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THE CANADA CHILD TAX BENEFIT: INCOME SUPPORT AND THE TAX SYSTEM

FELICITE STAIRS*

RÉSUMÉ
Dans cet article, on analyse l'efficacité du régime fiscal en tant que mécanisme de distribution de soutien du revenu aux familles à faible revenu avec enfants. L'auteur commence en traitant de l'évolution des prestations pour les enfants au Canada. L'auteur examine ensuite l'affaiblissement de l'État providence et met en contexte la présentation de la Prestation fiscale canadienne pour enfants. Cela est suivi par une réflexion sur les avantages et les inconvénients de l'aide de l'État par l'intermédiaire des régimes de l'impôt sur le revenu et d'aide sociale. L'auteur conclut que le régime fiscal ne peut remplacer le régime d'aide sociale comme moyen d'offrir un soutien au revenu à l'intention des enfants.

I. INTRODUCTION

A. The National Child Benefit
When the National Child Benefit was officially launched in June, 1998, the federal, provincial and territorial governments heralded it as "the most important social program in thirty years". The National Child Benefit (NCB) is a "system" of benefits and services for low and moderate income families with children. It includes income support, as well as programs and services designed to assist low income families. It features an income-tested "integrated child benefit", the Canada Child Tax Benefit (CCTB), which integrates federal benefits for children delivered through the tax system with provincial benefits for children delivered through social assistance programs. Under the NCB, all children of low and moderate income families are eligible for the CCTB, regardless of the source of their parents’ income. Prior to the introduction of the NCB, all families with children received benefits through the tax system. In addition, families receiving social assistance received a portion of their social assistance benefits as income support for their children. It is intended that, as

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the CCTB is enriched, it will eventually replace children's benefits under the social assistance system entirely.

In addition to income support, the NCB "system" comprises provincially funded programs and services to assist low income families. These programs and services are known as "reinvestment strategies", and include child care programs, extended health benefits, and provincially enriched child benefits. They are paid for by the provinces and territories from money saved by the reduced amount of social assistance paid to families with children under the NCB. Reinvestment strategies vary from province to province. They are not subject to national standards, and differ in the extent to which they assist all low income people or are targeted only at the "working poor".2

The federal child benefit was the product of many years of policy analysis and advocacy by numerous individuals and groups. When it was finally introduced, the Canadian welfare state had been under attack for two decades. While it may be true that the NCB is the most important social program in thirty years, it is also one of the only programs to be introduced in that period. Not only have few new programs been introduced, old ones have been abolished, and those that remain in place have been seriously eroded.3 It is within the context of this "hollowing out" of the welfare state that the National Child Benefit was introduced, and against this background that it must be evaluated.

This paper examines the use of the income tax system to deliver income support for children of low income families. There are advantages and disadvantages to using the income tax system, rather than the social assistance system, arising from both institutional factors and political choices.4 Institutional factors are constraints placed on the system by its statutory and administrative frameworks, as well as the "cultures" surrounding the program. When there are no limiting institutional constraints, the choice of particular design features may be entirely political. For example, what "income" is used for the purpose of income-testing the benefit is limited to what is considered "income" for tax purposes, or a subset thereof, as these are the only figures collected under the income tax system. In contrast, many eligibility requirements, choice of benefit unit, and benefit rates are examples of political choices. Institutional factors and political choices often interact. The ability to assess income but not assets in the income tax system is an institutional factor, which influences the political choice of whether or not benefits should be income or means tested. Of course, institutional factors result from political choices in the past and are themselves subject to change,

albeit not easily. However, the concept is useful in evaluating which advantages and disadvantages are potentially mutable and the likelihood of change.\textsuperscript{5}

In this paper, I take the position that the tax system cannot replace the social assistance system in the delivery of basic income support for children. While the stronger social rights associated with the tax system give it an advantage over the social assistance system, the institutional limitations of the tax system result in a only a very rough fit between those in need and the provision of benefits. The technical complexity of the tax system makes understanding and challenging decisions made under it very difficult for many recipients. Further, many of the perceived advantages of the tax system are in fact political choices that may be renegotiated in the future. The potential exists to import the intrusiveness and stigma attached to the receipt of “public assistance” to the receipt of child benefits. The perceived advantages of the tax system could be brought into the social assistance system if the political will existed. Our failure to address and oppose the “hollowing out” of the welfare state and the loss of social rights occurring as a result makes it unlikely that either system will be effective in tackling child poverty in the near future.

The first part of this paper sets the context for the introduction of the NCB through a discussion of the welfare state and a brief history of child benefits in Canada. I then outline the tax and social assistance systems and describe child benefits under both, as well as how the benefits are integrated in Ontario. Ontario is used as an example, but many of the conclusions apply generally across Canada. This is followed by a discussion of the advantages and disadvantages of each system in delivering income assistance. A preliminary evaluation is offered of the design of the Canada Child Tax Benefit, including the integrated benefit, in meeting the goals set for child benefits. Finally, I look at whether and how the NCB fits into the process of the hollowing out of the welfare state.


The welfare state includes programs and services to mitigate against the impact of uncontrolled markets, as well as the redistribution of income through transfer payments. The Canadian welfare state grew from a foundation of provincial Workers’ Compensation, Unemployment Insurance, Old Age Security and the Family Allowance program. The Canada Pension Plan, the Guaranteed Income Supplement and the Canada Assistance Plan (CAP) were implemented in the mid 1960s. CAP provided for federal-provincial cost-sharing and national standards for health, education and social assistance programs.\textsuperscript{6} However, by the time the National Child Benefit program was introduced in 1998, the Unemployment Insurance Act had been replaced by the Employment Insurance Act,\textsuperscript{7} and eligibility had been severely restricted. As well, the

\textsuperscript{5} While economic considerations also affect political choices, if the political will exists, the money generally follows.

\textsuperscript{6} Hess, supra note 3.

CAP had been replaced by the Canada Health and Social Transfer (CHST) and funding for social assistance programs was reduced. Only one “national standard” for social assistance programs remained in the CHST: the right to receive social assistance in any province or territory in which the applicant is resident. The other social rights embedded in the CAP requirements, such as the right to an appeal system, the right to receive benefits based on need and the prohibition against work-for-welfare programs, were left out of the CHST. Provincial legislation enacted following the introduction of the CHST severely restricted eligibility and imposed work-for-welfare requirements even on single mothers with young children. During the same time period, the federal Family Allowance program was transformed in several stages from a universal flat-rate tax-free benefit to an income tested refundable child tax benefit with a supplement for working families, making Canada one of only two OECD countries without some form of tax recognition for all children.

The welfare state was based on a shared understanding that the state should have a central and direct role in improving the lives of its citizens. Hollowing out the welfare state has meant not only gutting social programs, but also changing expectations about the role of the state and the social rights of its citizens. The purpose of the state is increasingly accepted as being a “midwife to globalization”, resulting in social policy dictated by the needs of the market. As economics is elevated above politics, it is constructed as politically neutral, scientific and inevitable. Whole areas of social policy are thus removed from the possibility of political negotiation by the exigencies of “economics”.

Restructuring the state and its relationship with its citizens has a particularly detrimental effect on women. Although the relationship between women and the welfare state is complex, women have relied on and worked through the state to ameliorate

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the worst disadvantages suffered because of their caregiving roles, their labour market
disadvantage and traditional gender relations. Income support, social housing, and
child care programs have assisted women in supporting their families and accessing
paid work, while pay equity, sexual harassment laws and employment protection laws
have furthered their ability to maintain employment. Divorce and family laws and the
existence of shelters and other support services for abused women as well as income
supports have given women options to leave abusive marriages. Erosion of these
services traps many women in desperate poverty and dangerous relationships.

The contraction of social programs and services has resulted not only in a deterioration
in the material circumstances of women, it has also brought with it new exclusions
from the rights of citizenship. Although the prototypical social citizen upon which the
welfare state was founded was white and male, women and other equity-seeking
groups worked to enlarge this concept. Much of this work is in serious jeopardy. By
basing the rights of social citizenship on self-reliance and full participation in the
labour market, new programs necessarily exclude many women with caregiving
responsibilities. The use of gender neutral language in entitlements cannot hide the
reality that women are once again being constructed as “second class citizens”,
although not quite in the same way as in the past. Not all women are affected equally
by the current contraction of the welfare state and the derogation of social rights.
Women whose history is most like that of men, that is, childless women with full-time
employment or those who can afford replacement caregivers (nannies) suffer less than
other women. Further, basing social rights on the status of (self-reliant) worker also
excludes those men who, like women, face barriers to attachment to the labour market,
whether through race or ethnic origin, disability or lack of jobs, training or opportunity.
Those most affected are those with multiple barriers, including single mothers.

Women are also the ones most severely affected by the push to privatize and refamilial-
ize services. Under the neoliberal order, the family is seen as the site of responsibility
and self-sufficiency. As the state retracts from the responsibility of providing services,
families and communities are expected to take up the slack. In reality, this means
women. Women provide the majority of unpaid caregiving work, and the burden of
not only child care but elder care and care for the disabled is falling on them as the
welfare state contracts. This further limits their ability to participate fully as “citi-
zen-workers” and consigns many to long term poverty.

14. For a good recent review of the literature, see A. Orloff, “Gender in the Welfare State” (1966) 22

15. Supra note 11 at 18-20; P.M. Evans, “Divided Citizenship? Gender, Income Security and the Wel-
fare State” in Evans & Wekerle, supra note 13, 91; A. Orloff (1993) “Gender and the Social Rights
of Citizenship: the Comparative Analysis of Gender Relations and Welfare States” 58 Am. Soc. Rev.
303 at 308-309.

16. Brodie, supra note 11 at 22-23; Evans & Wekerle, supra note 13; P. Armstrong, “Unravelling the
Social Safety Net: Transformations in Health Care and Their Impact on Women” in J. Brodie, ed.,
supra note 11, 129.
Privatization and refamilization also means that any private means of income support is privileged over public support. The mantra that we can no longer afford our social programs has led to the popularity of replacing universal entitlements with targeted income support. Even unemployment insurance benefits, funded as a social insurance program, now contains income-tested benefits. Social entitlements are thus increasingly becoming residual programs: claimants are expected to pursue all sources of private (labour market and family) income before public assistance.

In my view, the NCB must be evaluated in the context of these ongoing processes: namely, taking policy out of the realm of political negotiation through the use of technical discourse, basing social citizenship on the extent of labour market participation, excluding women from full social rights, and privileging private support over public entitlement. Unfortunately, this preliminary evaluation indicates that, despite its presentation, the National Child Benefit conforms to the patterns of hollowing out the welfare state outlined above, rather than representing fundamental, progressive reform of that state.

C. The Child Benefit in Canada: Changing Goals, Changing Programs

In many ways, the history of the federal child benefit reflects the history of the welfare state in Canada. The earliest form of “child benefit” was the child tax exemption, instituted in 1919, only two years after federal income tax was introduced. Its purpose was to reduce the tax payable by taxpayers with children, in recognition of the fact that having children reduced the amount of income available to pay tax. The rationale for it was entirely based on tax principles, and it had no effect on people with no taxable income.

The next phase of child benefits began with the release of a report by Leonard Marsh on a comprehensive social security system for Canada. He proposed a child benefit to recognize the needs of children apart from their parents, as part of the provision of a social minimum for all Canadian families, and to compensate for the failure of wage and social security programs to take children into account. In 1945, the Family Allowance program was instituted. This provided a universal, non-taxable, monthly benefit to all families with children, payable to the mother. The Family Allowance program made child benefits a social right.

The 1970s saw a move toward “progressive universality”. Family Allowances became taxable, but only at the marginal tax rate of the lower income spouse. In 1979,
The Canada Child Tax Benefit

a refundable child tax credit was also introduced, providing child benefits through the tax system for the first time to families too poor to pay tax. Since then, child benefits have become increasingly targeted to families in need. In 1988, the child tax exemption was reduced and then converted into a non-refundable tax credit. In 1989, Family Allowances began to be clawed back completely from higher income families. Finally, in 1993, the Family Allowance, child tax credit and refundable child tax credit were rolled into one program, the Child Tax Benefit.

The Child Tax Benefit was an income-tested monthly benefit, delivered through the income tax system. It featured a base amount as well as a Working Income Supplement, available to families with earned income above $3750. It was designed to provide the same level of benefits for low income families as they had under the old Family Allowance, refundable and non-refundable tax credit system. Benefits for middle income families were reduced and higher income families lost their benefits entirely. The stated goal was to rationalize and simplify benefits for children, and to provide an incentive for low income families to enter the labour market. While received by most Canadians, for the first time the child benefit was no longer available as a social right to all families with children, but became contingent on “need”.

The final stage of child benefits was the introduction of the CCTB as part of the NCB in 1998. The 1993 Child Tax Benefit was redesigned and enriched, the Working Income Supplement was repealed and further enhancements for the benefit were promised for the future. The NCB was the product of a number of factors. The first factor was concern about the deficit and its perceived relationship to social program spending, which resulted in a major review and revision of all social security programs in 1993. A second factor was provincial dissatisfaction with federal activity in matters perceived to be within provincial jurisdiction, as well as with the duplication of programs. These factors both encouraged the federal government to reduce its role in social programs and to develop new ways of working with the provinces. The NCB ensured that the federal government still retained visibility as a leader in social program development, despite vacating much of its financial responsibility. The

21. A deduction has the same regressive effect as an exemption: it is deducted from taxable income. In a progressive tax system, it has more value for high income taxpayers than for those with lower incomes, as it is deducted from income otherwise taxable at a higher marginal rate. Credits are deducted from tax liability, and therefore are worth the same amount of dollars for taxpayers in all tax brackets. Non-refundable credits are only useful for those with tax owing. Refundable credits are available to those without tax owing as well as those with.


development of the NCB also provided an example of how cooperative federalism could work.  

A third factor in the development of the National Child Benefit system was increasing public awareness and concern with child poverty. In 1989, there were 934,000 children living in poverty, 14.5% of all children in Canada. Appalled by the high numbers of children in poverty in an affluent country, in 1989 the House of Commons passed a resolution to eliminate child poverty in Canada by the year 2000. This resolution had the support of all political parties. Despite the resolution, Campaign 2000 reported that in 1995 there were 1,472,000 children living in poverty or 21% of all children. They called for an enhanced child benefit, available to all low and moderate income families regardless of their income source, as one part of the solution.

A fourth factor in promoting the development of the NCB was the push for welfare reform. Many provincial social assistance programs had been in place since shortly after the enactment of CAP in 1966. Welfare rolls swelled with the recession in the late 1980's and early 1990's, and continued into the mid-1990's as a result of the "jobless recovery" from the recession as well as the expansion of eligibility rules to cover more people in need. In addition, more people were forced to apply for welfare as changes to unemployment insurance restricted eligibility and reduced benefits. Governments and policy analysts began to blame "passive income support" for fostering "dependency" resulting in high welfare rolls, despite the lack of empirical evidence. They advocated the introduction of "employment enhancement" activities including employment supports, work-for-welfare requirements and eligibility restrictions.

Further, economic analysis of the costs associated with leaving welfare for work led to the concept of the "welfare wall". People trying to leave social assistance for

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25. Cooperative federalism is also called "executive federalism" by those who criticize the fact that the process of social policy renewal, reform and defining the social union is being done by First Ministers behind closed doors: S. Day & G. Brodsky, Women and the Equality Deficit: the Impact of Restructuring Canada's Social Programs (Ottawa: Status of Women Canada, 1998) at 28-29.


27. House of Commons Debates (24 November 1989) at 6173-6178 (E. Broadbent); (24 November 1989) at 6178-6181 (P. Beatty); (24 November 1989) at 6188 (E. Broadbent); (24 November 1989) at 6188-6189 (P. Beatty).


30. Supra note 9.


32. Supra note 9.
employment face a number of barriers: they not only face high tax-back rates while working and receiving supplementary welfare benefits, but in the process of making the transition they lose all cash benefits, including those for children as well as medical and dental benefits. Reform efforts have focused on breaking down the welfare wall, that is, making sure that people are always better off working.

Finally, the increasing demonization of the welfare poor provided support for the concept of "taking children off welfare" by providing benefits to children through a less stigmatizing and intrusive system than the welfare system. Several provinces considered and some enacted a child benefit, integrating national and provincial benefits, as part of their welfare reform.34

D. Goals of the NCB
The impetus for an enriched national child benefit came from many diverse groups, each with their own vision and goals for the program. Historically, the goals of federal child benefits have centred on horizontal equity, recognition of the contribution parents make to society by raising children and, more recently, income support for children of poor families. However, the official goals of the National Child Benefit System are somewhat different. They are:

1. to help prevent and reduce the depth of child poverty;
2. to promote attachment to the workforce, resulting in fewer families having to rely on social assistance by ensuring that families will always be better off as a result of finding work; and
3. to reduce overlap and duplication through closer harmonization of program objectives and benefits and through simplified administration.35

These goals reflect the priorities of Social Service Ministers concerned with reducing welfare rolls, rather than the priorities of the tax experts concerned with tax equity who helped to shape earlier forms of the child benefit. They are also not necessarily those put forward by social policy analysts and child poverty activists who worked hard to promote the creation of the benefit. Many of these groups retain the traditional tax goal of horizontal equity.36 Some believe that a program such as the NCB should

33. K. Battle & S. Torjman, The Welfare Wall: The Interaction of the Welfare and Tax Systems (Ottawa: Caledon Institute, 1993); Canada, Department of Finance, Building the Future for Canadians Budget 1997: Working Together Towards a National Child Benefit System (18 February 1997) at 9-10. The "welfare wall" also includes various aspects of the effect of the tax system on welfare, such as the income tax threshold, payroll taxes, the effect on refundable credits.
35. Canada, supra note 33 at 15.
recognize and reflect society’s shared responsibility for children. As well, some believe it should also promote the “independence and dignity” of recipients by providing benefits in a non-intrusive, non-stigmatizing way.

Finally, anti-poverty activists representing low income people have identified other, more specific goals for a child benefit program, recognizing that, for recipients of the benefit, the “devil is in the details”. Aside from adequacy of the benefit, their concerns include ensuring that the benefit is responsive to changing circumstances, is simple and transparent to use, has a meaningful right of appeal and provides benefits for those who are dependent in reality, not just those who are deemed so by statute.

These goals overlap on a number of points, but each group has a different emphasis. All are concerned with “child poverty” and in providing benefits to all children regardless of their parents’ source of income. However, the groups differ as to how that should be accomplished. Social policy analysts continue to advocate for the inclusion of tax principles and share with anti-poverty activists a concern that the benefit be delivered in a non-intrusive, respectful way. Social policy analysts are divided over the degree to which the benefit should be aimed at promoting attachment to the workforce and what that means.

The key choice made by the government was to implement child benefits as an income-tested monthly benefit to all low income families, delivered through the tax system. This choice brought some of the advantages of the tax system to the provision of income support for low income families. However, the institutional constraints imposed by the tax system also reduced the effectiveness of the benefit in meeting the objectives of the program. The institutional factors of the tax and social assistance systems are the subject of the next section.

II. THE INCOME TAX SYSTEM AND THE SOCIAL ASSISTANCE SYSTEM

A. Purpose, Principles and Institutional Framework

Federal child benefits are embedded in the federal income tax system and provincial child benefits in the social assistance system. Institutional factors influencing the design features of child benefits under the federal tax system and the provincial social assistance system are located in the purpose, guiding principles and statutory and administrative frameworks of each system.

38. Battle and Mendelson, supra note 18.
39. National Anti-Poverty Organization, Presentation to the Standing Committee on Finance: Bill C-36 and the National Child Benefit (23 April 1998); Interview with S. Tingley [National Working Group on the Child Benefit]. Actual versus deemed dependence occurs when a parent is providing the necessities of life for a child who is not considered a “dependent” under the statute. See the discussion on “Eligibility” below for details.
Four federal departments share responsibility for the tax system. The Finance Department is responsible for developing policy and preparing legislation. Human Resources Development Canada participates in this process when provisions relate to social policy. Revenue Canada is responsible for the administration of the Act, including social programs delivered through the Act. Litigation is the responsibility first of Revenue Canada’s Appeals Division and then the Department of Justice. In addition, all Departments are subject to an audit by the Auditor General.

The Income Tax Act\textsuperscript{40} provides the statutory framework for the system. Legislation is normally introduced through the Budget process, although adjustments are frequently made through Technical Amendments. In accordance with its complex purposes, it is a long, complicated and very detailed statute. The ITA is supplemented by comparably long and complex Regulations. In addition, Revenue Canada publishes a wide variety of Information Circulars for the public, Interpretation Bulletins on departmental interpretation of particular provisions, and Technical Notes. Operational policies are contained in the 218 volumes of Technical Operating Manuals, only a severely edited version of which is available for viewing by the public at Taxation Centre reading rooms.

The primary purpose of the income tax system is to gather revenue for government. It is based on the principle that people should share the tax burden in accordance with their “ability to pay”.\textsuperscript{41} “Vertical equity” requires that people with more resources should pay more taxes (progressivity).\textsuperscript{42} “Horizontal equity” dictates that people in similar circumstances should pay similar amounts of tax. This latter principle includes both treating income the same regardless of source, and recognizing when people are in “similar” circumstances.\textsuperscript{43}

The tax system is also used to pursue specific policy objectives. These objectives are allocational, with respect to investment, growth, the structure of the economy and regional balance. They are also distributional, delivering benefits to specific demographic groups including the elderly, the disabled, single parents and children.\textsuperscript{44}

\textsuperscript{40} Income Tax Act, R.S.C. 1985 (5th Supp.), c.1 [hereinafter ITA].

\textsuperscript{41} This is not a value-free or simple concept. There is ongoing debate among tax writers about what constitutes “ability to pay”. For example, we define “ability to pay” as “income”, not “wealth” which seriously disadvantages low income earners and women whose assets, if any, are held in income-producing investments and who tend to have relatively fewer assets than people of higher income in any case. See L. Phillips, “Tax Policy and the Gendered Distribution of Wealth” in Bakker, \textit{supra} note 13, 14.


the tax system to provide incentives or to realize allocational goals is not revenue neutral; the concept of “tax expenditure” reflects that providing incentives, tax relief, benefits and tax deferrals all cost the public money. Over 150 provisions in the tax system are in fact tax expenditures, ranging from a few million dollars to many billions of dollars. Although the use of tax expenditures to further policy objectives is now widely accepted, the practice has been criticized on the basis that it lacks the visibility, budgetary accountability and democratic debate of direct expenditure programs.45

The administration of social assistance is considerably less complicated and more accessible than the ITA. In Ontario, the Ministry of Community and Social Services (MCSS) has full responsibility for policy development, although with input from the Provincial Auditor.46 Social assistance is a direct expenditure program. The statutory framework includes the Ontario Disabilities Support Program Act47 for people who meet the statutory definition of disabled. Unemployed employable people, single mothers and those who are unemployable but do not meet the statutory definition of “disabled” receive benefits under the Ontario Works Act.48 The OWA is administered by municipalities, who are accountable to the province, and the ODSPA is administered by the province. Both statutes have extensive regulations. They are also interpreted by policy manuals, most of which are available to the public.49

The overarching purpose of a social assistance system is to provide assistance to people in need. Perceptions of what kind of assistance should be given, and who is in need, have changed over time, and within a given period are not uniformly shared by all members of the community. However, certain themes flow through the discourse and are here identified as principles.

One guiding principle is that people should be deserving of assistance.50 Historically, this meant eligibility for those within recognized categories of “deserving poor”, that


46. Although the Provincial Auditor does not officially have a policy making function, it was his concern with potential leakage in his 1993 Report which led to the introduction of some of the most intrusive and punitive information requirement practices.


48. Ibid., Sch.A. In this paper, I use OWA to denote the statute and OW to mean the Ontario Works program.

49. The manual containing the Policy Directives for ODSPA is available online at http://www.gov.on.ca/CSS/page/brochure/odspdir.html. It is anticipated that the Policy Directives for the OWA will be available online at some point in the future.

50. Transitions, supra note 34 at 70. The principles I identify here are common themes arising from the literature, not principles I necessarily believe should govern a “good” social assistance system. The principle of “deservedness” is an example of a principle not accepted by all. In 1988, the Ontario Social Assistance Review Committee’s primary recommendation, based on extensive community
is, the blind, disabled and the elderly. Assistance for unemployed breadwinners, “the undeserving poor”, has always been more complicated, arising from a moral anxiety that people are on social assistance because of some fault of their own: namely, laziness, immorality or both. Work tests were imposed to ensure that those receiving assistance were really willing to work and not just taking advantage of the system. Historically, single mothers occupied some middle ground. Insofar as they conformed to notions of “a fit and proper person”, they were deserving, but they were subject to constant and vigilant scrutiny of their moral behaviour. More recently, the Ontario Social Assistance Reform Act not only brought in work-for-welfare requirements for unemployed breadwinners, but took single mothers out of the “deserving poor - categorically eligible” class and placed them squarely in the “unemployed breadwinner - undeserving poor” class.

A second principle is that social assistance should be a program of “last resort”. Only people who have no access to other resources, and whose income and assets are below an accepted level are eligible for benefits. Further, “the principle of lesser eligibility” demands that assistance should never be enough to make people financially better off receiving assistance than they would be working. Finally, there are the principles of “compassion” and “deterrence”, which are inversely related to each other. Periods of high unemployment when welfare rolls rise are correlated with deterrence policies which discourage applications and restrict eligibility. Conversely, policies guided by compassion are more likely to arise when welfare rolls are low.

While these principles appear to underlie much of the thinking about social assistance programs historically and up to the present, how they are interpreted and the shape and impact of the resulting social assistance program varies with many factors, including the political climate of the day. The Social Assistance Reform Act passed in 1997 clearly reflected the agenda of the Conservative government in power. The consultation, was to eliminate the difference between deserving and undeserving poor, by basing eligibility entirely on financial need: Ibid. This was not acted on and, by the time new legislation was proposed almost a decade later, public sentiment fed by concern for the deficit led to widespread support for a notion of undeservedness. See I. Morrison, “Ontario Works: A Preliminary Assessment” (1998) 13 J. L. Soc. Pol’y 1 at 2-5; A. Moscovitch, “Social Assistance in the New Ontario” in D. Ralph, A. Regimbal & N. St-Amand, eds., Mike Harris’ Ontario: Open for Business, Closed to People ( Halifax: Fernwood: 1997) 80.

51. J. Struthers, Can Workfare Work?: Reflections from History (Ottawa: Caledon Institute, 1996).
54. Transitions, supra note 33 at 70-71; Struthers, supra note 51 at 7.
purpose of social assistance programs shifted from the provision of income support
to an employment program with an income support component.

B. "Culture"
This next section deals with culture. By "culture" I mean the set of practices and beliefs
in which the delivery of benefits is embedded. Understanding the culture of the two
delivery systems is critical to evaluating the advantages and disadvantages of using
one or the other to deliver income support. I use culture to include not only the
principles and statutory and administrative frameworks discussed above, which set
the stage, but also concepts of citizenship, democracy and fairness.

People in the tax system are seen and see themselves as rights-bearing citizens. They
are constructed as givers, not takers. They give money and they create jobs. By paying
taxes, citizens are submitting to the transfer of their resources ("hard-earned dollars")
to the government, for the public good. They are therefore surrounded by rights, to
privacy, respect, fairness, openness, and to arrange their affairs to minimize their tax
liabilities. Tax expenditures are not characterized as being given money. Rather, they
are seen as money which is not being taken away from those to whom it belongs.55

Further, the ability to actually influence the design of the tax system overwhelmingly
belongs to the more advantaged members of society. Wealthy individuals and corpo-
rations employ a legion of tax lawyers, accountants and lobbyists whose principal job
is to minimize the tax liabilities of their clients.56 It is not surprising that their view
of Revenue Canada is as an agency of autocrats with unlimited power, against whom
their clients need protection.57 The power of this community is reflected in the extent
to which Revenue Canada appears to share this view and puts in place programs and
policies to protect the rights of these wealthy clients.58 It has also become the dominant
view which the public at large shares of Revenue Canada, despite the fact that the
reality of the situation is that most individuals’ experience with Revenue Canada is
limited to receiving their refund cheque in the mail.

55. P. W. Hogg & J. E. Magee, Principles of Canadian Income Tax Law, 2d ed. (Toronto: Carswell,
1997) at 469.

56. The power of this group was demonstrated in its ability to seriously water down the progressive rec-
ommendations of the Royal Commission on Taxation (i.e., Carter Commission) in 1966, to com-
pletely derail the 1981 tax reforms proposed in the budget, and to virtually control the agenda of the

Windsor Y.B. Access Just. 98 at 116; Revenue Canada, Appeals Renewal Initiative: Towards an
Improved Dispute Resolution Process at 1 [hereinafter Appeals Renewal]. See also V. Krishna,
“Rules for Dealing with Revenue Canada” Law Times (29 September 1996) 5. Professor Krishna
describes the “David and Goliath” relationship between taxpayers and Revenue Canada.

58. Appeals Renewal, Ibid.; Revenue Canada, Ensuring Fair Customs and Revenue Administration in
Canada: A Discussion Paper on Progress and an Invitation to Comment (97-262(E)) (March 1998)
[hereinafter Fairness]; Revenue Canada, Fact Sheet: the Fairness Initiative (F980318) (March
1998).
The highly technical nature of tax policy and administration further limits the ability of ordinary citizens to participate in policy discussions. It also both contributes to and is a consequence of the power of the tax community. The opinions of laypersons can be easily dismissed on the basis that they possess an inaccurate or at least incomplete understanding of all the technical details. Non-experts may be reluctant to claim a place in the debate for fear that this is true. Framing the debate on tax policy in technical terms allows it to appear neutral and outside the political realm, further discouraging citizen participation and abandoning the field to the “experts”.

Unlike the citizens imbued with full political, civil and social rights assumed by the tax system, two types of citizens can be identified in the social assistance system: those who get benefits, and those who fund them (the taxpayers). People who receive welfare are not rights-bearing subjects. At best they are objects of charity. Often, they are seen as quintessential takers and depicted as “welfare bums”, “welfare queens” and “welfare cheats”. Many of their rights to social citizenship are suspended, including their rights to privacy, respect and to make decisions about their lives. They must prove their honesty, continually fighting a presumption of ineligibility. Initiatives against welfare fraud and abuse are continually in the news.

Not only are their social and civil rights restricted, but people who rely on social assistance are rarely in a position to exercise their political rights to participate meaningfully in debates about public policy. They are excluded from the corridors of power, through lack of education, organization and, most of all, money. However, the social assistance policy making process itself is more accessible to the general public than tax policy. While the rules and regulations governing welfare law are very complex, the principles themselves are not technical. Welfare policy is thus highly susceptible to analysis by anecdote and soundbite. No “experts” are needed to determine how the social assistance system should be designed and administered.

The difference in the rights of citizenship are apparent in the understanding of “fairness” in the two systems. “Fairness” in the tax system means two different things. From the tax policy (Finance) point of view, it means equity: namely, a fair sharing of the tax burden based on ability to pay. From the administrative (Revenue Canada) point of view, it means a fair and open process. This goal is reflected in the formal Declaration of Taxpayer Rights, appended to the General Income Tax Guide and other Revenue Canada publications. Under the Declaration, taxpayers have the right to:

1) complete and accurate information about the Act, entitlements and obligations;

59. Supra note 12.

60. OWA, supra note 48, s.1; Morrison, supra note 50 at 42-3. Note that this bears no relation to the reality that many people on welfare paid taxes in the past, will in the future and also do at present through sales tax, if nothing else. Although there is a Goods and services Tax credit, it does not reimburse for all GST paid: Ontario Fair Tax Commission, Working Group Report: Low Income Tax Relief (Toronto: Ontario Fair Tax Commission, December 1992) at 75.

2) impartial application of the law;
3) courtesy and consideration, whether in a request for information or an audit;
4) be presumed honest, unless there is evidence to the contrary;
5) privacy and confidentiality;
6) impartial review;
7) arrange their affairs to minimize the tax payable, as long as it is in accordance with the law;
8) know their rights and insist that they be respected.62

"Fairness" in the context of social assistance has a different focus. Fairness in this context is defined in light of the concern with "dependency" and employment enhancement. In the "Guiding Principles of [Welfare] Reform" produced by MCSS, fairness is the first principle:63

Programs that merely provide financial assistance and do not assist welfare recipients back into jobs fail to meet the principle of fairness. They let down the people who need assistance by trapping them in a vicious circle of dependency and skill loss. They also fail the taxpayers.

There is no Declaration of Social Assistance Recipient Rights equivalent to that for taxpayers. Although Ontario recipients receive a copy of a very long and detailed Rights and Responsibilities form at the time of their application for social assistance, its content and purpose is quite different. The only rights mentioned are the right to apply for supplementary benefits, the right to written notice of a decision and the right to appeal a decision affecting a mandatory benefit.64 The remainder of the document explains their obligations to disclose all income, assets and any material changes of circumstances. Applicants are required to sign the document and are given a copy. Its most frequent use is as evidence in social assistance appeals, as proof that recipients knew and understood their obligations.

The tax system is based on self-declaration and voluntary compliance. It assumes a high degree of citizen responsibility.65 The government overtly intrudes only as much as is necessary to ensure an acceptable degree of compliance. In most cases, documentation to support claims need not be produced unless specifically requested.66

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64. MCSS, Form 0465. These rights are listed as "chances": for e.g., the chance to file an appeal, and the "chance to ask" about other benefits.
65. See, for e.g., Fairness, supra note 58 at 4: "In Canada, our revenue and customs administration operates on the principle of voluntary compliance. Voluntary compliance is based on a fundamental belief that most Canadians will abide by the law if they have the information, advice, and other services necessary to help them meet their obligations".
66. See, for e.g., supra note 62 at 21.
Even when being reassessed, audited or investigated, “fairness” and the rights of the taxpayer are paramount.\(^6\)

The welfare system is not a self-declaration system. There are extensive information requirements, all of which must be backed up by the prescribed documentation before assistance can be issued.\(^6\) Applicants must prove eligibility by providing information on an ongoing basis. Failure to remit a monthly reporting card by the seventh day of the month can result in delays of several weeks before a cheque can be issued. Social assistance authorities also have the right and are developing the technology to implement finger scanning of social assistance recipients. Recipients will be required to submit to and use this technology to receive ongoing assistance.\(^6\)

Taxpayers have a right to arrange their affairs to pay the least possible tax. The consequence of this right is that tax practitioners spend a great deal of time coming up with creative ways to minimize tax liabilities.\(^7\) Much of the complexity of the ITA arises from the government trying to plug loopholes created by tax experts. In an attempt to fight this more systematically, the government finally enacted the General Anti-Avoidance Rule.\(^7\) Under this rule, transactions which violate the spirit and intent of the law can be nullified and tax liability imposed. However, no penalties or other consequences result, other than interest on the amount owed. In fact, taxpayers can avoid even this modest penalty by asking for an Advanced Tax Ruling on their proposed transaction.\(^7\)

Far from having a right to arrange their affairs to maximize access to benefits, social assistance recipients are specifically prohibited from doing so. An applicant who transfers or disposes of assets for the purpose of qualifying for assistance can be found ineligible for any benefits whatsoever. This also applies to a person who has transferred or disposed of assets for less than adequate consideration. The welfare administrator can look at transactions as far back as three years before the date of application.\(^7\)

The tax system assumes that people are honest. The welfare system assumes they are trying to cheat the system. Nowhere is this difference more clearly illuminated than in the language and methods of “ensuring compliance”. There is “leakage” in both systems, both because of administrative practices and intentional or unintentional misreporting by clients. In the Ontario social assistance system in 1998, less than 3% of cases received more benefits than they were entitled to for reasons the government

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67. See Fairness, supra note 58.
68. OWA, supra note 48, s.7(3); O. Reg. 134/98, s.14 [hereinafter OWR]; Morrison, supra note 50 at 30.
69. OWA, Ibid., s.74(3).
70. Sossin, supra note 57 at 115.
71. ITA, supra note 40, s.245.
73. OWR, supra note 68, s.32.
considered "fraud or misuse". This resulted in the identification of $63 million worth of overpayments. The total outstanding recoverable overpayments, for all years cumulatively, stood at $368 million in 1996. Revenue Canada reports only a 95% compliance rate in filing, and almost all audits result in money owed to the government. Its verification and enforcement programs identified an additional $4.8 billion owed to the government in 1995/96 by Canadian taxpayers, over and above what was reported and self-assessed voluntarily. "Taxpayers" have higher rates of non-compliance, with much greater impact on public revenue than welfare non-compliance, but attract a much lower degree of moral opprobrium if any at all.

According to Revenue Canada, the solution to the problem of noncompliance in the income tax system is to "foster a culture of compliance". The first stage of its compliance strategy is "facilitation", that is, making it easy for taxpayers to comply, through the provision of user friendly materials and telephone access where necessary. Another aspect of facilitation is the voluntary disclosure policy. Under this program, people who have failed to file an income tax return (potentially subject to both criminal and civil sanctions) or who have made a false statement on their income tax return, need only voluntarily file or disclose the misrepresentation before Revenue Canada catches up with them. Rather than receiving a sanction, they will be "brought back into the fold". There is no comparable procedure for social assistance recipients, who face potential criminal charges upon voluntary disclosure.

74. The Provincial Auditor reported there were 551,500 social assistance cases, representing 1,095,000 people, at the end of March 1998: Ontario, Provincial Auditor, 1998 Annual Report at 57. MCSS reported 14,771 cases in which social assistance was reduced or terminated due to "fraud or misuse": Welfare Fraud Control Report (November 1998).

75. Ontario, Provincial Auditor, 1996 Annual Report (March 1996) at 14. Based on an estimated fraud rate of 3%, the Provincial Auditor calculated that $100 million was lost to fraud in 1995/96. This accords with the 1998 results, given that total assistance paid was $5.8 billion in 1995/6 and $4.74 billion in 1997/8: Ibid.

76. Revenue Canada, Compliance: From Vision to Strategy (1997) at 3 [hereinafter Compliance]. It is not clear whether this is 95% voluntarily filed, or 95% voluntarily filed and estimated their tax correctly.

77. Supra note 55 at 17.

78. Supra note 76 at 9.

79. These are comparisons between Canada and Ontario loss of revenue - a rough (and probably conservative) estimate that 1/3 of the recovered tax revenue is attributable to Ontario taxpayers still results in an estimate of $1.2 billion. See also Sossin, supra note 57 at 118-127.

80. Supra note 76 at 59.

81. Ibid. at 4.

82. Revenue Canada, Information Circular 85-1R2, "Voluntary Disclosures" (23 October 1992).

83. Supra note 76 at 7. At 7, it is also stated that, "this policy was introduced for taxpayers who are feeling guilty about evading taxes...." I am not questioning the wisdom of Revenue Canada's approach, as it is arises from a policy of keeping compliance costs low, but merely contrasting this with OW's policy.
Revenue Canada's enforcement mechanism has also recently been redesigned to "reduce the burden of compliance".\textsuperscript{84} The strategy and language is of "risk assessment" and "risk management".\textsuperscript{85} As a result of this analysis, Revenue Canada has developed a number of programs targeted at "high risk" groups, including corporations, self-employed people and the underground economy. However, programs include protocols worked out in part with the tax community to protect the rights of taxpayers, including procedures to minimize the interruption to business life.\textsuperscript{86}

This contrasts sharply with the language of "welfare cheaters", "abuse" and "fraud" used extensively in the context of social assistance. Although both the income tax system and the welfare system take public referrals of fraud allegations, MCSS has publicly set up a "Fraud Hot Line". Further, MCSS regularly issues reports on "Welfare Fraud Control", ensuring that the issue continues to be in the public consciousness and continues to be framed this way.\textsuperscript{87}

Tax evasion and welfare fraud are both criminal offences. However, prosecutions are much more vigorously pursued under the welfare system than the tax system. There were more criminal investigations for welfare fraud in Ontario in 1997/8 than there were for income tax fraud in all of Canada.\textsuperscript{88} The likelihood of going to jail is also much higher for welfare fraud than for income tax fraud.\textsuperscript{89}

The above discussion highlights the institutional advantages of delivering income support programs through the income tax system rather than the social assistance system. However, the disadvantages come to light upon examination of the details of the child benefit programs.

C. Child Benefits

Both the income tax system and the social assistance system contain provisions for benefits for children. In this section, I describe and compare the design features of the

\textsuperscript{84} Ibid. at 6.
\textsuperscript{85} Ibid. at 10.
\textsuperscript{86} Revenue Canada, Information Circular 71-14R3, "The Tax Audit"; RC4067 (3931), "Protocol Between the Verification, Enforcement and Compliance Research Branch (VECR) and the Appeals Branch of Revenue Canada" (June 10, 1997) was put into place to assure taxpayers of their access to an appeal process independent from the original decision makers: Appeals Renewal, supra note 57 at App.A.
\textsuperscript{87} Morrison, supra note 50 at 32-33.
\textsuperscript{88} In 1997/98, Ontario completed 53,452 investigations into alleged welfare fraud and obtained 1,123 welfare fraud convictions, with 623 still under investigation: MCSS, Welfare Fraud Control Report (November 1998) [http://www.gov.on.ca/CSS/page/brochure/fraudnov98.html]. In 1995/96, Revenue Canada took 2,000 "investigative actions". This figure includes criminal prosecutions, cases where criminal prosecutions were not pursued but penalties imposed and cases to determine tax payable by persons involved in criminal activity. Just under 600 criminal investigations were completed. See supra note 76 at 47.
\textsuperscript{89} Sossin, supra note 57 at 122.
CCTB under income tax legislation and Ontario's social assistance benefits under the OWA. While design features are often dismissed as "program details", it is the details which determine whether a program can meet its objectives. Some program details can be changed, but others are intricately tied to the system in which they are embedded. Telling the difference between the two is crucial to any discussion of delivery of income support programs through one system or another, as only then is it possible to discern whether a perceived flaw can be fixed or whether the program is fundamentally incapable of meeting its goals.

Child benefits received under the CCTB provisions of the Income Tax Act and under the OWA differ in several respects: namely, they differ in eligibility requirements, the methods of establishing eligibility, amount of entitlement, enforcement procedures and dispute resolution. One major difference is that CCTB benefits are entirely "child benefits". In contrast, child benefits under the OWA are fully integrated with adult benefits: recipients receive only one cheque. Benefit units are notionally separated into "adult" and "dependent" (including both child and adult dependents) only for the purposes of calculating the amount of entitlement. Even then, the regulations provide a prescribed amount for a single parent and one child, or two parents and one child, for example; they do not prescribe how much of that amount each member of the benefit unit should "get".

1. Eligibility

Under both the CCTB provisions and OWA, benefits are received on behalf of children under 18 years old. However, under the OWA, there is an additional requirement that the child must be in school if she is of school age. Further, if she is sixteen or seventeen years old, she must also be making "satisfactory progress" in school. Accordingly, some children will be covered by the CCTB but not by the OWA.

Both programs stipulate that only one parent can receive benefits for each child. Under both programs, the benefits are to be received by the child's "primary caregiver", provided the child resides with him or her. Under the CCTB, there is a rebuttable presumption that the female parent is the eligible individual. If both parents apply for the benefit, Revenue Canada makes a determination based on the factors set out in the ITA. The test for "primary caregiver" under the OWA is completely harmonized with the CCTB. The OWA defines the primary caregiver as the person who receives or is eligible for the CCTB or, if that test does not apply, the person who has "primary care and control" of the child, determined by assessing the same factors as those in the ITA. There is no provision under either statute for situations where both parents share

90. ODSPA, supra note 47, is the same except there are no employment enhancement requirements and asset rules are much more generous. Benefit levels are also higher.
91. OWR, supra note 68, ss.41-2.
92. ITA, supra note 40, s.122.6; OWR, Ibid., ss.1(1), 2(3).
93. ITA, Ibid., s.122.6; OWR, Ibid., s.2(3)(c)ii.
94. Income Tax Regulations, C.R.C., c.945, s.6302.
custody equally. Revenue Canada’s practice is to allow the parents to split the children if there is more than one child or, if there is not, to allow each parent to receive the benefit for six months of the year.95 Ontario Works follows suit in such situations.

The programs differ in their treatment of applicants who are new Canadians. While both grant benefits to applicants who are Canadian citizens, permanent residents and Convention Refugees whose claims have been determined, eligibility for the CCTB for people with visitor’s or Minister’s permits is limited to those who have been in Canada for at least eighteen months.96 Eligibility is much less restricted under the OWA. It includes anyone other than tourists, people under deportation orders (except under specified limited circumstances) and visitors who have not made either a refugee claim or applied for permanent resident status.97

Financial eligibility tests differ dramatically. The CCTB is income-tested, based on the family income reported in the income tax return for the “base taxation year”. The amount of the CCTB for the coming year is determined every July, based on the income tax return filed in the previous April. Accordingly, the CCTB received from July 1998 to June 1999 is based on taxable income reported for 1997 (the base taxation year).98

Financial eligibility under the OWA is determined by assessing current assets as well as current income.99 The recipient cannot have liquid assets worth more than the prescribed limit (approximately $1500 for a couple with one child).100 A vehicle worth less than $5000 may be exempt, if it is “necessary”. A house used as a principal residence is also exempt, although the recipient must agree to a lien being put on the house if she receives assistance for more than a year.101 In addition, the applicant must have pursued all possible financial resources102 and must agree to reimburse OW if money is due and owing from some other source.103

There are no other conditions of eligibility for the CCTB. Under the OWA, recipients and their dependents, if they are not attending school, must agree to participate in “employment assistance” programs, including workfare.104 Benefits are reduced if an adult quits or is fired from a job for misconduct, or if an adult fails to make reasonable efforts to seek, accept and maintain employment assistance activities, including

96. ITA, supra no 40, s.122.6.
97. OWR, supra note 68, s.6.
98. ITA, supra note 40, s.122.61.
99. OWA, supra note 48, s.7(3)(b).
100. OWR, supra note 68, s.38(1).
101. Ibid., s.39.
102. Ibid., s.13.
103. OWA, supra note 48, s.13; OWR, Ibid., s.15.
104. OWA, Ibid., s.7(4); OWR, Ibid., s.3.
workfare. Benefits for single recipients (without children) are terminated for a three or six month period for these transgressions.105

Eligibility and entitlement for both programs depend on "family income", that is, income of the applicant and his or her spouse.106 The definitions of "spouse" differ somewhat.107 Both define "spouse" as a person of the opposite sex. Both include legally married couples who are cohabiting, and parents of a child who are cohabiting. However, under the ITA, a person does not become a "spouse" until he or she has cohabited with the applicant for at least 12 months. Under the OWA, a person becomes a "spouse" immediately upon cohabitation.

"Cohabitation" is a legal term, extensively interpreted in the common law to include economic, social, familial and sexual factors which add up to a "marriage-like relationship".108 Under both statutes, cohabitation requires more than co-residence. However, in practice, both Revenue Canada and Ontario Works appear to treat co-residence as tantamount to cohabitation. Revenue Canada achieves this with its forms. The General Income Tax Guide and the Child Tax Benefit Application Form both advise taxfilers that a "spouse" is someone who has lived with them "in a common law relationship" for twelve months or someone with whom they have a child.109 The OWA reaches the same result through a presumption that co-residents are spouses which is very difficult to rebut in practice.110

2. Entitlement

Once eligibility is determined, the amount of the CCTB is calculated based on a formula set out in the ITA.111 Understanding the formula is important to an understanding of how the federal benefit is integrated with the provincial one. Its complexity highlights the difficulty many recipients have in determining whether they are receiv-

105. OWA, Ibid., s.14; OWR, Ibid., ss.33-34.
106. ITA, supra note 40, s.122.61(1); OWA, Ibid., s.1; OWR, Ibid., ss.1, 40.
107. ITA, Ibid., ss.122.6, 252(3), 252(4); OWR, Ibid., s.1.
108. Re Warwick & Ontario (Minister of Community and Social Services) (1978) 21 O.R. (2d) 528 at 537, 91 D.L.R. (3d) 131, 5 R.F.L. (2d) 325 (C.A.). In Milot v. R. (1995), [1996] 1 C.T.C. 2247 (T.C.C.), the Tax Court used a "cohabitation questionnaire" approach adopted from the case law to determine whether the appellant was cohabiting with a spouse for the purposes of calculating entitlement to credits. They looked at sexual relations, emotional and intellectual exchange, financial support and common knowledge, as well as sharing household duties and responsibilities. However, in Bolduc c. R. (1994), [1996] 1 C.T.C. 2113 (T.C.C.), the Court concluded that the appellant was "clearly" a de facto spouse, despite her evidence that she and her co-resident each paid their share of food, housing and electricity expenses and that he had no authority over or financial responsibility for her children. It is not clear what the basis of the decision was, except a shared address and the fact that she had referred to herself as a de facto spouse on her income tax return. It should also be noted that, because of a history of highly intrusive, and often abusive, investigation techniques, sexual factors are specifically excluded from consideration by OWR, supra note 68, s.1(2).
110. OWR, supra note 68, s.1(3).
111. Supra note 40, s.122.61.
The Canada Child Tax Benefit

...ing the correct amount. The CCTB is made up of two notional parts: the base amount and the supplement.

The base amount starts with $1020 per year per child, with an extra $75 for each child in excess of two. There is a further $213 for each child under the age of seven years. If a child care expense deduction has been claimed for a child under seven, 25% of the amount claimed as child care expenses must be subtracted from the $213. The maximum base benefit is therefore $1233 per year or $103 monthly, for a child under seven.

The amount of the supplement depends on the number of children, with a maximum of $605 per year for the first child, $405 for the second and $330 per child for the third and subsequent children. The maximum benefit, including base and supplement, for a child under seven is $1838 per year or $153 monthly.

The calculation of entitlement under the OWA is also complex. The calculation is prescribed by Regulation. The amount depends on the difference between the “budgetary requirements” of the benefit unit and its income. The “budgetary requirements” are prescribed and depend on the number of adults and the number and ages of children. “Budgetary requirements” are the sum of a prescribed amount for basic needs and for actual shelter costs up to a maximum prescribed amount. For a single mother with one child under twelve years, the prescribed “basic needs” are $446 per month, and the maximum amount for shelter is $511. A single person is entitled to $195 per month for basic needs, and up to $325 per month for shelter costs.

Since both benefits are targeted, both programs contain provisions for the reduction of the benefits if other income exceeds a threshold amount. However, they differ dramatically in what is considered “income”, the threshold amounts above which the benefit is reduced and the tax back rates. The CCTB is based on net income, after deductions for RRSP, professional dues, tuition, support payments, business investment losses, carrying charges, employment expenses, exploration and development expenses and any other deductions the taxfiler may be eligible for under the ITA. For Ontario Works, there are less deductions and the definition of “income” is much broader. It includes not only all income received “by or on behalf of or for the benefit of” a member of the benefit unit, but also the monetary value of items and services received and income deemed to be available to the recipient. The treatment of the

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112. OWR, supra note 68, s.40.
113. Ibid., s.41.
114. Ibid., s.42.
115. ITA, supra note 40, s.122.6: The only difference between “net income”, the calculation of which makes up the substantive part of the ITA, and the “adjusted income” used for CCTB purposes is the exclusion of income received from the involuntary transfer of property, such as foreclosures and seizures of property.
116. OWR, supra note 68, ss.48-54. A few items are specifically exempted from income under the OWA, including amounts for pain and suffering up to $25,000, and charitable donations.
CCTB under the *OWA* is anomalous: the base amount is exempt, while the supplement is included in income.\(^{117}\)

Income up to $20,921 has no effect on the amount of the CCTB supplement. Above that threshold amount, the amount of the supplement is reduced by a percentage of the amount by which the income exceeds $20,921. The rate of reduction varies with the number of children, from a 12.1% reduction for families with one child up to a 26.8% reduction for families with more than two children. The base amount of the CCTB has a threshold of $25,921. The base amount is reduced by 2.5% for each dollar in excess of $25,921 if there is one child, and by a total of 5% if there are two or more children. The calculations are simpler under the *OWR*. Almost all income is deducted dollar for dollar or, in other words, the tax back rate is 100%. However, the tax back rate for earned income is lower. The rules governing earned income are very complicated, with different rates for applicants and recipients, which vary depending on family structure, the number of children and the number of years the person has been in receipt of social assistance.\(^{118}\) That said, the tax back rates under the *OWR* are always well in excess of the tax back rates for the CCTB under the *ITA*.

Benefits are not fully indexed under either the CCTB provisions of the *ITA* or under the *OWA*. The CCTB is partially indexed, with the amount of the benefit increasing to the extent that inflation exceeds 3% in a given year.\(^{119}\) Thus, for example, if inflation is 4% in a given year, the benefit will increase by 1% for that year, but will lose 3% of its value due to inflation. Benefits under the *OWA* are not indexed to inflation at all. Consequently, each year the value of the benefit is eroded by the amount of inflation.

Another major difference is the range of benefits available under each program. Entitlement for CCTB recipients is limited to the amount of the benefit received, with no other benefits available. OW recipients, however, may be eligible for employment and training start-up assistance ($253 per year) and up-front child care costs to a maximum amount, in addition to basic financial assistance. Drug benefits, diabetic supplies, surgical supplies and dressings and transportation for medical appointments are also available for all members of the benefit unit. There are also additional benefits for dependent children: dental and vision services, a winter clothing allowance ($105 per year) and a back to school benefit ($69 to $128 per year).\(^{120}\)

3. **Establishing and Maintaining Eligibility**

The application procedure for the CCTB is comparatively simple. A completed Application form, signed by both the applicant and spouse, and completed income tax returns for both for the relevant base taxation years are all that is required for most applications. Proof of birth, immigration documentation and Statements of World Income are also required under limited circumstances. Aside from filing annual

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118. *Ibid.*, s.49.
119. *ITA*, supra note 40, s.122.62(3).
120. *OWR*, supra note 68, s.55.
income tax returns, there are no obligations to provide further information to Revenue Canada unless there is a change affecting the recipient’s status as an “eligible individual”.¹²¹

In keeping with the detailed eligibility requirements under the OWA, the application procedure for benefits contains very specific and detailed information requirements which must be met before eligibility can be established. This includes the requirement to produce extensive documentation in order to verify the personal and financial circumstances of all members of the benefit unit. In areas where biometric (finger) scanning is in operation, the applicant must “agree” to this.¹²² Applicants and recipients must also sign very broad “consent” forms to allow the welfare authority to request information relevant to eligibility from any source possessing information.¹²³ Failure to comply with any of these requests can result in refusal or cancellation of benefits.¹²⁴

Ontario Works recipients also have monthly reporting requirements to maintain ongoing eligibility. In addition, they must advise OW of any material changes in their circumstances, including family composition, accommodation, earnings, income and assets.¹²⁵ The OWA mandates random home visits to ensure ongoing eligibility and failure to allow entrance, except under limited circumstances, can result in the loss of benefits.¹²⁶ Recipients and dependent adults are required to sign Participation Agreements, in which they agree to participate in specific planned employment assistance activities, and must meet regularly with workers to discuss their compliance with this “Agreement”.¹²⁷

Applications are potentially processed much faster under the social assistance system than the income tax system, in keeping with its role as a program of last resort. Applications for the CCTB take at least two months and may take much longer if information is missing. If there are two applications for a particular child, the process may take several months or even years to resolve and no benefits will be issued until eligibility is determined.¹²⁸ Emergency assistance under the OWA may be issued

¹²¹. Revenue Canada, “Your Canada Child Tax Benefit” (T4114(E)) (October 1998).
¹²². OWA, supra note 48, s.7(3)(c); OWR, supra note 68, s.14. For a discussion of finger scanning’s use as a further step in the ‘criminalization’ of social assistance recipients and its actual weakness as a means of detecting criminal activity, see Morrison, supra note 50 at 31-32.
¹²³. OWR, Ibid., s.19.
¹²⁴. Ibid., s.14.
¹²⁵. Ibid.
¹²⁶. Ibid., s.12. OWA, supra note 48, s.7.
¹²⁷. OWA, Ibid., s.7; OWR, Ibid., ss.3, 25-29.
¹²⁸. Both applicants are sent a “Care and Upbringing Questionnaire” and given 30 days to complete it. If one of the applicants does not return the questionnaire within 30 days, they are given an extra 15 day grace period before reinstatement of benefits occurs. If both questionnaires are returned, they are assessed by an analyst and a decision rendered. If the analyst cannot make a decision (for e.g., in a shared custody situation with equal access), the analyst writes to the applicants outlining the possible
almost immediately upon application and applications for regular benefits should take only a few days to process if the applicant is able to supply all requested information. In practice, applications often take much longer than this, given the amount of documentation currently required.

4. **Responding to Changes in Circumstances**

Benefits under the CCTB provisions are much less responsive to changes in circumstances than social assistance benefits. The CCTB can be adjusted to accommodate changes in family composition within a benefit year, but not changes in income.¹²⁹ When a child is added or leaves, the CCTB formula is recalculated based on the new information about that child. When a spouse dies, the adjusted income is recalculated based only on the applicant’s income in the base taxation year. The same recalculation is used when spouses separate, but only after the separation has lasted continuously for at least ninety days.¹³⁰ Benefits are adjusted by completing a form, advising of the change. The benefit can be adjusted to include a new spouse’s income, but there is no requirement to do so until the next income tax return is filed.

Adjusting the benefit for changes in family composition only requires a recalculation of the basic formula for the CCTB, using information already provided in the income tax returns of the base taxation year. No similar mechanism exists for adjusting eligibility or entitlement for changes in income within the benefit year. Thus, a recipient who loses a job, or whose cohabiting spouse loses a job, must wait until the following year or even the next before it is reflected in the CCTB. For example, the impact on family income of losing a job in late fall of 1998 may not show up until 1999. And the CCTB will not be adjusted to compensate for this until July 2000, eighteen months later. On the other hand, those whose income increases will not see their CCTB adjusted downwards for several months, essentially giving them a “bonus”.

Because social assistance is based on current income and regular reporting is built into the program, it can be much more responsive to changed circumstances. Under the OWA, benefits can be adjusted immediately not only for the addition or loss of a child or spouse, but also for a change in income due to unemployment or any other reason. In addition, as a local social service agency, OW is in a position to make appropriate referrals to other community agencies for supplemental assistance (food banks, clothing and special items), a function which is clearly beyond the purview of Revenue Canada.

alternatives and attempts to resolve the situation (Interview with M. Neal (29 September 1998). Ms. Neal is in the Eligibility Division, Child Tax Benefit Section, Revenue Canada.). Clearly, such a process can take several months. If it is not resolved administratively, the formal dispute resolution process can take months or years.

¹²⁹. ITA, supra note 40, s.122.62.
¹³⁰. Ibid., s.122.62(6).
5. Overpayments and Underpayments

Underpayments occur when information which is relevant to eligibility and entitlement has not been reported or considered, and they arise under both the ITA and the OWA. Underpayments are adjusted through retroactive payments. Under the ITA, an eligible individual may claim benefits, including an increase in benefits, up to eleven months retroactively.\(^\text{131}\) Repayment under OW is much less generous, and entitlement will not be adjusted more than one month retroactively except under exceptional circumstances.\(^\text{132}\)

Overpayments arise when benefits are paid to which the person is not entitled for whatever reason. While some occur because the recipient delayed in notifying the authorities of relevant information, some also occur because of systemic or delivery agent error, resulting in a delay in processing. Overpayments also arise following a reassessment of the income tax return of either the eligible individual or her spouse, if the taxable income on which the amount of the CCTB changes. If the spouse fails to report income for the base taxation year, and then is audited and reassessed, this will result in an overpayment being assessed for the CCTB, even if the parties have since separated.

Under both the ITA and the OWA, overpayments are collected from recipients by deductions from subsequent benefit cheques. The ITA contains legislative authority to withhold the entire amount of the overpayment, but in practice a maximum of 50% is withheld in most circumstances. The CCTB cannot be seized, garnished or in any other manner attached except by Revenue Canada for the purpose of repaying a CCTB overpayment.\(^\text{133}\) Under the OWA, overpayments are recoverable by monthly deductions of up to 10% of the amount of the benefits. However, while there is a general proscription against garnishment or attachment, deductions of up to 10% of the benefits in total may be taken as repayments for a number of debts to the Crown, as well as for Family Support orders.\(^\text{134}\) Both statutes also impose joint and several liability on recipients and their cohabiting spouses for overpayments which arise during the period of their cohabitation.\(^\text{135}\)

6. Disputes

CCTB recipients who object to a decision concerning their benefits must use the appeal procedures under the ITA.\(^\text{136}\) If the dispute cannot be resolved at the first level of review, the appeal proceeds to the Tax Court of Canada. The Tax Court is a specialized, statutory court whose mandate is to hear appeals from all decisions under the ITA and

\(^{131}\) Ibid., s.122.62(1).
\(^{132}\) This is current policy. Benefits can be paid retroactively if the fact that the change was not made in a timely fashion was beyond the control of the recipient.
\(^{133}\) ITA, supra note 40, ss.164(2), 164(2.2).
\(^{134}\) OWA, supra note 48, s.20; OWR, supra note 68, s.62.
\(^{135}\) ITA, supra note 40, s.160.1(2.1); OWA, Ibid., s.21.
\(^{136}\) ITA, Ibid., ss.165-180.
other statutes which specifically refer to the Tax Court. Appeals may proceed under either the General or the Informal procedure set out in the Rules. Most CCTB disputes proceed under the Informal Procedures. While still a formal court hearing, the rules of evidence are relaxed to accommodate unrepresented appellants and there are statutory timelines. However, decisions under the Informal Procedure have no precedential value and there is no right of appeal from them.

Despite statutory timelines, a dispute in Tax Court may take several months or even years to reach resolution. This is particularly true if the Tax Court must travel outside Toronto or Ottawa, to accommodate an appellant. There is no provision for interim relief, and Revenue Canada’s decision stands until the Tax Court rules otherwise. In the case of disputes over who is the eligible individual (which comprise the majority of CCTB cases which reach the Tax Court), benefits are suspended until a determination is made.

The appeal procedure under the OWA is much less formal than even the Informal Procedure under the Tax Court of Canada Rules. Following an initial internal review of the decision by the local welfare administrator, unresolved disputes proceed to the Social Benefits Tribunal (SBT). Hearings are governed by the Statutory Powers and Procedures Act and the rules of the SBT. The rules of evidence and the conduct of the hearing are comparatively relaxed. Not all decisions under the social welfare legislation are appealable, but there is a right of appeal for decisions on eligibility and entitlement for basic assistance, unless the Tribunal decides that they are “frivolous and vexatious”. The Tribunal has limited jurisdiction and cannot consider either constitutional or ultra vires arguments. There is a right of further appeal to the Ontario Court (General Division) (Divisional Court) on matters of law.

The SBT is much more accessible than the Tax Court. It travels regularly to centres around the province and hearings may also be conducted by telephone or as a paper review. Although there may still be lengthy delays, especially in outlying areas, the procedure is speedier than Tax Court. In recognition that people on social assistance

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138. Tax Court of Canada Rules (General Procedure); Tax Court of Canada Rules (Informal Procedure), S.O.R./90-688.

139. OWA, supra note 48, ss.27-28.


141. OWA, supra note 48, ss.26, 33.

142. Ibid., s.67(2).

143. Ibid., s.36(1).
often cannot wait for a hearing, the SBT may order interim assistance, although this must be repaid if the appellant loses the case or fails to appear.144

7. Compliance and Enforcement

The ITA and OWA share similar investigation and enforcement powers, but there are significant differences in how these powers are used. Both statutes grant broad powers to their authorized investigators, including the right to enter into any place that they reasonably suspect contains information relevant to the investigation, and to demand production of the books, financial transactions or any documents which may be relevant.145 Investigators also have the power to enter a residence, but must obtain either the occupant’s consent or a search warrant prior to entry.146 People are required to cooperate with investigations under both statutes, and it is an offence to interfere with or obstruct investigations.147 In addition, under the ITA, hearings officers may be authorized to hold inquiries into “anything relating to the administration or enforcement” of the ITA and have the power to subpoena witnesses and demand the production of documents.148

The offence provisions under each statute parallel each other, but those under the ITA are much more complex, reflecting the complexity of the ITA and the sophistication of those caught by it. For example, while it is an offence under both statutes to knowingly make false statements or omissions, under the ITA it is also an offence to make a false statement “under circumstances amounting to gross negligence”, as is “making, participating in, assenting to or acquiescing in” the making of a false statement. Under both statutes it is an offence to knowingly obtain or receive benefits to which one is not entitled, and to aid and abet someone else in so doing.149 One major difference is that it is an offence under the ITA to fail to file an income tax return when required, either because tax is payable or because the Minister demands that one be filed.150 While this section reflects the fact that the ITA collects taxes in addition to distributing benefits, there is nothing to stop it from being used to force a cohabiting spouse to file an income tax return to enable an applicant to receive the CCTB.

The ITA allows for the imposition of administrative penalties for offences, in addition to recovery of tax payable or benefits issued.151 There is no analogue to administrative penalties under the OWA, although prosecution under the Provincial Offences Act may result in a fine up of to $5000, in addition to six months imprisonment.152

144. Ibid., ss.30, 32.
145. ITA, supra note 40, s.231; OWR, supra note 68, s.65.
146. ITA, Ibid., s.231(2); OWR, Ibid., s.65(11).
147. ITA s. 231.5(2); OWA s. 79(3).
148. ITA, Ibid., s.231.4.
149. Ibid., s.239; OWA, supra note 48, s.79(3).
150. ITA, Ibid., ss.162(1), 238(1).
151. Ibid., ss.162-163.1.
152. OWA, supra note 48, s.79.
The *ITA* provides for prosecution under the *Criminal Code* for offences relating to tax evasion or fraudulent receipt of benefits.\textsuperscript{153} Welfare fraud charges may also proceed under the *Criminal Code* and historically have. However, with the new and increased powers given to Eligibility Review Officers under the *OWA*, an increase in prosecutions under both the *Criminal Code* and the *Provincial Offences Act* for welfare fraud is expected.\textsuperscript{154}

Although the enforcement provisions under the *ITA* are in fact stronger than those under the *OWA*, they are used very differently. For example, when the Auditor General discovered that more children were being enrolled in the child benefit program than were actually eligible and that deaths of children were not being reported,\textsuperscript{155} Revenue Canada's response was to enter into negotiations with all provinces so that it would begin to receive birth and death records on an ongoing basis.\textsuperscript{156} Similar concerns expressed by the Provincial Auditor led to widespread anxiety about welfare fraud and abuse and increased investigations into individual cases.\textsuperscript{157} The institutional frameworks of both programs contemplate regular and vigorous enforcement, but only under the *OWA* does the political will exist to carry it out.

This apparently more relaxed and less punitive approach to compliance under the *ITA* may in fact be shortlived. The CCTB is one of the single most expensive tax expenditure programs under the *ITA*, with over five billion dollars being paid out in benefits every year.\textsuperscript{158} As a portent of this trend, the Auditor General recently recommended periodic reconfirmation of eligibility information after it was discovered that 0.8% of child tax benefit applications reported marital status in a manner that was inconsistent to that reported on previously submitted tax returns.\textsuperscript{159} The Auditor General's *1996 Report* recommended that Revenue Canada consider adopting similar approaches to those used by provincial social assistance administrations in order to protect against fraud and abuse.\textsuperscript{160} In response to this recommendation, among other things, Revenue Canada agreed to develop "effective, targeted verification and enforcement activities."\textsuperscript{161}

This brief look at the program details of the child benefit programs under both the income tax and social assistance systems illustrates the differences between a program

\begin{footnotes}
\footnote{154. *OWA*, supra note 48, s.58; *OWR*, supra note 68, s.65. *Provincial Offences Act*, R.S.O. 1990, c.P.33, as am.}
\footnote{155. Canada, Auditor General, *1996 Report* at 15-17.}
\footnote{156. Revenue Canada, *Benefit Programs Report (RC4071)* at 14. Following this, the 1996-7 Benefit Report reported very few discrepancies.}
\footnote{158. *Supra* note 156 at 7.}
\footnote{159. *Supra* note 155 at 18.}
\footnote{160. *Ibid.* at 22-23.}
\footnote{161. *Ibid.* at 29.}
\end{footnotes}
superimposed on an existing structure designed to serve many purposes, such as the income tax system, and one that is designed for one specific purpose, such as social assistance. While in the current political climate the tax system has the advantage of less punitive monitoring and enforcement practices, the social assistance system can be much more responsive and flexible in meeting the needs of low income recipients.

D. Integrating the Benefits

Up until now, the income tax and social assistance systems have been examined separately. However, one of the main features of the National Child Benefit is the integration of provincial social assistance benefits with federal child tax benefits. This next section therefore looks at the relationship between the benefit programs. It also raises questions about the impact of the interaction of the OWA with the design of the CCTB on those who must rely on both for income support.

The first integrated child benefit was introduced in British Columbia under the B.C. Family Bonus program in 1996. Under that program, an income tested benefit of up to $103 per month was added to the former federal Child Tax Benefit and delivered through the tax system. Social assistance rates were reduced to reflect the fact that child benefits were now received under the new program. Families received social assistance only for the adults in the benefit unit and for children who were not eligible for the B.C. Family Bonus. Those who were eligible but did not receive the full amount of the child benefit received a top-up from their social assistance program, B.C. Benefits.62 British Columbia has continued this delivery model under the CCTB.

Ontario's model for integrating the CCTB with benefits under the OWA is slightly different. All eligible families in Ontario continue to receive the CCTB cheque directly from the federal government. For families receiving social assistance, the supplement portion of the CCTB is then treated as "income" under the OWA and deducted dollar-for-dollar from the amount of social assistance benefits.63

Neither system of integration is perfect. The British Columbia model may be more conceptually satisfying to some because it removes children's benefits entirely from the welfare system, however it is potentially less responsive to changes in the CCTB than the Ontario system. Under an information sharing agreement with the federal government, Ontario is advised by the twentieth day of the month how much CCTB should be deducted from social assistance benefits for the following month. If the amount of the CCTB decreases, the province automatically compensates by topping up the social assistance benefit, so that the total amount of monthly income received remains the same. If the CCTB is reduced because of a previous overpayment of the benefit, OW may collect the money through an overpayment deduction, but the

163. MCSS, "Memo re The New National Child Benefit Initiative and Its Impact on FBA and GWA Social Assistance Programs" (12 March 1998).
deduction will be limited to a maximum of 10%, not the 50 to 100% allowed by Revenue Canada.\textsuperscript{164}

The first and most obvious way that the OWA and CCTB rules interact is that families receiving social assistance receive no financial benefit from the CCTB supplement. The supplement is clawed back entirely. Not only does this mean that the supplement does nothing to alleviate child poverty for the "poorest of the poor", but it also means that some families who would otherwise qualify for social assistance no longer do. Approximately 1,700 families lost all eligibility to social assistance in Ontario when the NCB was introduced in July 1998 because of the combined effects of earned income, other income and the CCTB supplement.\textsuperscript{165} Although the net income of these families has not changed, the fact that they now receive a portion of that income from the tax (as opposed to the social assistance) system means that they are actually worse off following the introduction of the NCB. They are worse off because they will no longer be eligible for supplementary and in-kind benefits. The clawback applies to all people receiving social assistance, including families with earned income.\textsuperscript{166} The result is that only low income families who do not rely on social assistance for any part of their income will benefit from the CCTB. The number affected is significant. The National Council of Welfare estimates that only 36% of poor families and only 17% of poor single-mother-led families are actually receiving a net benefit from the enriched CCTB.\textsuperscript{167}

For those Ontario families who continue to receive social assistance, integration does not free them from the information and behavioural requirements of the OWA, but simply adds another obligation. The OWA requirement to realize any financial resource includes the CCTB, and social assistance benefits may be canceled or reduced if the recipient does not apply for the CCTB.\textsuperscript{168} As a result, people on social assistance do

\begin{footnotesize}
\footnote{164. \textit{Ibid.} at 4–8. Ontario's system of integration has not been without problems. The amount deducted is calculated by the province on the basis of a payroll sheet received from the federal government each month, which contains information on how much was remitted and for which children for each eligible family on social assistance. In cases where the information is wrong, the province takes the position that it is bound by the federal information, and the recipient must go through the \textit{ITA} system to resolve it.}

\footnote{165. Interview with J. Stapleton. Mr. Stapleton is a Senior Policy Advisor, MCSS.}

\footnote{166. Nationally, the National Council of Welfare reported that in March 1997 36% of two-adult families on social assistance had earned income and 19% of single mother led families on social assistance had earned income (National Council of Welfare, \textit{Profiles of Welfare: Myths and Realities} (Ottawa: Minister of Public Works and Government Services, 1998) [hereinafter \textit{Profiles}] at 48).}

\footnote{167. National Council of Welfare, \textit{Child Benefits: Kids Are Still Hungry} (Ottawa: Minister of Public Works and Government Services, 1998) at 9 [hereinafter \textit{Kids}]. Single mothers also have their CCTB clawed back for longer periods of time, as they face more labour market barriers and rely on social assistance for longer than other recipients (\textit{Ibid., Profiles} at 27). Seventy-five per cent of the 315,500 children who were beneficiaries of Ontario social assistance in January 1999 were in single mother led families (excluding children whose parents received ODSPA) (MCSS, News Release, "First Time Ever: 12 Consecutive Months of People Leaving Welfare" (5 February 1999)).}

\footnote{168. \textit{OWR, supra} note 68, s.13(1).}
\end{footnotesize}
not just have the right to apply for the CCTB: they are required to do so. As applications require filing income tax returns, this imposes an obligation on both the applicant and her cohabiting spouse to file income tax returns. For other citizens (i.e., those not in receipt of social assistance), income tax returns are only mandatory if tax is owed or the Minister requests that a return be filed.

The rules determining who receives the benefit for the purposes of the CCTB and the OWA are different. Although in most cases, children who are considered beneficiaries under the ITA are also beneficiaries under the OWA, there are cases where they are not. Families in which no one meets the immigration status requirements of the ITA might still be eligible for benefits under the OWA. Conversely, a sixteen or seventeen year old who is not attending school or is not making satisfactory progress in school will not be eligible for benefits under the OWA, but would still be a beneficiary of the CCTB, provided he or she still resided with a "primary caregiver". The CCTB supplement for that child would not be deducted from the recipient's social assistance allowance as no social assistance benefits are received for him or her. In this limited case, the enriched CCTB does indeed provide an improvement in the financial well-being of families relying on social assistance because they at least receive the CCTB supplement for the child rather than no benefits at all.

Since the enactment of the OWA, the treatment of joint custody situations for CCTB and OWA purposes has been completely harmonized. If parents have decided that one parent should receive the CCTB, then that parent receives both the CCTB and social assistance benefits for the child even if custody is shared equally. If the parents decide that one parent should receive the CCTB benefit for six months of the year and the other parent should receive the CCTB benefit for the other six months of the year, then social assistance benefits will also be shared six months and six months.

While harmonizing provincial and federal benefits may be intellectually satisfying and certainly administratively easy, it is potentially disastrous for the family. It essentially prevents parents likely to be in long term need of social assistance (disabled or single parents) from having joint custody of their children. Caring for a child under a joint custody arrangement with shared access will be more expensive than sole custody because of the necessity of maintaining two homes for the child for the entire year. Although for six months of the year each parent will not receive any benefits for the child, they will still have to pay accommodation costs, as well as food and other necessaries, for the child. Although the parent in receipt of the benefits for a given period could voluntarily share those benefits with the other parent, the only recourse if they refuse to do so is to go back to family court to try to have the joint custody situation changed or to appeal under the ITA. This raises the spectre of the use of benefits as a weapon to control the other parent.

Because of the broader definition of spouse under Ontario social assistance legislation, more co-residents are considered cohabiting spouses under Ontario social assistance law than under the ITA. While subjecting social assistance recipients to a broader definition of "spouse" than applies to people who are not in receipt of social assistance
is *prima facie* unfair, the CCTB provisions do not make this worse. In certain circumstances, however, a person will be a “spouse” for the purposes of the *ITA* and not for social assistance. This occurs when the spouses have separated, but the separation has not yet lasted ninety days. After ninety days, the recipient can apply for an adjustment to the CCTB, that is, to have the CCTB based only on her previous income, rather than on their joint income. In these circumstances, the CCTB supplement amount will be deducted dollar-for-dollar from social assistance benefits, however the base amount will remain low for the initial ninety day period and will not be compensated for by the social assistance system.

An attempt was made by the MCSS to develop policies to alleviate hardship for social assistance recipients caused by differing rules with respect to underpayments and overpayments of the CCTB. Overpayments of the CCTB, recoverable at 50-100% under *ITA* rules, are paid by the social assistance authority to Revenue Canada on behalf of social assistance recipients. This repayment is then treated as an overpayment under social assistance law and may be recovered by the social assistance authority from the recipient under the usual recovery proceedings. If a CCTB recipient receives a lump sum repayment of an underpayment from Revenue Canada, the portion of that CCTB attributable to the supplement is considered “income” in the month in which it is received and deducted dollar-for-dollar from the social assistance benefit cheque.

For some recipients, having income from two different sources will mean that at least some money is coming in from somewhere, to cushion the impact of problems with the receipt of the other benefits. For example, if a social assistance cheque is suspended while the recipient attempts to supply requested information or prove that a co-resident is not a “spouse”, then at least the family can rely on the CCTB. However, for others, two delivery agents can mean twice as many hurdles to income security.

In addition to the administrative problems of integrating the system discussed above, there are legal problems which arise from harmonizing the two statutes. Because of the harmonization of the definitions, the province is now bound by the determination made by Revenue Canada as to who meets the definition of “primary caregiver” in joint custody situations. A recipient who disagrees with this determination must appeal under the *ITA*. For many recipients, the physical and emotional inaccessibility of this forum will mean no effective right of appeal.

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169. Ibid., as am. by O. Reg. 272/98, s.9.
170. Ibid., s.6.
171. This results entirely from the harmonization of the definitions, as there is nothing to prevent a province from adopting its own conditions of eligibility, as was the case under the predecessor statutes to the *OWA* and the *ODSPA*, the *Family Benefits Act*, R.S.O. 1990, c.F.2, and the *General Welfare Assistance Act*, R.S.O. 1990, c.G.6.
III. ADVANTAGES AND DISADVANTAGES OF USING THE TAX SYSTEM TO DELIVER AN INTEGRATED INCOME SUPPORT BENEFIT FOR CHILDREN

The relative advantages and disadvantages to using the income tax system as opposed to a direct delivery program such as social assistance result from both institutional factors and political choices within those institutional frameworks. The two are sometimes, but not always, interrelated.

A. Reduced Stigma
One of the major advantages to the use of the income tax system is the lack of stigma attached to it. This lack of stigma is due in part to the relative anonymity of the application process, but also to the near universality of the CCTB program which gives it the character of a social right rather than charity. This is vastly different from the welfare system, where mere receipt is sufficient to stigmatize all members of the family.

The lack of stigma also arises from the culture of the tax system itself, as tax expenditures in general are perceived as rewards for socially desirable activity. As Canadians, we accept that one of the functions of the tax system is to redistribute income through programs such as the CCTB. Targeting the benefit at families with children meshes with the accepted tax objective of horizontal equity, even though the income test and exclusion of high income families from receipt subverts this objective in fact. The CCTB also contributes to a sense of fairness in the tax system: corporations get tax breaks, rich people get tax breaks and so do ordinary people through the CCTB. Recipients of the CCTB are seen as "taxpayers" with entitlement to child benefits — not as recipients of charity.

B. Reduced Intrusiveness
The delivery of the CCTB through the tax system is less intrusive than delivery through the social assistance system. This is in part due to the test for the benefit, rather than to the systems involved. Because the CCTB is income-tested, no special information is required beyond that required of any taxfiler, other than the inclusion of spousal income. A means test, as in social assistance programs, requires information about all other sources of potential and deemed income, as well as all assets.

The use of an income (as opposed to a means) test in the ITA may be partly political, but largely institutional. Without a radical change in the ITA to require the reporting of all assets, together with a radical change to the administration of the benefit to allow such reporting, delivering the CCTB as a means-tested benefit is not feasible. However, the use of a means test for social assistance purposes is clearly a political choice,

172. Professor Brooks, supra note 45 at 325, suggests that reduced stigma occurs because the application is by mail. If we decided to take applications for social assistance through the mail, it also would lack stigma.
as either an income-tested or means-tested benefit can be delivered through a program which is not tied to the income tax system. If the political will existed to do so, at least part of the intrusiveness of the social assistance system could be removed by basing entitlement on income, not means.

Much of the intrusiveness of the social assistance system stems directly from the use of the “family” as the benefit unit. The fact that entitlement for the CCTB is also based on “family income” has the potential for vastly increasing the intrusiveness of the system. As new verification and enforcement procedures are put in place in response to concerns about “marital misreporting”, it may lose this advantage. Strengthening verification and enforcement procedures into family circumstances is not gender neutral. The benefit is received mainly by women. In addition, women have been the ones who have traditionally been targetted for “spouse in the house” investigations in which social assistance authorities routinely invade the privacy and abuse the rights of single mothers. The suspicion that single mothers are living the high life on taxpayers dollars could easily be imported into the CCTB program.

The “spouse in the house” cases resulted (and continue to result) in the denial of benefits to single mothers and their children without regard to the actual availability of income from the alleged spouse. This is in part due to the very broad definition of “spouse” used in social assistance law. The definition of “spouse” in the tax system requires that unmarried couples be together for at least one year before being considered spouses. Thus, the assumption that the couple are economically a “family” may be more supportable in income tax, rather than social assistance, law. The ITA also requires that there be “cohabitation” in the legal sense. However, most couples are not aware of the difference between “living together” and “cohabiting”, and the available tax information is not illuminating. This suggests that at least some of the “misreportings” may have arisen from a genuine belief that, although they were living together, they were not a family.

173. Although the issue of the appropriateness of the family as tax unit for benefit programs is outside the scope of this paper, there are many issues here: including, the assumption that resources are shared within the “family”, the joint liability for any overpayments (including ones based on a husband misreporting of income, which in fact are paid by the wife through a holdback of the CCTB) and problems associated with the husband refusing to file an income tax return or using it as a “bargaining chip”.


175. Although the definition was amended in 1987 to allow a three year period of cohabitation before spousal status was determined (Regulation to Amend Regulation 441 of Revised Regulations of Ontario, 1980 made under the General Welfare Assistance Act, O. Reg. 590/87, s.1), to bring the statute into conformity with the Family Law Act, 1986, S.O. 1986, c.4, s.29, this was repealed in 1995 (O. Reg. 410/95, s.1(4)). The OWA, supra note 48, is not identical to the pre-1987 law, but is similarly broad.

the relationship did not and should not involve sharing income, rather than from an intent to mislead.\textsuperscript{177}

Revenue Canada has vast investigative powers under the \textit{ITA}. If these powers are used against Canada's most vulnerable citizens, the result could be highly intrusive. However, two things may mitigate against the repeat of the abuses of the social assistance system in the delivery of the CCTB. First, current administrative practices within the tax system make it unlikely that significant resources will be deployed to do on-site enforcement and investigation of such cases ("home visits"), although this is not unheard of. Verification and enforcement are more likely to take the form of cross-checking previous tax returns, addresses and other relevant information, rather than more overtly intrusive methods.

Second, if there are undeclared co-residents, it is likely that they will include individuals of all income classes. The coercive intimidation tactics used against low income single mothers are likely to be challenged if used against the middle class. However, if Revenue Canada identifies low income single mothers as "high risk" for misreporting because they receive the highest benefits, then verification procedures could indeed target them differently with relative impunity.

The potential for increased intrusiveness noted here results directly from the use of family income to calculate entitlement. The choice of benefit unit is a political choice, rather than an institutional necessity. If the tax unit for benefit entitlement was the individual, then the intrusiveness of the tax system would indeed be less than the social assistance system. If the social assistance system used the individual as benefit unit or at least used a narrower definition of spouse, then it would be less intrusive as well because fewer women would be caught by it.

\textbf{C. Responsiveness}

The lack of responsiveness of the tax system to changing circumstances is a major disadvantage of tax-delivered income support. Some improvements could be made within the current structure. Theoretically, it is possible to speed up the CCTB application process. Further, allowing separated spouses to adjust benefits immediately upon separation rather than wait ninety days might enable some women to stay off social assistance, especially if the benefit is enhanced in the future. However, the lack of responsiveness is largely institutional. Responding to an in-year loss of income would be almost impossible without vastly expanding and altering the administrative structure of benefit delivery. As noted above, it can take as long as eighteen months for benefits to be adjusted following the loss of employment income.\textsuperscript{178} This time lag is the almost inevitable result of basing the amount of a benefit on information filed in income tax returns.

\textsuperscript{177} See, for e.g., \textit{Bolduc c. R.}, \textit{supra} note 108.

\textsuperscript{178} See discussion under "Eligibility", \textit{supra}.  


The use of income tax information is conceptually and practically straightforward, and a family’s benefit entitlement can be calculated by simply inputting the income data into the formula for the CCTB. As a result, some adjustments are administratively complicated. For example, adjusting the benefit to change the number of qualified dependants only requires recalculating the benefit formula to increase or decrease the number of children. Similarly, removing a spouse from the benefit unit upon separation or death only requires recalculating “family income” to remove that spouse’s income from the formula. Consequently, there is relatively little time delay involved in adjusting the benefit to reflect these changes in family composition.

However, of necessity information in income tax returns relates to a past period and is often outdated, placing limits on what adjustments can be made. For example, it is impossible to adjust benefits to reflect loss of income within the benefit year by a member of the benefit unit using data from past income returns. This adjustment would require a system to report loss of income, including the implementation of a system of regular reporting and monitoring to prevent people from structuring the receipt of their income to receive more benefits than they are entitled to. Trying to match current income and current benefits for even a small proportion of the population would entirely wipe out many of the administrative advantages of using the tax system at all. Although current recipients cannot get an increase in their CCTB, they get a “bonus” in the year after they have an increase in income, because they receive high CCTB benefits at the same time as their income is high. Thus, over a lifetime benefits received reflect benefits entitled to. This system is simple to administer and low cost in enforcement and verification, but does not help those families in immediate need.

While it may seem at first glance that lack of responsiveness is almost entirely institutionally constrained, ultimately responsibility lies with the political decision to target benefits. Had the government chosen a flat-rate, universal benefit delivered through the tax system granting the (maximum) benefit to everyone, the problem of non-responsiveness would have been avoided. The Family Allowance program did this, and was specifically rejected in favour of a targeted, income-tested and unresponsive benefit.

D. Dispute Resolution
The dispute resolution process in the tax system is designed to address the needs of all taxfilers with disputes, not just low-income people who rely on the system for a substantial portion of their income. Accessibility, delay and formality, even within the “informal procedure”, are serious issues for many low income people. The limited appeal rights attached to the informal procedure also create a two-tier justice system,
as there is no right of appeal to Federal Court in the informal system. As well, only those who can afford legal representation can elect to proceed under the General Procedure, thereby maintaining their right to appeal to Federal Court if they lose at Tax Court. Further, while the Tax Court has expertise in tax law, its members do not have expertise in issues affecting low income people. That said, the lack of specialized expertise may actually be a positive feature in political climates where experts purport to "know" that all people on social assistance are defrauding the system. Notwithstanding this, a well-designed social assistance appeal system has a greater potential to be timely and accessible and to have expertise in the law and issues affecting low income people.

E. Tax Expenditure Versus Direct Expenditure Programs
A further disadvantage of using the tax system is the complexity of the ITA itself. Although the CCTB provisions themselves are relatively short and straightforward, the benefit is embedded in arguably the most complex and technical piece of legislation in the country. Because the CCTB provisions interact with the rest of the statute, reassessments resulting in changes in tax liability will affect eligibility for and the amount of the CCTB as well as other benefits. Further, any changes in the tax liability of the cohabiting spouse also affect the CCTB.181 Reassessments can occur for many reasons, from failing to declare income, to disallowance of a deduction, to retroactive inclusion of Canada Pension Plan disability income.182 Because of this complexity, many people will not attempt to understand how a reassessment was calculated, but will simply accept that Revenue Canada must be "right" when they issue a reassessment notice. This is a large problem in direct expenditure programs for low income people and is likely to be an even larger one with the CCTB.183

Some features of the tax system designed for other purposes may not always be appropriate for the provision of social benefits. For example, terms used in the CCTB provisions are defined in the general sections of the ITA which apply to the entire statute. Because “income” means taxable income with one minor adjustment,184 taxpayers who have sufficient income to take advantage of tax deductions can reduce their income to the same level as a taxfiler with much lower actual income. To target the benefit more closely to people in need would require using a different definition of “income”, distancing it further from the universality of the tax system.

181. For example, a reassessment disallowing a business expense for a cohabiting spouse could retroactively decrease entitlement to the CCTB for the recipient. This would be recovered from the current CCTB entitlement, whether or not the recipient was currently living with the cohabiting spouse.
182. ITA, supra note 40, s.120.3.
183. While there is no “hard data” on this, many poverty law advocates have observed that, while many clients receiving social assistance have overpayments, few can tell them how the overpayments were calculated.
184. ITA, supra note 40, s.122.6. See discussion supra note 115.
Expenditures through the tax system differ fundamentally from direct expenditure programs in the government processes that are used to enact and administer them. Direct expenditures are deliberated prior to approval, whereas tax expenditures are often hidden in technical amendments. Even when introduced in the budget, their interaction with the technical aspects of the ITA make it difficult for lay people to understand their overall impact, and therefore to contribute to meaningful debate.\textsuperscript{185} It is much easier to hold direct spending programs accountable for money spent and outcomes achieved.

Finally, locating a benefit program in the tax system also allows the government to cut benefits while appearing to increase them. For example, the failure to fully index the CCTB to the inflation rate results from the 1986 enactment of an ITA provision, long before the CCTB was even conceived. Consequently, the value of child benefits decreases every year, and yet no rate decrease has ever been announced. Despite several increases to child benefits announced in the 1992 and 1997 budgets, the actual value of the benefit in real dollars declined over the period 1985 to 1997 for almost all families.\textsuperscript{186} While the institutional structure facilitates this “social policy by stealth”,\textsuperscript{187} the decision not to fully index child benefits is clearly a political choice. That said, social assistance benefits are not indexed to inflation at all. Delivering child benefits through the tax system at least requires that they be accorded the same treatment as other provisions of the ITA, that is, partial indexation.

\section*{IV. Meeting the Goals of the National Child Benefit Through an Integrated Benefit}

This paper began with a discussion of the goals and expectations set for the NCB. We now return to that discussion in order to address the question of how well the integrated child benefit can meet those goals, given its current design.

As a measure to “help prevent and reduce the depth of child poverty”, the current benefit is not large enough nor responsive enough to make serious inroads against child poverty. The failure to fully index the benefit does not bode well for the benefit as a sincere effort to fight child poverty. Further, the government’s method of evaluating the success of the benefit calls into question its intentions in implementing the benefit. Currently, a joint federal/ provincial/ territorial working group on social development research and information is developing a new and narrower definition

\begin{footnotesize}
\footnote{185. The failure to measure the effectiveness of tax expenditure programs merited comment in the 1998 Report of the Auditor General, Chapter 8. See also Brooks, \textit{supra} note 45.}
\footnote{187. A term coined by Ken Battle, \textit{Ibid.} at 1, and defined as “the use of arcane and poorly understood technical changes to public policy which were imposed on the Canadian public without their knowledge, consent or understanding”}.\end{footnotesize}
of poverty, which will have the effect of reducing the number of families reported to be living in "poverty" by defining them out of it.188

The failure to pass on the enhanced benefit to families on social assistance also makes a mockery of the goal of fighting child poverty. Under current policy, social assistance families are not entitled to the benefits of the enriched CCTB because their families already receive more benefits on behalf of children than non-social assistance working families. As a result, with the exception of Newfoundland and New Brunswick, the CCTB supplement is entirely clawed back by the provincial governments. This policy is incoherent. Children in social assistance families have less because their families have less overall income. Rather than reducing the depth of child poverty, the clawback effectively increases the income gap between social assistance families and other families.

In addition to making the benefit ineffective as an anti-poverty measure, the clawback essentially punishes children in social assistance families on the basis of the source of their parents' income, a result the NCB was supposed to be designed to avoid. The clawback has its greatest impact on single mothers, who comprise the largest number of families in receipt of the integrated benefit. They are also more likely to receive assistance for longer periods of time because of labour market disadvantage, child care responsibilities and lack of sufficient supports.189 Not only do their children receive no benefit because of the clawback, they are further entrenched and stigmatized as the "undeserving poor".190

Proponents of the current design argue that the money taken from social assistance families through the clawback is not really being taken from children because of the requirement to reinvest the savings in programs for low income families.191 Although some provinces have reinvestment strategies which assist all low income people, others have programs which assist only non-social assistance families. For example, the main plank of Ontario's reinvestment strategy, the Ontario Child Care Working Family Supplement, is not available to most working families on social assistance and is deducted from the benefits of most of those who do receive it.192

188. Federal/Provincial/Territorial Working Group on Social Development Research and Information, Construction of a Preliminary Market Basket Measure of Poverty (March 1998).
189. Supra note 166 at 27.
192. MCSS, "Memo re Ontario Child Care Supplement for Working Families" (23 December 1998). The Ontario reinvestment strategy also includes child care for parents on social assistance to enable them to participate in mandatory work or school programs, funding for services such as the Healthy Babies program, an intervention program for "high risk" babies and child protection services: MCSS, News Release, "Canada, Provinces Launch New National Benefit Program for Children in Low-Income Families" (18 June 1998). While these will be used by social assistance families, they do not
The government’s second goal, to “promote attachment to the workforce”, appears to subvert the first goal. A strategy to fight child poverty should not condition benefits on the behaviour of the parents. Insofar as it does, it looks like a welfare reform program, or a low wage strategy to assure a supply of cheap labour for employers, rather than an anti-child-poverty program. Even if rewarding labour market participation were an appropriate goal for a child benefit, the CCTB is poorly designed to achieve this. For example, a single mother whose entire income comes from support payments receives the same benefit as she would if she received the same amount of income from earnings. People with disabilities receiving social assistance are treated the same way as unemployed able-bodied people, despite differing employment participation expectations. The CCTB does not promote labour force attachment as much as it rewards independence from social assistance.

One way in which the NCB is intended to promote labour force attachment is by tearing down the “welfare wall”. The “welfare wall” is a theoretical construct created by economists, and its empirical reality is highly questionable. People receiving social assistance do not calculate whether their tax-back rate is low enough to make working worthwhile financially. Most do not consider income from earnings to be qualitatively the same as income from social assistance; substituting “their” dollars for “welfare’s” dollars is a matter of personal pride and a step towards independence from the system. To the extent that recipients perceive a “welfare wall”, it is the high cost of drugs, dental and vision care for families who leave social assistance for low-wage work. The solution, however, is not to claw back the enhanced benefit from social assistance families, but to provide universal drug, dental and vision care for all children or, at least, all low income children.

The third goal of the NCB is to simplify administration and harmonize provincial and federal programs. Unfortunately, the NCB adds a further level of complexity to the administration of child benefits by requiring an ongoing exchange of information between two levels of government. In the information age, this may appear simple. For recipients, it can mean having to straighten out two levels of government, not just one, as computers and the people who operate them are not infallible. Further, provincial social assistance programs are increasingly taking on the complexion of coercive employment services programs, with income support contingent on the behaviour of the recipient and her dependents. As noted above, harmonizing with these program objectives may not be appropriate for an anti-child poverty program.

make up for inadequate income support. Further, they send a message that, while non social assistance families deserve cash benefits, social assistance families need servicing. See also supra note 37 at 18–19.


194. See Canada, supra note 33.

195. Supra note 37 at 48–9.
The Canada Child Tax Benefit

The program has fared no better in meeting the goals put forward by social policy analysts. The program does not meet the goal of horizontal equity in any but the most cursory way. To meet that goal, the benefit would have to provide child benefits based on the number of children and possibly on the age of the children. In fact, as a targeted benefit, the child benefit provides higher benefits based in part on the number and age of children, but mainly on income and it provides no benefits at all to higher income families. It thus combines horizontal with vertical equity goals, reducing entitlement with income, but increasing it with additional children. There is a risk that by conflating equity goals, the recognition of parental contribution component of the benefit is obscured, setting the stage for the treatment of children as a consumer choice, rather than a societal good.

The benefit is more successful in meeting the goal of promoting dignity and independence also put forward by social policy analysts. However, the non-intrusiveness of the process could be short-lived. Further, for those who most lack dignity and independence, it does not make any difference, as they still receive most or all of their benefits through the stigmatizing, intrusive and punitive social assistance system.

Reviewing the goals set forth by activists, the CCTB cannot respond to changes in circumstances which affect the material needs of recipients and is not likely to ever be able to do so. That is currently the role of social assistance programs and is likely to remain so for the foreseeable future.

The CCTB is also not available for all children who are actually dependent. In particular, it is not available to both parents in shared custody situations since one or the other must receive it. The current social assistance program shares this failing and, by granting assistance on the basis of which parent is currently receiving the CCTB, effectively denies many low income parents the ability to share custody. This is also an example of how harmonizing and simplifying administration can lead to an inability to meet program objectives of providing income support.

The tax system is not simple and transparent. Although the CCTB provisions are relatively accessible, the interaction of other tax provisions complicates accessibility.

The dispute resolution process is a serious problem. The Tax Court of Canada, as “informal” as it might try to be, remains intimidating and inaccessible. People receiving social assistance and the CCTB must also go to Tax Court as a first step to resolving some social assistance issues. Many people will give up rather than face going to Tax Court, especially if legal aid is not available.

To summarize, the child benefit program as it is currently designed does not, and perhaps cannot, meet the goals set for it by the government or by the social policy analysts for many years. Given this conclusion, the remaining sections of this paper will look at how the benefit fits into larger trends in the Canadian welfare state, and ways in which the benefit might be improved to meet its goals.
V. THE NATIONAL CHILD BENEFIT AND HOLLOWING OUT THE WELFARE STATE

With the introduction of the NCB, the federal government appears to be strengthening the role of the state in social policy, not reducing it. However, as this analysis has shown, it is possible to appear to be doing one thing while in fact doing the opposite. Dismantling the welfare state may be most effective when it appears to still be functioning, but has no "guts". Time will tell whether or not the NCB heralds a restructuring of the welfare state or whether it is simply one more bit of evidence of "vampire capitalism". At this stage, the lack of full indexation, the clawback and the inadequacy of the benefits unfortunately point to the latter.

Another characteristic of the hollowing out of the welfare state is the privileging of private support over public support. The fact that families with income from any source except social assistance receive the benefit of the enriched CCTB, while those receiving social assistance do not clearly conforms to this pattern. The burden of caring for children, including the labour market disadvantage which results from it, is thus almost totally privatized under the NCB. The state’s role is to enable private families to care for their own, not to share the burden of that caring. Further, if their (privatized) caregiving responsibilities prevent them from full participation in the labour market as “self-reliant workers”, they are also denied the full rights of social citizenship enjoyed by those who do have that status.

The use of the tax system to deliver income support, with its accompanying institutional constraints, takes a number of social policy issues out of the realm of political negotiation and reframes the issues. It also allows for contested political issues to be masked by apparently neutral tax policy concerns. For example, the 1999 federal budget positioned the CCTB as “tax relief” for low and moderate income taxpayers, apparently offsetting the tax relief afforded the rich by the rescission of the federal surtax on taxable incomes over $65,000. The debate changed from whether more should be done to address child poverty to whether tax relief was fairly apportioned among income groups.

Finally, the mechanism of cooperative federalism not only allows both levels of government to claim credit for addressing child poverty, it also enables each to avoid responsibility for the weaknesses of the program. The federal government can justifiably blame the provinces for reinvestment strategies that don’t benefit all low income families. The provinces can also rightly point to the failure of the federal government to commit more money for the program. However, as a consequence, the ability of low income families and their advocates to organize and lobby effectively to improve the program is greatly reduced.

197. Canada, Department of Finance, Building Today for a Better Tomorrow Budget 1999: Providing Tax Relief and Improving Fairness.
VI. CONCLUSION

Despite flaws, the CCTB may be a positive move which can be built on. However, if the NCB is to do more than promote the appearance that governments care about child poverty, several factors must be addressed immediately. The amount of the CCTB must be raised quickly to a level sufficient to support children, and it must be fully indexed. It must be available to all families in poverty, not just those who are not forced to rely on social assistance. Anything else is smoke and mirrors.

The benefit must be made more responsive to changing circumstances, by making the benefit a taxable universal flat rate benefit. Alternatively, mid-year adjustments should be made through social assistance authorities, based on an income test only. Failing either of these, children will either have to live in greater poverty until the benefit can be adjusted sometime in the following eighteen months, or their families will have to turn to social assistance.

In cases of joint custody more flexibility is needed. Parents should be able to choose which parent receives the benefit as is the case currently, but if they cannot agree, then the option to split the benefit should be available. This would allow receipt by both parents, allowing them to better meet the needs of their children throughout the year and ensuring that the benefit could not be used as a weapon against the other parent. While this might have been cumbersome in the past, with current information technology it should not prove difficult to implement. It does, however, require a legislative change.

Administrators must be aware of the potential increase in intrusiveness if single parents are targeted for enhanced verification of marital status. The relative lack of intrusiveness currently perceived as an advantage in tax-delivered benefits may turn out to be transitory, at least for women who comprise the bulk of single parents.

Finally, there must be a change in the way we think about child poverty. While the goal of “taking children off welfare” has a stirring ring to it, the rhetoric is misleading. Children are in fact “on welfare” as long as their parents are. They do not know the difference, and their schoolmates, teachers and the rest of society do not treat them differently if their benefits come through the tax system, but their parents’ benefits come through the social assistance system. 198

The CCTB and the NCB cannot solve child poverty because the cause of child poverty is adult poverty and the program is not designed to address adult poverty. As Leonard Marsh suggested 50 years ago, a national child benefit is part of, but only part of, a comprehensive income security plan for Canadians. 199 If we really care about child poverty, we need to address labour market poverty through good job creation, raising the minimum wage and other measures designed to increase the labour market income of parents.

198. Battle & Mendelson, supra note 18 at 10; Supra note 37; Kids, supra note 167 at 17–18.
199. Supra note 19.
We must also recognize that not all parents will be able to take advantage of an improved labour market at all times and some will inevitably require social assistance to support their families. Accordingly, we must re-examine the basic purpose of social assistance programs, and we need to revisit the assumptions on which reforms to social assistance are being made. As long as receipt of social assistance is conditioned on the behaviour of parents, children will be punished for their parents' perceived transgressions. As long as social assistance is stigmatizing, intrusive and mean-spirited, children will suffer. A national child benefit system is no substitute for a caring and compassionate welfare system, based on dignity, respect and the full rights of social citizenship.