Tax Act*, *supra* note 15, s. 122.61(1).

⁵⁹A family with \$45,000 of income and two children over seven will receive less than \$1,200 a year. Finance Canada, *Working Together Towards a National Child Benefit System* (Ottawa: Public Works and Government Services Canada, 1997) at 18 and 12.

⁶⁰*Ibid.* at 11.

on the undeserving rich *holus bolus*. The benefits are taxed in just the same way as other income, such as wages or interest income. Under the old family allowance regime,⁶¹ taxable benefits, except for the last few years when they were targeted,⁶² were given to the mothers of all children, with the largest benefits going to the poorest – which appears to be a reasonable result.

A dollar of the child tax benefit is a special kind of dollar. It is taxed much more heavily than dollars from dividends or interest from GICs or salary.⁶³ In addition, because the child tax benefit is so heavily taxed, it adds to the constellation of social welfare benefits that contribute to the so-called poverty trap. One aspect of the poverty trap is that the highest rates of tax are generally borne by some of the lowest-income Canadians. Canadians with incomes below \$20,000 a year are often taxed at near confiscatory rates.⁶⁴

This raises another important aspect of the child tax benefit. Because the child tax benefit bears such a heavy rate of tax, as does social assistance payments, ways have to be found to encourage families to accept waged work if they can find it. Thus the working income supplement (WIS) was introduced in the 1996 budget which discriminates between poor children whose parents work in the waged workforce, and poor children whose parent or parents either cannot find work or simply believe in the importance of a parental presence in the lives of their younger children.⁶⁵ While I understand the attempt to replace some of the benefits lost when parents move off social assistance, I deplore the potential to distinguish, almost in Dickensian terms, between the deserving and the not-so-deserving poor.⁶⁶ In any case, the answer lies in the elimination of economically abusive social welfare systems.⁶⁷ Women forced to live in desperate economic straits do not bootstrap themselves to economic or social independence. It is only when the basic necessities are provided that these women can be better parents and if need be, and I say this with some ambivalence about women with small children, wage-earners.

I end as I began, with a reference to the *Report of the Royal Commission on the Status of Women*.⁶⁸ During the course of writing this paper I reread the *Report's* chapter

⁶¹*Family Allowance Act*, R.S.C. 1985, c. F-1 as rep. by S.C. 1992, c. 48 s. 31(1).

⁶²*Income Tax Act* as amended by S.C. 1990, c. 39, s. 48.

⁶³*Income Tax Act*, *supra* note 15, s. 122.61(1).

⁶⁴This assumes that any reduction in social welfare benefits is a tax.

⁶⁵*Income Tax Act*, *supra* note 15, s. 122.61(1).

⁶⁶*Ibid.*

⁶⁷See for example, *Family Benefits Act*, R. S.N.S. 1989, c. 158. The maximum monthly benefit for a parent and two young children in Nova Scotia as of April 1, 1997 is \$1,048.

⁶⁸*Supra* note 1.

on *Women in the Canadian Economy* several times.⁶⁹ Underlying the chapter was an implicit understanding that if specific barriers to women's participation in the economy were eliminated, then women would be equal economic partners. Well, a lot of those barriers have been eliminated, and we are not equal partners and our children suffer.⁷⁰

As I said before, times have changed. I have attempted to demonstrate in this paper that global economies and the ideology of the market require comprehensive strategies in support of women and their children. Although specific economic and tax provisions do matter, we should not allow ourselves to be distracted to the detriment of the focus on the main game. First, there must be a commitment to children in their families.

⁶⁹*Ibid.* at 19-160.

⁷⁰*Supra* note 53.