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Tax, Race, and Child Poverty: The Case for Improving the Canada Child Benefit Program

JINYAN LI & JACKLYN NEBORAK*

Selon des publications existantes, les enfants noirs et autochtones sont surreprésentés dans le système d'aide à l'enfance. La pauvreté compte parmi les principaux facteurs causant cette surreprésentation. La pauvreté des enfants est donc racialisée. La lutte contre la pauvreté et sa racialisation est une composante importante de la stratégie générale de remédiation à cette surreprésentation. Comme le régime d'impôt sur le revenu offre du soutien aux familles ayant des enfants, notamment par l'intermédiaire du programme d'Allocation canadienne pour enfants (ACE), cet article analyse son rôle et son efficacité dans la réduction de la pauvreté des enfants en général, et en particulier de la pauvreté racialisée. Voici quelques-uns de nos principaux constats : l'ACE est sans doute le meilleur instrument de lutte contre la pauvreté des enfants dans l'histoire de l'impôt au Canada; il est raisonnablement conçu pour lutter contre la pauvreté des enfants en général, mais pas contre la pauvreté racialisée. Il y aurait lieu d'améliorer la prestation de l'ACE aux enfants racialisés.

Existing literature reveals that Black and Indigenous children are overrepresented in the child welfare system, that poverty is among the key factors producing this overrepresentation, and that child poverty is racialized. As such, tackling poverty and its racialization is an important component of an overall strategy to address overrepresentation. As the income tax system provides support to families with children, including through the Canada Child Benefit (CCB) program, this article investigates its role and effectiveness in reducing child poverty in general and racialized poverty in particular. Our main conclusions include the following: the CCB is arguably the best anti-child poverty instrument in Canadian tax history; it is reasonably designed to address child poverty in general, but not racialized poverty; and there is room for improving the delivery of the CCB to racialized children.

THE *INCOME TAX ACT* (*ITA*) IS ONE OF THE MOST important instruments for providing income support to families with children.[1] It does so in two ways. First, the *ITA* reduces the tax liability of parents through special deductions and tax credits (hereinafter "child tax expenditures"). Examples are the deduction for child care expenses[2] and the equivalent-to-spouse tax credit for single parents.[3] Second, the *ITA* "pays" cash to parents who have no or low income. (In this article, we call these *ITA* payments "child income transfers.") An example is the Canada

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[1] *Income Tax Act*, RSC 1985, c 1 (5th Supp) [*ITA*].

[2] *Ibid*, s 63.

[3] *Ibid*, s 118(1)(b).

Child Benefit (CCB).[4] Child tax expenditures provide financial relief to parents in respect of the cost of raising children, while child income transfers provide a minimum income guarantee for each eligible child and have the potential to reduce child poverty.

In this article, we investigate the role and effectiveness of the CCB in addressing the disproportionate number of racialized children living in poverty and make a case for its improvement. To contextualize the CCB discussions, we provide a brief overview of the child tax expenditures and the child income transfer programs that preceded the CCB. Our main conclusions include the following: the CCB is arguably the best anti-child poverty instrument in Canadian tax history; it is reasonably designed to address child poverty in general, but not racialized poverty; and there is room for improving the delivery of the CCB to racialized children. We hope to contribute, albeit indirectly, to research on the over-representation of African Canadian and Indigenous children in the child welfare system.[5] As Sinha et al have observed, "existing literature consistently associates the overrepresentation of racialized children in child welfare systems in Canada and the United States with chronic needs linked to poverty, which can manifest as insecurity in housing, food, or other material goods that can contribute to findings of neglect."[6] Efforts to improve the scope and reach of the CCB so as to reduce poverty can therefore be understood as among the many initiatives needed to tackle the problem of over-representation.

This article is not a theoretical or empirical exploration of the relationship between child poverty, race, and tax policy.[7] Rather, we take a critical look at the choice of using tax instruments in combatting child poverty and the inherent constraints of each choice. We seek to contribute to literature on race and tax policy by highlighting the fact that race has rarely, if ever, been part of the Canadian debates in choosing and designing child tax instruments despite the relationships others have found between race, child poverty, and other social issues.[8]

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[4] *Ibid,* s 122.6

[5] See the contributions in volume 28:1 from Sinha et al, "Reimagining Overrepresentation Research: Critical Reflections on Researching the Overrepresentation of First Nations children in the Child Welfare System" (2018) 28:1 J L & Soc Pol'y 10 [Sinha et al, "Reimagining Overrepresentation] and from David Rothwell et al, "Explaining the Economic Disparity Gap in the Rate of Substantiated Child Maltreatment in Canada" (2018) 28:1 J L & Soc Pol'y 39 [Rothwell et al, "Explaining the Economic Disparity Gap"]. Note too that the Committee on the Rights of the Child, "Concluding Observations: Canada," 5 October 2012, sixty-first session produced a report that assessed Canada's compliance with its commitment to the *Convention on The Rights of the Child*. The Committee noted concern "that families in some disadvantaged communities lack adequate assistance in the performance of their child-rearing responsibilities, notably those families in a crisis situation due to poverty" (para 53). The Committee also noted the need for culturally appropriate child welfare services to Aboriginal and African Canadian families, found that welfare services to these communities are not comparable in quality or accessibility to services for other children and are not adequate to meet their needs, and expressed concern about the inequitable distribution of tax benefits and social transfers for children (paras 54, 67), online: <www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-CAN-CO-3-4_en.pdf> [perma.cc/TQ23-Q64Q].

[6] Sinha et al, "Reimagining Overrepresentation," *supra* note 5 at 26.

[7] For general literature on race and tax policy, see Dorothy A Brown, "Race and Class Matters in Tax Policy" (2007) 107 Colum L Rev 790; Dorothy A Brown, "Race, Class, and Gender Essentialism in Tax Literature: The Joint Return" (1997) 54 Wash & Lee L Rev 1469; Dorothy A Brown, "Racial Equality in the Twenty-First Century: What's Tax Policy Got to do with It?" (1999) 21 U Ark Little Rock L Rev 759; Beverly Moran, "Setting an Agenda for the Study of Tax and Black Culture" (1999) 21:4 U Ark Little Rock L Rev 779; and Mylinh Uy, "Tax and Race: The Impact on Asian Americans" (2004) 11 Asian LJ 117.

[8] Our article does not examine the specific additional programs earmarked for Aboriginal children.

The article proceeds as follows: Part I provides an overview of race and child poverty by drawing on the existing literature, and Part II discusses the system of tax recognition of children and the policy objectives. Parts III and IV examine the technical design and efficacy of the CCB program. Part V suggests ways of improving the CCB as a tool for reducing racialized child poverty, and Part VI concludes the article.

I. RACE, CHILD POVERTY, AND OVERREPRESENTATION

Child poverty is a problem in Canada.[9] In 2014, Statistics Canada's Income Survey reported that 14.7 percent of children under the age of seventeen continue to live in low-income families.[10] A recent UNICEF report, *Measuring Child Poverty*, shows that Canada ranks twenty-fourth of thirty-five of the world's industrialized countries with a relative child poverty rate of 14 per cent.[11] In British Columbia, one in five children lives in poverty.[12] In Toronto, one in four children lives in poverty.[13] The problem is persistent. One report states that child poverty was worse in 2015 than in 1989, although the child poverty rate had decreased slightly since the year 2000.[14]

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[9] The precise extent of the problem is difficult to ascertain as Canada does not have an official income poverty threshold. Several measures of low income can be used, including the Low Income Measure (LIM) and the Low Income Cut Offs (LICO) Before Tax and LICO After Tax. The LIM is a closer measure of absolute poverty, indicating the deprivation of the basic goods and services needed to achieve a minimal but sustainable standard of physical well-being. The LICOs are income thresholds below which a family will likely devote a larger share of its income to the necessities of food, shelter, and clothing than the average family. The approach is essentially to estimate an income threshold at which families are expected to spend twenty percentage points more than the average family on food, shelter, and clothing. Statistics Canada, *Low-Income After-Tax Cut-Offs (LICO-AT)* (Ottawa: Statistics Canada, 2011), online: <www12.statcan.gc.ca/nhs-enm/2011/ref/dict/fam019-eng.cfm> [perma.cc/SBA6-NBU6]. The LICO stands in contrast to the LIM as it is indexed to inflation instead of recalculating annual changes every year.

[10] Statistics Canada, *The Daily* (Ottawa: Statistics Canada, 8 July 2016), online: <www150.statcan.gc.ca/n1/daily-quotidien/160708/dq160708b-eng.htm> [perma.cc/BY5C-K42S]. Low income is based on the Low Income Measure After Tax (LIM-AT), which outlines that all persons in a household have low income if their household after-tax income falls below half of the median after-tax income.

[11] UNICEF, *Report Card 10: Measuring Child Poverty (Canadian Companion)*, online: <www.unicef.ca/sites/default/files/legacy/imce_uploads/TAKE%20ACTION/ADVOCATE/DOCS/canadian_companion_updated.pdf> [perma.cc/ZMK4-Y978] at 2.

[12] First Call: BC Child and Youth Advocacy Coalition, *2016 BC Child Poverty Report Card* (November 2016), online: <firstcallbc.org/publications/2016-bc-child-poverty-report-card/> [perma.cc/H277-APBC].

[13] Michael Polanyi et al, "Unequal City: The Hidden Divide Among Toronto's Children and Youth" (Toronto: Children's Aid Society of Toronto, November 2017), online: <torontocas.ca/sites/torontocas/files/CAST%20Child%20Poverty%20Report%20Nov%202017.pdf> [perma.cc/K8NT-UL8R] [Polanyi et al, "Unequal City"]. Also see Statistics Canada, "Census in Brief: Children Living in Low-Income Households" (Ottawa: Statistics Canada, 13 September 2017), online: <www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016012/98-200-x2016012-eng.cfm> [perma.cc/5SYS-85AZ].

[14] Campaign 2000, *Report Card on Child and Family Poverty in Canada, 2015*, online: <campaign2000.ca/wp-content/uploads/2016/03/C2000-National-Report-Card-Nov2015.pdf> [perma.cc/7BXM-KQU9] [Campaign 2000] at 4–5.Another report finds that from 1996 to 2009, the percentage of children living in poor households fell from 9.1 to 5.5 per cent, and the percentage of children in low-income households (as defined by LICO) fell by more than half—from 18.4 per cent in 1996 to 8.7 per cent in 2010, but increased to 11.2 per cent by 2013; see Charles Lammam & Hugh McIntyre, "An Introduction to the State of Poverty in Canada" (Fraser Institute, 2016).

Child poverty is disproportionately racialized.[15] The 2006 Census showed that the overall poverty rate in Canada was 11 per cent, but for racialized persons it was 22 per cent, compared to 9 per cent for non-racialized persons.[16] Child poverty rates more than double to 40 per cent for Indigenous children in Canada.[17] Statistics Canada reported that racialized families rely the most on child benefits as a portion of their household income: 4.5 per cent for Aboriginal families and 4 per cent for Black families, and 1.3 per cent for non-visible minority families.[18]

Child poverty is worse in urban centres where racialized families tend to live.[19] While the national rate in 2015 was 14.7 per cent, the rate in Toronto was 28.6 per cent, 25.1 per cent in Montreal, 24.2 per cent in Winnipeg, and 22.3 per cent in Hamilton.[20] For example, on the basis of the 2016 Census, a report reveals that "Indigenous families with children in the City of Toronto experience an extremely high poverty rate of 84%... [C]hildren in racialized families are more than twice as likely to be living in poverty compared to children in non-racialized families (25.3% compared to 11.4%) in the Toronto region (*i.e.*, Census Metropolitan Area or CMA) [and] almost one in two children who are of West Asian (46.8%) or Arab (46.7%) background live in poverty in the Toronto region, [which] is more than four times the rate of poverty of children in non-racialized families."[21] A 2016 report stated that 40.8 per cent of children in the care of the Children's Aid Society of Toronto were Black, in a city where only 8.5 per cent of children are Black.[22] At the same time, in the Toronto region, 32.8 per cent of Black children under the age of eighteen lived in low-incomes families, almost three times the rate for children in non-racialized families.[23]

Child poverty is a social issue. It may deprive a child of the opportunities for development that require financial resources. Evidence points to a strong correlation between

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[15] Polanyi et al, "Unequal City," *supra* note 13.
[16] National Council of Welfare Reports, *A Snap Shot of Racialized Poverty in Canada (2013).*
[17] Campaign 2000, *supra* note 14.
[18] Statistics Canada, *Selected Demographic, Income and Sociocultural Characteristics (109), Income Statistics in 2010 (3) and Income Sources (16) for the Population Aged 15 Years and Over in Private Households of Canada, Provinces, Territories, Census Metropolitan Areas and Census Agglomerations, 2011 National Household Survey* (Ottawa, Statistics Canada: 2013). The term "Aboriginal" is used by Statistics Canada in the report and is defined therein to include First Nations, Metis and Inuk, including those registered under the *Indian Act* of Canada and those who reported membership in a First Nation or Indian Band.
[19] Alliance for a Poverty-Free Toronto et al, *Toronto Child & Family Poverty Update 2015*, online: <campaign2000.ca/wp-content/uploads/2016/03/Toronto-Child-and-Family-Poverty-Update-2015.pdf> [perma.cc/J5JP-CWE3].
[20] *Ibid.* Within Toronto, child poverty is geographically stratified: 62.9 per cent in Regent Park and 4.6 per cent in Lawrence Park South (at 3). Child poverty rates in Toronto's ten most linguistically diverse neighbourhoods are about four times higher than rates in the least linguistically diverse neighbourhoods (at 3).
[21] Polanyi et al, "Unequal City," *supra* note 13.
[22] Ontario Association of Children's Aid Societies, *ONE VISION ONE VOICE: Changing the Ontario Child Welfare System to Better Serve African Canadians* (2016), online: <www.oacas.org/wp-content/uploads/2016/09/One-Vision-One-Voice-Part-1_digital_english.pdf> [perma.cc/9VDP-S7XH] [*One Vision One Voice*] at 4.
[23] Polanyi et al, "Unequal City," *supra* note 13 at 11.

poverty and intervention by child welfare authorities.[24] For example, 83 per cent of families served by a Children's Aid Society in Toronto had incomes below the low-income cut-off and a further 11 per cent were economically vulnerable.[25] "In 2000, 11% of children in care were not returned to their parents because of their poor housing situation related to poverty."[26] Child poverty may affect children physiologically and negatively affect children in the short term and across the life-cycle.[27] Child poverty, in other words, has significant implications for society.[28] As Rothwell et al have concluded that, "while reform is needed within the child welfare system, improving outcomes for low-income families is not a challenge that can be addressed by this sector alone."[29]

II. TAX AND CHILDREN

A. TAX RECOGNITION OF CHILDREN

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[24] Sinha et al, "Reimagining Overrepresentation," *supra* note 5 and Rothwell et al, "Explaining the Economic Disparity Gap," *supra* note 5. However, one must be careful in drawing inferences from the above data that poverty causes maltreatment which causes intervention. "Maltreatment" is a broad term that encompasses physical, sexual, and emotional abuse, as well as neglect. Rothwell et al, drawing on the *Canadian Incidence Study of Reported Child Abuse and Neglect—2008,* found that, "[w]ith the exception of physical abuse, children experiencing economic hardship remained at greater likelihood of all types of substantiated maltreatment," *supra* note 5 at 52. Other data from the *Canadian Incidence Study of Reported Child Abuse and Neglect* ("CIS") (2008) indicate that in 33 per cent of maltreatment investigations, the caregiver's primary source of income was government transfers including social assistance/employment insurance/other benefits and 60 per cent of children in maltreatment investigations in 2008 lived in rented housing or public housing: *Canadian Incidence Study of Reported Child Abuse and Neglect—2008: Major Findings Table*, Table 5–7 at 56, online: <cwrp.ca/sites/default/files/publications/en/CIS-2008-rprt-eng.pdf> [perma.cc/XJ37-KA3M]. Families who rely on social assistance or public housing can be presumed to be in the low-income group. The *Ontario Incidence Study of Reported Child Abuse and Neglect* ("OIS") notes that neglect comprised 24 per cent of maltreatment investigations, and household risks in substantiated child maltreatment cases included relying on social assistance, employment insurance, or other benefits as the main source of income (29 per cent); one move (21 per cent); public housing (10 per cent); and at least one unsafe housing condition (8 per cent); Barbara Fallon et al, "Ontario Incidence Study of Reported Child Abuse and Neglect-2013 (OIS-2013)," (Toronto: Child Welfare Research Portal, 2015), online: <cwrp.ca/sites/default/files/publications/en/ois-2013_final.pdf> [perma.cc/Q5ND-CATN] Figures 5 & 11.

[25] *One Vision One Voice*, *supra* note 22 at 28.

[26] *Ibid* at 30. See also Polanyi et al "Unequal City," *supra* note 13 at 12 and Kofi Antwi-Boasiako et al, "Ethno-Racial Categories and Child Welfare Decisions: Exploring the Relationship with Poverty," CWRP Information Sheet #178E (Toronto: 2016), online: <cwrp.ca/publications/3144> [perma.cc/E4MC-Y6NR]. This information sheet utilizes data from the *Ontario Incidence Study of Reported Child Abuse and Neglect* ("OIS") and 2011 Census and suggests a strong correlation between poverty and race for Aboriginal and Black groups as a driving factor for intervention from the child welfare system. "Aboriginal children are more likely to live in difficult economic circumstances: in over 18% of investigations involving Aboriginal children, the worker documented that the household ran out of money for food … and seven per cent of investigations involving Black children documented that the household had run out of money for food compared to 6% for investigations involving White children" (at 3).

[27] Lawrence Aber, Pamela Morris & Cybele Raver, "Children, Families and Poverty: Definitions, Trends, Emerging Science and Implications for Policy" (2012) 26:3 Social Policy Report 3 at 9.

[28] Kaila de Boer, David W Rothwell & Christopher Lee, "Child and Family Poverty in Canada: Implications for Child Welfare Research," CWRP Information Sheet #123 E (Montreal: McGill University Press, 2013), online: <cwrp.ca/publications/2554> [perma.cc/WN8D-DLES].

[29] Rothwell et al, "Explaining the Economic Disparity Gap," *supra* note 5 at 59.

Since its inception, the income tax system has provided special treatment to families with children. "Child benefits were the first-born of Canada's tax-transfer system"[30] and are currently delivered through the CCB program. Child benefit programs are, in effect, social security programs implemented through the tax system. The *ITA* also assists families with children through tax expenditures.[31] Tax expenditures are "tax relief" or "tax subsidy" measures, targeting specific socially-desirable activities or expenses, such as child care expenses. In effect, tax expenditures are the same as direct government spending in the form of grants or cash transfers. However, because tax expenditures provide relief in the form of reduced tax liability, they benefit only those people who would otherwise pay tax in the first place.

The child income transfer programs and child tax expenditures complement each other in providing support to all families with children. Motivations for using a specific type of tax instrument vary. At a high level, we suggest that child tax expenditures reflect the principle of universality, available to all parents with eligible children, but provide more "assistance" to parents in higher income brackets. Income transfer programs are means-tested and selective, assisting parents with no or low income.

At a high level, we suggest that the tax system recognizes children as "burdens" for their parent(s) in terms of the financial cost of raising children and barriers that prevent parents (especially mothers) from participating in the workforce. It provides tax relief to parents. The tax system also recognizes children as resources of Canada, worthy of social investment. It offers a minimum income support to families to reduce child poverty: "When children are lifted out of poverty, they are better able to develop to their fullest potential, an opportunity that every Canadian deserves."[32]

B. CHILD TAX EXPENDITURES

1. TAX EXEMPTIONS, DEDUCTIONS AND CREDITS

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[30] Ken Battle, "Child Benefit Reform: A Case Study in Tax-Transfer Integration" (1999) 47:5 Can Tax J 1219 at 1222.

[31] Tax expenditure provisions of the *ITA* are those that are considered to deviate from the normative system of raising revenue. The *ITA* is comprised of two types of provisions—technical tax provisions and tax expenditures. Technical tax provisions are those provisions that establish the basic structural elements of the tax system: the tax base, the filing unit, the accounting period rules, the rates, and the rules of administration. These rules are necessary in order to make the statute effective for raising revenue and redistributing income. They are drafted and evaluated using the traditional technical tax policy criteria of equity, neutrality, and simplicity. Tax expenditure provisions of the *ITA* cannot be explained by reference to these technical tax policy criteria. These provisions have nothing to do with defining the basic elements of the tax system. Instead, their purpose is to provide an implicit subsidy to either those who behave in ways that the government wishes to encourage or to those who are deemed to be entitled to some form of government transfer payment because of their personal circumstances. These tax expenditure provisions take the form of special tax exemptions or deductions, tax credits, lower rates of tax, or provisions that allow taxes to be deferred. Every year the Department of Finance publishes a document entitled *Government of Canada: Tax Expenditures*, which lists, describes, and estimates the cost of these tax expenditures to the federal government. For further discussion, see Neil Brooks, Jinyan Li & Lisa Philipps, "Introduction" in Lisa Philipps, Neil Brooks & Jinyan Li, *Tax Expenditures: State of the* Art (2011) Canadian Tax Foundation [Philipps, Brooks & Li, *Tax Expenditures*]; Christopher Howard, "Introduction" in *The Hidden Welfare State: Tax Expenditures and Social Policy in the United States* (New Jersey: Princeton University Press, 1999); Neil Brooks, "The Case Against Boutique Tax Credits and Similar Tax Expenditures" (2016) 64:1 Can Tax J 65 [Brooks, "Boutique Tax Credits"].

[32] Government of Canada, *Budget 2016: Chapter 1—Help for the Middle Class* at 57.

Tax relief to families with children takes the form of tax exemptions, deductions for child care expenses, and child tax credits.[33] A tax exemption excludes an amount of income from taxation, and the "value" of the tax benefit is determined by the marginal tax rate applicable to the taxpayer. The earliest use of tax exemption in respect of children is the 1918 *Income Tax War Act*,[34] which exempted $200 from the income of taxpayers with children.[35] Its purpose was to reduce the tax liability of the parent in recognition of the fact that having children reduced the amount of income available to pay tax. Tax exemptions implicitly recognize the general cost of raising children.

The child care expense deduction in section 63 of the *ITA*[36] was introduced in 1972 to target paid child care expenses. It must be claimed by the lower-earning parent and the amount cannot exceed the lower of either (a) two-thirds of the lower-earning parent's income[37] or (b) a maximum amount per eligible child ($8,000 per child under seven years of age, $5,000 per older child under sixteen years of age, and $11,000 for any infirm child). Like tax exemptions, the value (or the amount of tax savings) of a tax deduction is determined by the taxpayer's marginal tax rate. For example, a $1,000 child care expense deduction is worth $500 for a taxpayer whose marginal tax rate is 50 per cent, $200 for a taxpayer whose marginal tax rate is 20 per cent, and nil if the taxpayer does not have any taxable income. The child care expense deduction is not available to parents who do not incur child care expenses (such as daycare or nanny salaries) or if one of the parents has no income.

An equivalent-to-spouse credit is currently available to single parents with a dependent child. It is a non-refundable tax credit and the base amount is currently capped at $2,150 per child up to the age of seventeen.[38] Between 2007 and 2016, the *ITA* provided the Children's Fitness Tax Credit[39] and Children's Arts Tax Credit[40] in recognition of specific expenses related

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[33] The disability tax credit and the medical expense tax credit also help families with children, but are not discussed in this article.

[34] SC 1917, c 28.

[35] The April 1918 budget introduced exemptions of $200 (or $2,732 in 2016) for each child under age sixteen; see Kevin Milligan, "The Tax Recognition of Children in Canada: Exemptions, Credits, and Cash Transfers" (2016) 64:3 Can Tax J 601 [Milligan, "Tax Recognition of Children"]. See also William Watson & Jason Clemens, *The History and Development of Canada's Personal Income Tax* (The Fraser Institute, 2017) at 17. For further, see Ken Battle, *supra* note 30*;* Jonathan R Kesselman, "Credits, Exemptions, and Demogrants in Canadian Tax-Transfer Policy" (1979) 27:6 Can Tax J 653; Jonathan R Kesselman, "The Child Tax Benefit: Simple, Fair, Responsive?" (1993) 19:2 Can Pub Pol'y 109; and Felicite Stairs, "The Canada Child Tax Benefit: Income Support and the Tax System" (1999) 14 J L & Soc Pol'y 123 [Stairs, "Canada Child Tax Benefit"].

[36] This provision was announced in Budget 1971, introduced in 1972, and effective for the 1972 and subsequent taxation years. While the basic design remains unchanged, specific limitations were modified: the original overall maximum limit of $8,000 per taxpayer for child care expenses was eliminated in 1988; the age limit was increased from fourteen to sixteen in Budget 1996; and maximum dollar amounts increased by $1,000 effective for the 2015 taxation year. For further discussion, see Alexandre Laurin & Kevin Milligan, "Tax Options for Childcare That Encourage Work, Flexibility, Choice, Fairness and Quality," CD Howe Institute Commentary No 481; Lynda G Gagné, "Potential Income and the Equity of the Child-Care Expense Deduction" (2001) 49:3 Can Tax J 636; and Claire F L Young, "Child Care—A Taxing Issue" (1994) 39 McGill LJ 539.

[37] The higher-income parent may claim a deduction if the lower-income parent is infirm, confined to a bed or a wheelchair, in prison or a similar situation for at least two weeks, attending a designated educational institution, or living apart due to a breakdown in the relationship for a period of at least ninety days during the year.

[38] *ITA*, *supra* note 1, s 118(1)(b).

[39] Former *ITA*, s 118(1)(b.1).

to fitness and arts programs. The base amount for each credit was capped at $500 per child per year. In 2014, the Family Tax Cut[41] reduced the tax for families with one high-income earning parent—technically it permitted a notional transfer of up to $50,000 of income between spouses if there were children aged seventeen or younger and the resulting difference in the joint tax was delivered via a non-refundable tax credit capped at $2,000.

A tax credit is a dollar-for-dollar reduction in tax liability. The amount of the credit is typically stipulated by the *ITA* to be a percentage of a defined amount and the percentage is generally fixed at the rate for the lowest tax bracket. As a result, the value of the tax subsidy is the same for all taxpayers, thereby removing the perverse result that higher-income earners receive more tax subsidy. However, like the child care expense deduction, a tax credit is "useful" only to parents who pay tax in the first place.

2. ASSISTING PARENTS

Child tax expenditures aim at providing relief to parents in recognition of the fact that raising children involves time, effort, and costs. Because the cost of raising children is considered a personal expense for tax purposes, it is not deductible in computing the parents' taxable income.[42] This is true even when parents must incur child care expenses to earn business income.[43] In reality, child care costs are not discretionary, and they reduce the parent's ability to pay tax. Child care responsibilities impede parents from engaging in gainful activities in the marketplace.[44]

In recognition of the reduced ability to pay tax, the tax system provides relief. For example, the 1918 child tax exemption was explained by the government at the time as follows: a parent with eight children would have less ability to pay than a childless person who earns the same amount of income because of the cost of raising children.[45] As such, the parent should pay less tax. The child care expense deduction and tax credits reflect the same purpose. Furthermore,

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[40] Former *ITA*, s 118.03.

[41] Former *ITA*, s 119.1. This measure had the effect of eliminating or significantly reducing the difference in federal tax payable by a one-earner couple relative to a two-earner couple with a similar family income: See *2016 Tax Expenditure Report*, *infra* note 46.

[42] For tax law purposes, the cost of raising a child is a personal—as opposed to business or income-earning—expense, and is thus not deductible for a parent. However, it was suggested that child care expenses are different from expenses such as purchasing an expensive car or vacation because parents have a moral and legal obligation to provide basic care for their children. Such an argument has not been persuasive in making child care expenses deductible. See Kenneth J Boessenkool & James B Davies, "Giving Mom and Dad a Break: Returning Fairness to Families in Canada's Tax and Transfer System," C D Howe Institute Commentary No 117 (Toronto: C D Howe Institute, November 1998).

[43] See *Symes v Canada*, [1993] 4 SCR 695.

[44] The *ITA* measures ability-to-pay by "income" computed under section 3 but leaves income undefined as a concept. Income under section 3 is different from economists' definition of income, which includes, in essence, the consumption and savings. For pragmatic reasons, the *ITA* imposes tax on income that can be measured and objectively observed. Section 3 looks at the source of income, such as employment, business and property. In computing income from business or employment, personal expenses, such as cost of food or clothing, are not deductible. Because income is measured for each person, the family circumstances are generally not relevant.

[45] Milligan, "Tax Recognition of Children," *supra* note 35 at 603; see also Battle, *supra* note 30 at 1222.

the child care expense deduction aims at achieving a social objective—encouraging parents to engage in employment, business, education, and research activities.[46]

The focus of the child tax expenditures is on the parents. The tax relief is justified on the basis of ability-to-pay or as part of the state encouraging parents to work outside the home. Originally, it was also suggested that parents should be rewarded for their services to the country in raising children: the tax system delivered an income benefit to taxpayers "deemed worthy of tax relief by virtue of their child-rearing labours."[47] These tax expenditures do not view children as independent persons requiring basic necessities to survive. The *ITA* implicitly recognizes the parents' contribution to society[48] and helps reduce distortions to taxpayers' decisions to have children, their choices in child care, and their decisions to participate in gainful employment.

C. CHILD INCOME TRANSFERS

1. PREDECESSORS OF THE CCB

The current Canada Child Benefit can be traced to the *Family Allowances Act* (1944),[49] which provided support to families with children outside the income tax system. In 1978, a new refundable child tax credit was introduced that specifically targeted low-income families. Both the Family Allowances program and the refundable child tax credit were folded into the Canada Child Tax Benefit in 1993.[50] Between 1998 and 2009, a National Child Benefit supplement provided some additional income for low-and-middle-income families. A Universal Child Care Benefit was introduced in 2006 and subsequently consolidated with the National Child Benefit Supplement and the Canada Child Tax Credit[51] into the CCB.

The Family Allowances program was the first universal income security scheme in Canada.[52] The objective was to support families in meeting the basic needs of their children and

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[46] The original purpose of section 63 was to encourage mothers to participate in the workforce. The proposal to introduce this provision was explained in the following manner: "Costs of looking after young children when both parents are working, or when there is only one parent and that parent is working, would be allowed as a deduction subject to certain conditions. This new plan is intended primarily to benefit mothers who need to work to support their families" (Edgar J Benson, Minister of Finance, "Proposals for Tax Reform" (Ottawa: Queen's Printer, 1969) at 10). See Canada, Department of Finance, *Report on Federal Tax Expenditures—Concepts, Estimates and Evaluations 2016* (Ottawa: 2016) ["2016 Tax Expenditure Report"]. However, the effect of encouraging parents to work was reduced by the short-lived universal child care benefit (2006–16) and family tax cut (2015–16).

[47] Battle, *supra* note 30 at 1222.

[48] It has been suggested that these programs serve two basic and related objectives: child poverty reduction by filling the gap between the income of parents and their needs related to raising children, taking into account the number and age of children; and social recognition of parents' contribution to society for bearing expenses that childless households, at the same income level, do not bear. See Ken Battle. "Child Benefits in Canada: Politics Versus Policy" (Caledon Institute of Social Policy, June 2015) [Battle, "Child Benefits"].

[49] *The Family Allowances Act 1945*, 8 & 9 Geo VI, c 41. It was introduced to implement recommendations of the Marsh report of 1943: Leonard C Marsh, *Report on Social Security for Canada*, prepared for the Advisory Committee on Reconstruction (Ottawa: King's Printer, 1943). For further discussion, see Raymond B Blake, *From Rights to Needs: A History of Family Allowances in Canada: 1929–1992* (Vancouver: UBC Press, 2009).

[50] Milligan, *supra* note 35 at 607.

[51] This non-refundable child tax credit was introduced in 2006, providing $2000 per child up to the age of seventeen.

[52] Government of Canada, "Evaluation of the National Child Benefit Initiative: Synthesis Report," SP-AH-215-10-04E (Ottawa: 2005) at 5.

to maintain purchasing power in the postwar era.[53] The program provided a monthly universal, tax-free benefit to the mother of every school-attending child under the age of sixteen (age eighteen after 1973). Originally, the monthly amount varied between $2 and $8, depending on the age and number of the children, with less payable to larger families and more to older children, but the amount of benefit changed over the years. The refundable child tax credit (1978)[54] delivered child benefits to families too poor to pay tax and thus unable to benefit from the child tax expenditures discussed above. As with other social security programs that target low-income individuals, the refundable child tax credit was income-tested. The test was the net family income. The tax benefit phased out at a specified rate for every dollar of family income exceeding a specified threshold. The amount of the credit was initially set at $200 per child with a 5 per cent phase-out for family net income over $18,000. "By 1992 … the amount had reached $601 per year per child, phased out at 5 per cent for family net income above $25,921."[55]

The Canada Child Tax Benefit (1993) consolidated the child benefit system by replacing the refundable child tax credit, a non-refundable dependant tax credit, and the family allowance. It paid $85 per month per child to families with net income below $25,921 as well as three separate add-ons: an additional amount of $6.25 per month for families with three or more children; a supplement of $17.75 per month for children who were under seven years of age; and a $500 per year Working Income Supplement, which was intended to supplement the earnings of working poor families and was phased out where earned income exceeded $3,750 [56]

The National Child Benefit Supplement (1998) aimed to target the lowest-income families with children. It replaced the working income supplement and increased benefits to all low-income families (including those not working) as part of the Canada Child Tax Benefit program. At the time of introduction, the supplement phased out when family net income exceeded $20,591. The maximum amounts were set at $605 per child per year, $405 for the second child, and $330 for each subsequent child.[57] As a joint initiative of the federal, provincial, and territorial governments, the program was intended to "help prevent and reduce the depth of child poverty; to promote attachment to the workforce ... by ensuring that families will always be better off as a result of finding work; and to reduce overlap and duplication through closer harmonization of program objectives and benefits and through simplified administration. [58] Provinces and territories agreed to deduct the National Child Benefit Supplement on a dollar-for-dollar basis from provincial child benefit programs so that the federal child benefit supplement would not be clawed back if a parent earned employment income. The effect of this initiative

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[53] *Ibid*. It was also meant to encourage women who worked during World War II to return to the home.
[54] A non-refundable tax credit for dependent children was available from 1942–1946 and 1988–1992. It was replaced in 1993 by the Canada Child Tax Benefit. The Conservative government brought it back in 2006 and cancelled it for taxation years after 2014. For further discussion of this refundable tax credit, see Brigitte Kitchen, "The Refundable Child Tax Benefit" (1979) 1:3 Can Tax'n 44 [Kitchen, "Refundable"]; Leonard Shifrin, "The Refundable Child Tax Credit Experience" (1979) 1:4 Can Tax'n 36; Comment on the Shifrin paper: Samuel A Rea, Jr (1979) 1:4 Can Tax'n 39; Comment on the Shifrin paper: Michel Rochon (1979) 1:4 Can Tax'n 40; Jonathan R Kesselman, "Pitfalls of Selectivity in Income Security Programs" (1980) 2:3 Can Tax'n 154. For general discussion of the use of refundable tax credit to reduce poverty, see Lisa Philipps, "Disability, Poverty, and the Income Tax: The Case for Refundable Credits" (2001) 16 J L & Social Pol'y 77.
[55] Milligan, *supra* note 35 at 607.
[56] *Ibid* at 608.
[57] The amounts were increased in subsequent years, reaching $2,279 for one child, $2,016 for the second child, and $1,918 for each subsequent child.
[58] Battle, "Child Benefit Reform," *supra* note 30 at 1233.

was extra benefit for families with children delivered exclusively through the federal child benefit system rather than through provincial social assistance programs.

The Universal Child Care Benefit was introduced in 2006 by the Conservative Government. It paid $100 per month per child up to the age of five and the amount was taxable to the lower-income parent. Unlike the general child care deduction, this benefit is not tied to the parent's earned income. (In other words, a stay-at-home parent was entitled to receive it.)[59]

The CCB was proposed during the 2015 federal election by the Liberals as an alternative to the Conservatives' family taxation package which included the family tax cut, enhanced child care expense deduction, children fitness tax credit, and children art tax credit.[60] The fact that both the Conservatives and the Liberals wanted to enhance tax support to families with children highlights the broad acceptance of using the tax system to support children.

2. INVESTING IN CHILDREN

Child income transfer programs differ from child tax expenditures because they use a means-test. They aim at, in part, reducing child poverty and providing equal opportunity for Canadian children. They represent public investments in children. For example, the Family Allowances program (1944) was justified as follows:

> Liberalism stands for equality of opportunity, and the only way the children of a family of 7 or 8 children can have equality of opportunity with the children of a family of one or two children is to give the larger family a larger income. This cannot be done through the wage system.[61]

The equal opportunity argument suggests that each child requires a certain minimum amount of money to support their development. If the parents cannot provide the minimum, the tax system provides some assistance.[62]

Child poverty reduction became an explicit objective with the introduction of the refundable child tax credit in 1978. This measure also marked the beginning of selectivity.[63] The tax credit was income-tested, benefiting children growing up in families with net income below the 1977 national median income level. The amount of the benefit, however, has never been

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[59] For further information, see Battle, "Child Benefits," *supra* note 48 at 6–7.
[60] For additional critique, see Brooks, "Boutique Tax Credits," *supra* note 31.
[61] McKenzie King Papers C1877755 (Ottawa: Public Archives), quoted by Kitchen, "Refundable," *supra* note 54 at 46.
[62] It could be argued that helping children of low-income families does not require denying the benefit to higher-income families and all children should receive the tax assistance. A true universal program would benefit each child irrespective of the family income level, but it would be fiscally costly. The Canadian programs have been largely income-support in nature by providing a social minimum and relying on an income test; they are not true universal programs.
[63] Kitchen, *supra* note 54 at 48–49.

enough to eliminate child poverty[64] nor has it been explicitly linked to any measurement of poverty.[65]

Public investment in children has become more explicit in recent years. Children are viewed as "the number one resource of a nation."[66] Investment in children means investment in producing future citizens, workers, and taxpayers. State support is deemed necessary when families are unable to make this investment due to "liquidity constraints": "some households may not be able to borrow against future income to fund current desired expenditures or investments in children.[67] Providing increased income to such households through the tax system can lead to improved investment decisions. "When children are lifted out of poverty, they are better able to develop to their fullest potential, an opportunity that every Canadian deserves."[68]

Investments in children were sometimes justified on the basis that they produce immediate economic benefits for Canada. For example, the Family Allowances program was meant to put cash into the hands of mothers and thus help increase consumer demand after the Second World War. Such a measure was deemed necessary to smooth the economic transition from wartime to peacetime and to help maintain purchasing power in times of economic downturn.[69] Similarly, the CCB was justified because it would boost economic activity by increasing the spending power of low-income families. According to Prime Minister Justin Trudeau,

> [t]oo many middle-class families struggle with the high costs of raising their children. The new Canada Child Benefit means more money for healthier groceries, kids' summer programs, and back-to-school clothes. This new child benefit is much more generous, and will help the Canadian economy grow for years to come.[70]

Public investment in children has also been justified on the ground of economic efficiency. Since "children may produce positive externalities affecting other members of society in addition to their parents,"[71] investment in children can thus improve efficiency by aligning private incentives with social incentives. This argument suggests that all children produce positive externalities and regards children as akin to a public good. Public investment is necessary because of a market failure: the market rewards people for their productive work, not

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[64] It was argued that "it is unrealistic to set the prevention of child poverty as a formal objective of child benefits per se, though other programs (including some in the bundle of provincial "reinvestments" under the NCB [National Child Benefit]) can play a preventive role, such as the broad range of education services (cradle-to-retirement) that invest in human capital and improve employability, programs that seek to help parents balance their work and family responsibilities (especially affordable, quality child care and family-friendly workplace practices), and other family support services." See Battle, "Child Benefit Reform," *supra* note 30 at 1233–34.

[65] This is consistent with other social security programs, such as Old Age Security, aimed at targeting removing poverty to some extent, as opposed to universal benefits to all Canadians.

[66] Per Hon. Monique Begin, former Minister of National Health and Welfare who was responsible for introducing the refundable child tax benefit in 1977: see Kitchen, *supra* note 54 at 47.

[67] Milligan, "Tax Recognition of Children," *supra* note 35 at 603.

[68] *Ibid.*

[69] *Ibid* at 1223.

[70] The Rt. Hon. Justin Trudeau, "Families now receiving new Canada Child Benefit" (Gatineau, Quebec: 20 July 2016), online: <pm.gc.ca/eng/news/2016/07/20/families-now-receiving-new-canada-child-benefit [perma.cc/ZJY4-2HVB].

[71] Milligan, "Tax Recognition of Children," *supra* note 35 at 602.

their procreative abilities. Market failures are typical justifications for the use of corrective tax expenditures.[72]

D. THE "CANADIAN COMPROMISE"[73]

The current tax recognition of children reflects a balance of universality and selectivity. All families with dependent children receive recognition through child tax expenditures and/or child income transfers. Low-income families receive child income transfers and parents are trusted to spend the money in the best interest of the child.[74] Middle- and high-income families benefit from child tax expenditures. At the same time, the system is selective in the sense that the CCB is targeted based on family income level, and the child care expense deduction targets the cost of raising children for working parents. Because the CCB and child tax expenditures are implemented through the income tax system, they are available only to families who opt into the tax system by filing tax returns.

In terms of the overall equity of the tax recognition of children, child tax expenditures are regressive in nature as they provide more benefit to higher-income earners. That is the case with the non-refundable tax credit that existed before 1979 and the current child care expense deduction.[75] In contrast, the CCB and its predecessors are progressive by delivering more benefits to lower-income taxpayers and families without income.[76]

III. TECHNICAL DESIGN OF THE CCB PROGRAM

A. OBJECTIVES AND UNDERLYING ASSUMPTIONS

The CCB is found in sections 122.6 to 122.63 of the *ITA*.[77] Its objectives are to recognize non-discretionary expenses of raising children to better reflect the ability to pay of the parents; to

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[72] See Philipps, Brooks & Li, *Tax Expenditures, supra* note 31.

[73] Kitchen, "Refundable," *supra* note 54 at 50, describing the system in 1979.

[74] Research shows that overall, "families appear to be quite sophisticated in the way they spend their benefit income." Lauren Jones, Kevin Milligan & Mark Stabile, "How Do Families who Receive the CCTB and NCB Spend the Money?" (March 2015), online: <martinprosperity.org/media/CCTB-and-NCB-Family-Spending.pdf> [perma.cc/8K7T-GYW9] at 8. This research report states that families are purchasing more basic necessities and education tools. Further, families significantly cut back spending on alcohol and tobacco, indicating success of the benefits on child outcomes.

[75] Milligan, "Tax Recognition of Children," *supra* note 35 at 612–13.

[76] *Ibid.* The introduction of the income-tested refundable tax credit in 1978 made the system less regressive by reducing the benefit for families in the top 10 per cent. The introduction of the Canada child tax benefit in 1993 further reduced the benefit for the highest earners to zero. The national child benefit supplement in 1998 increased the benefit for families in the bottom 10 per cent of income earners. Overall, benefit for the bottom 10 per cent increased steadily from 1966 (about $1,000) to about $12,000 in 2015.

[77] *ITA*, *supra* note 1, ss 122.6–122.64 were originally enacted in 1992 to implement the child tax benefit proposals introduced in the 25 February 1992 federal budget. Commencing 1 January 1993, they replaced family allowances under the *Family Allowances Act*, the tax credit for dependants under age eighteen under s 118(1), and the refundable child tax credit under s 122.2, with one comprehensive child tax benefit system. In 1997, the child tax benefit was replaced by the Canada Child Tax Benefit.

achieve a social objective of child poverty reduction; and more generally to give "families more money to help with the high cost of raising their children."[78]

Several assumptions seem to underlie the drafting of the CCB rules. First, a family's income level is a proxy for need for support or level of child poverty. Second, the need for support is based on the age of a child, whether the child is living with a disability, and the number of children in a family. Pre-school-age children (under age six) are assumed to require more financial resources for their care. There are economies of scale in that the amount of money needed to care for the second, third, and subsequent children declines. A child living with a disability requires more resources. Third, a female parent is presumed to be the primary caregiver and eligible for claiming the CCB (see below). Fourth, families in need of income support are aware of the CCB and are willing to participate in the program. Finally, the structure of the CCB assumes that raising children is primarily a matter for the parents and public support is available only when parents have inadequate means to care for their children.

B. INSTITUTIONAL FEATURES OF THE INCOME TAX SYSTEM

Embedding the CCB in the *ITA* means that its design is influenced or limited by the features of the *ITA*. Perhaps the most notable feature is the *ITA*'s intimidating appearance and size. The statute grew from fewer than twenty pages in 1917 to over 2000 pages.[79] The print version weighs more than a kilogram![80] The *ITA* has over 280 sections, organized in XIX parts. Sections 122.6 to 122.64 are in Part I of the *ITA*, taking up eight pages, in small print. Their location in such a formidable statute makes their accessibility almost impossible to ordinary people—or even lawyers who are not specialized in this area of the law.

The drafting style is another key feature. A basic rule is typically found in a section or subsection; and it is written in one sentence, irrespective of the length of the rule. For example, subsection 122.61(1) provides the basic rule for the amount of CCB payment. It is reproduced below as an example of drafting:

> If a person and, if the Minister so demands, the person's cohabiting spouse or common-law partner at the end of a taxation year have filed a return of income for the year, an overpayment on account of the person's liability under this Part for the year is deemed to have arisen during a month in relation to which the year is the base taxation year, equal to the amount determined by the formula
>
> **(A + C + M)/12**
>
> where
>
> **A** is the amount determined by the formula
>
> **E – Q – R**
>
> where
>
> **E** is the total of

[78] Department of Finance, *Report on Federal Tax Expenditures—Concepts, Estimates and Evaluations 2017*, online: <fin.gc.ca/taxexp-depfisc/2017/taxexp-depfisc17-eng.pdf> [perma.cc/XCJ7-LXLM] [2017 Tax Expenditure Report] at 74.
[79] For example, David M Sherman, *Practitioner's Income Tax Act 2017*, 51st ed (Scarborough: Carswell, 2017).
[80] *Ipsco Inc v R*, 2002 CanLII 878 (TCC) at para 26.

(a) the product obtained by multiplying $6,400 by the number of qualified dependants in respect of whom the person was an eligible individual at the beginning of the month who have not reached the age of six years at the beginning of the month, and

(b) the product obtained by multiplying $5,400 by the number of qualified dependants, other than those qualified dependants referred to in paragraph (a), in respect of whom the person was an eligible individual at the beginning of the month,

Q is

(a) if the person's adjusted income for the year is less than or equal to $30,000, nil,

(b) if the person's adjusted income for the year is greater than $30,000 but less than or equal to $65,000, and if the person is, at the beginning of the month, an eligible individual in respect of

(i) only one qualified dependant, 7% of the person's adjusted income for the year in excess of $30,000,

(ii) only two qualified dependants, 13.5% of the person's adjusted income for the year in excess of $30,000,

(iii) only three qualified dependants, 19% of the person's adjusted income for the year in excess of $30,000, or

(iv) more than three qualified dependants, 23% of the person's adjusted income for the year in excess of $30,000, and

(c) if the person's adjusted income for the year is greater than $65,000, and if the person is, at the beginning of the month, an eligible individual in respect of

(i) only one qualified dependant, the total of $2,450 and 3.2% of the person's adjusted income for the year in excess of $65,000,

(ii) only two qualified dependants, the total of $4,725 and 5.7% of the person's adjusted income for the year in excess of $65,000,

(iii) only three qualified dependants, the total of $6,650 and 8% of the person's adjusted income for the year in excess of $65,000, or

(iv) more than three qualified dependants, the total of $8,050 and 9.5% of the person's adjusted income for the year in excess of $65,000, and

R is the amount determined for C;

C is the amount determined by the formula

$$\mathbf{F - (G \times H)}$$

where

F is, if the person is, at the beginning of the month, an eligible individual in respect of

(a) only one qualified dependant, $2,308, and

(b) two or more qualified dependants, the total of

(i) $2,308 for the first qualified dependant,

(ii) $2,042 for the second qualified dependant, and

(iii) $1,943 for each of the third and subsequent qualified dependants,

G is the amount determined by the formula

J – [K – (L/0.122)]

where

J is the person's adjusted income for the year,

K is $45,282, and

L is the amount referred to in paragraph (a) of the description of F, and

H is

(a) if the person is an eligible individual in respect of only one qualified dependant, 12.2%, and

(b) if the person is an eligible individual in respect of two or more qualified dependants, the fraction (expressed as a percentage rounded to the nearest one-tenth of one per cent) of which

(i) the numerator is the total that would be determined under the description of F in respect of the eligible individual if that description were applied without reference to the fourth and subsequent qualified dependants in respect of whom the person is an eligible individual, and

(ii) the denominator is the amount referred to in paragraph (a) of the description of F, divided by 0.122; and

M is the amount determined by the formula

N – O

where

N

is the product obtained by multiplying $2,730 by the number of qualified dependants in respect of whom both

(a) an amount may be deducted under section 118.3 for the taxation year that includes the month, and

(b) the person is an eligible individual at the beginning of the month, and

O is

(a) if the person's adjusted income for the year is less than or equal to $65,000, nil, and

(b) if the person's adjusted income for the year is greater than $65,000,

(i) where the person is an eligible individual in respect of only one qualified dependant described in N, 3.2% of the person's adjusted income for the year in excess of $65,000, and

(ii) where the person is an eligible individual in respect of two or more qualified dependants described in N, 5.7% of the person's adjusted income for the year in excess of $65,000.

In defining the amount of disability benefit, subsection 122.61(1) refers to section 118.3 for defining the notion of disability. Recent legislative drafting has included the use of algebraic formulae. As a recent provision, subsection 122.61(1) uses several formulas to define the amount of benefits payable under the CCB. Subsection 122.61(1) is drafted by using a tiered structure:

the basic rule is that the amount is determined by a tier 1 formula—(A+ C + M)/12; each of "A," "C," and "M" is then defined by a tier 2 formula (*e.g.*, C = F – (G × H)); and one element of a tier 2 formula is defined by a tier 3 formula (*i.e.*, "G"). This cumbersome and arithmetical drafting style renders knowledge about the CCB highly inaccessible.

The use of cross-referencing is another drafting feature of the Act. In addition to relying on the ordinary meaning of words, the *ITA* provides definitions and makes cross-references. For example, section 122.6 defines the key terms in the CCB program, such as "eligible individual" and "qualifying dependant" and refers to other provisions for the meaning of "person," "parent," "resident," and "income." For example, subsection 122.6 defines "eligible individual" as follows:

> ***eligible individual*** in respect of a qualified dependant at any time means a person who at that time
>
> **(a)** resides with the qualified dependant,
>
> **(b)** is a parent of the qualified dependant who
>
> **(i)** is the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant and who is not a shared-custody parent in respect of the qualified dependant, or
>
> **(ii)** is a shared-custody parent in respect of the qualified dependant,
>
> **(c)** is resident in Canada or, where the person is the cohabiting spouse or common-law partner of a person who is deemed under subsection 250(1) to be resident in Canada throughout the taxation year that includes that time, was resident in Canada in any preceding taxation year,
>
> **(d)** is not described in paragraph 149(1)(a) or 149(1)(b), and
>
> **(e)** is, or whose cohabiting spouse or common-law partner is, a Canadian citizen or a person who
>
> **(i)** is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*,
>
> **(ii)** is a temporary resident within the meaning of the *Immigration and Refugee Protection Act,* who was resident in Canada throughout the 18 month period preceding that time,
>
> **(iii)** is a protected person within the meaning of the *Immigration and Refugee Protection Act,*
>
> **(iv)** was determined before that time to be a member of a class defined in the *Humanitarian Designated Classes Regulations* made under the *Immigration Act,* or
>
> **(v)** is an Indian within the meaning of the *Indian Act*,
>
> and for the purposes of this definition,
>
> **(f)** where the qualified dependant resides with the dependant's female parent, the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant is presumed to be the female parent,
>
> **(g)** the presumption referred to in paragraph 122.6 eligible individual (f) does not apply in prescribed circumstances, and
>
> **(h)** prescribed factors shall be considered in determining what constitutes care and upbringing; (*particulier admissible*)

A third feature of the *ITA* is that it uses "person" and "income" as the key means or tools of assessment and is largely "facially neutral."[81] In other words, the *ITA* generally does not look into the identities of individual taxpayers, except with respect to income level. In exceptional cases of providing tax relief (such as the child care expense deduction) or preventing tax avoidance (such as attribution rules[82]), it recognizes the fact of marriage, common-law relationships, and/or children. The CCB is an exceptional case; it recognizes "family" as the unit for determining the amount of the benefit and identifies female parents as default primary caregivers and therefore, as the recipients of the CCB benefits.

Self-assessment and "voluntary" payment of tax are basic features of the income tax system. Individuals must file tax returns to report their tax liability and claim any tax assistance or income transfers. The *ITA* does not proactively identify beneficiaries of tax expenditures or income transfers. Beyond requirements to provide information about residency, gender, relationship status (married, living in a common-law relationship, or separated), and the number of dependants, no information is gathered regarding personal identity. The CRA "reacts" to the tax returns through re-assessment or imposes penalties on taxpayers for failure to file tax returns.[83]

Finally, the *ITA* is administered by the Canada Revenue Agency (CRA). The CRA is a large and sophisticated agency, tasked to administer not only the federal *ITA*, but also the income tax statutes of many provinces. In the case of the CCB, the CRA assesses eligibility, computes the amount of benefits, and administers the payments.[84] Any disputes between the CRA and a claimant of the CCB are resolved through the general process for resolving all tax disputes, which begins with filing a notice of objection with the CRA, triggering an administrative review. If the review decision is unsatisfactory, the taxpayer can bring a suit at the Tax Court of Canada.[85]

The institutional features of the *ITA* limit the design and delivery of the CCB program. In turn, the design features of the CCB can impact the effectiveness of the program in reducing child poverty and confine the reform options for improving the program. Furthermore, the limited personal identification gathered makes it difficult to have information to assess the actual impact of the CCB with reference to race. Significant pieces of information cannot be gleaned directly from tax filings.

C. ELIGIBILITY

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[81] The *ITA* is similar to the United States Internal Revenue Code in this respect. For further discussion of the US system, see Nancy J Knauer, "Critical Tax Policy: A Pathway to Reform?" (2014) 9:2 Nw J L & Soc Pol'y 206.

[82] *E.g.*, *ITA* section 74.1(1) attributes income from certain property which was acquired by a taxpayer to the taxpayer's spouse or common-law partner for tax purposes.

[83] For further, see Jinyan Li, Joanne Magee & J Scott Wilkie, *Principles of Canadian Income Tax Law*, 9th ed (Toronto: Carswell, 2017) at c15 [Li et al, *Principles*].

[84] The CRA does not have discretion or make policy decisions; it merely implements *ITA* provisions enacted by Parliament. As with all *ITA* provisions, the Department of Finance suggests changes (typically in the annual budget), prepares draft legislation, and offers a rationale for the changes.

[85] For an overview, see Li et al, *Principles, supra* note 83.

The CCB aims to support children but does so indirectly by providing the benefit to their parent. Technically, it applies to an "eligible individual" in respect of a "qualified dependant." Section 122.6 defines "qualified dependant" to be a person who at the specific time (a) has not attained the age of 18 years; (b) is not a person for whom a marriage credit was claimed by the person's spouse or common-law partner (*i.e.*, not dependent on a spouse or common-law partner); and (c) is not a person in respect of whom a special allowance under the *Children's Special Allowances Act* is payable for the month that includes that time (*e.g.*, a child under foster care).[86] The basic test is age, and the two additional tests ensure that there is no duplication in tax/public support of any particular child.

Section 122.6 defines "eligible individual" as a person who is a Canadian resident,[87] resides with the qualified dependant, and is a parent of the qualified dependant and primarily fulfils the responsibility for the child's care and upbringing.[88] Typically, when a parent lives with a qualified dependant, she/he is the eligible individual. In the case of shared custody when a child lives with two individuals in separate residences on a more or less equal basis, both individuals may be considered "eligible individuals" and share the CCB payment.[89]

Section 122.6 states that "where a qualified dependant resides with the dependant's female parent, the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant is presumed to be the female parent."[90]In other words, a mother or other female custodian is presumed to be the eligible individual and receives the CCB. Furthermore, a parent or custodian may be considered to be an eligible individual in respect of a particular child only if the person has filed with the Minister a notice in prescribed form containing prescribed information.[91] In other words, a parent must notify the CRA about the existence of a child in order to claim the CCB in respect of the child. A child that is unreported to the CRA is neither "seen" nor "covered" by the CCB program. It is the responsibility of the parent or custodian to notify the CRA and claim the CCB.

D. AMOUNT OF BENEFITS

1. MAXIMUM AMOUNTS

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86 *ITA*, *supra* note 1, s 122.6.

87 Like most tax benefits available in the *ITA*, only residents are entitled to the benefits. The residency of an individual is determined by the statutory deeming rules in subsections 250(1) and (3) of the *ITA* as well as case law. Generally speaking, individuals who ordinarily live in Canada or are away from Canada temporarily are Canadian residents. See Li et al, *Principles, supra* note 83 at c3.

88 Income Tax Regulations, CRC, c 945, s 6302 provides a list of factors for determining what constitutes care and upbringing for the purposes of the "eligible individual" definition, including the supervision of the daily activities and needs of the qualified dependant, and the maintenance of a secure environment in which the qualified dependant resides.

89 *ITA*, *supra* note 1, s 122.6 and Reg c 945, *supra* note 88, s 6302.

90 *ITA*, *supra* note 1, s 122.6(f) and Reg c 945, *supra* note 88, s 6301. The presumption does not apply in such circumstances as where the female parent declares in writing to the Minister that the male parent, with whom she resides, is the eligible individual.

91 *ITA*, *supra* note 1, s 122.62. See CRA Guide T4114, Canada Child Benefit, online: <www.canada.ca/content/dam/cra-arc/formspubs/pub/t4114/t4114-18e.pdf> [perma.cc/YQ55-GM5K] [CRA Guide T4114].

The CCB pays two types of benefits: a base amount and a child disability benefit.[92] The base amount is set at $5,400 per year per child aged six to seventeen and $6,400 per year per child under the age of six. The child disability benefit is an additional support to qualified families caring for children who have a severe and prolonged impairment in physical or mental functions. Qualification for this benefit is tied to the eligibility criteria for the disability tax credit under section 118.3 of the *ITA*.[93] The amount of this additional benefit was $2,730 per year per child in 2017.

The amounts of benefits are indexed for inflation for 2018–2019 and thereafter.[94] They are "tax-free" and paid monthly. These amounts are phased out with increasing family net income; that is, they are means-tested.

2. MEANS-TESTED BASED ON FAMILY INCOME

The CCB aims to primarily assist families whose annual adjusted family net income (AFNI)[95] is below $30,000. The full amounts mentioned above start being reduced when the AFNI exceeds $30,000 at the rate of between 7.0 per cent and 23.0 per cent, depending on the number of children in the family. These phase-out rates increase further once the AFNI rises above $65,000

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[92] As a transitional measure to tie the CCB program to the previous regimes, there formerly existed a national child benefit supplement. CCB payments do not affect the amount of, or eligibility for, provincial programs, such as Ontario Works benefits, Ontario Disability Support Program benefits, child care subsidies under the *Child Care and Early Years Act*, Healthy Smiles Ontario (dental program for youth), rent-geared-to-income subsidies, or portable housing benefits.

[93] See Form T2201, Disability Tax Credit Certificate, online: <canada.ca/content/dam/cra-arc/formspubs/pbg/t2201/t2201-17e.pdf> [perma.cc/F4FQ-SQEX].

[94] In the *Fall Economic Statement, 2017*, the Government proposed to strengthen the CCB by increasing the benefits annually to keep pace with the rising cost of living as of July 2018. In the fall of 2016, the Government committed to indexing the CCB to inflation starting July 2020, but a growing economy and improved fiscal track means the Government can deliver on this commitment two years sooner. See Canada, Department of Finance, "Backgrounder: Strengthening the Canada Child Benefit", online: <www.fin.gc.ca/n17/data/17-103_1-eng.asp> [perma.cc/M2RP-22AX] ["Finance Backgrounder"].

[95] The notion of "adjusted income" is important as the CCB is reduced where an eligible individual's adjusted income exceeds a threshold amount. It is defined as including the income of the person who is the eligible individual's cohabiting spouse or common-law partner at the end of the base taxation year (*i.e.*, the adjusted income is equivalent to the family income). The adjusted income of each spouse or common-law partner is basically the individual's net income, which includes income from employment, office, business, or property, as well as taxable capital gains.

and reach 100 per cent when the AFNI is $189,100 (*i.e.*, the CCB benefits become nil at that point).[96]

The phase out of the child disability benefit starts where the AFNI exceeds a higher threshold of $65,000. The phase out rate is 3.2 per cent in the case of a single child with a disability or 5.7 per cent in the case of two or more children with a disability.

E. CLAIMING THE BENEFIT

An eligible individual, typically the mother,[97] must file a tax return and apply for the CCB.[98] In addition to proof of birth for a child, the individual may be asked to provide supporting documents to prove that she is "primarily responsible" for the care and upbringing of the child. Such documents include a letter from the day care or school authorities indicating the child's home address and contact information on file; a letter from a person in a position of authority (such as a lawyer or a social worker) stating that they have personal knowledge that the child lived with the applicant for the period indicated in the CCB application; a registration form or a receipt from an activity or club the child was enrolled in for the period indicated in the CCB application; or a court order, decree, or separation agreement.[99]

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[96] *ITA, supra* note 1, s 122.61(1). Technically, the monthly CCB benefit is computed by the formula: (A + C + M)/12, where A is the base CCB amount, C is the national Child Benefit Supplement, and M is the Child Disability Benefit. The base CCB amount under A is determined by the formula (E–Q). E is the total of: (a) $6,400 multiplied by the number of qualified dependants in respect of the eligible individual who have not yet reached the age of six at the beginning of the month; plus (b) $5,400 multiplied by the number of qualified dependants in respect of the eligible individual other than those referred to in paragraph (a). In other words, the maximum base amount is $6,400 per year ($533 per month) for each child under the age of six and $5,400 per year ($450 per month) for each child aged six to seventeen. And Q is the reduction or phased-out amount where adjusted income exceeds certain thresholds. The phase-out rates are as follows: (i) If the person's adjusted income for the year is less than or equal to $30,000, the phase-out rate is nil; (ii) If the person's adjusted income for the year is greater than $30,000 but less than or equal to $65,000 and if the person is, at the beginning of the month, an eligible individual in respect of: (a) one qualified dependant, 7 per cent of the person's adjusted income for the year in excess of $30,000; (b) two qualified dependants, 13.5 per cent of the person's adjusted income for the year in excess of $30,000; (c) three qualified dependants, 19 per cent of the person's adjusted income for the year in excess of $30,000; (d) more than three qualified dependants, 23 per cent of the person's adjusted income for the year in excess of $30,000; (iii) If the person's adjusted income for the year is greater than $65,000 and if the person is, at the beginning of the month, an eligible individual in respect of: (a) one qualified dependant, the total of $2,450 and 3.2 per cent of the person's adjusted income for the year in excess of $65,000; (b) two qualified dependants, the total of $4,725 and 5.7 per cent of the person's adjusted income for the year in excess of $65,000; (c) three qualified dependants, the total of $6,650 and 8 per cent of the person's adjusted income for the year in excess of $65,000; or (d) more than three qualified dependants, the total of $8,050 and 9.5 per cent of the person's adjusted income for the year in excess of $65,000.

[97] This is due to the presumption in the definition of "eligible individual." However, if the male parent is primarily responsible, he can apply by attaching a signed note from the female parent that states he is primarily responsible for all of the children in the household.

[98] CRA Guide T4114, *supra* note 91 explains what is needed for the CCB application. The application can be made online or by mailing in Form RC66, Canada Child Benefits Application. For mothers of new-born babies, there is an automated application process. Additional documentation is required (Schedule RC66SCH, Status in Canada/Statement of Income) if an eligible individual's spouse or common-law partner a) became a new resident or returned as a resident of Canada in the last two years; b) became a Canadian citizen in the last 12 months; c) is a permanent resident, protected person (refugee), or temporary resident who has lived in Canada for the previous 18 months; or d) is not a Canadian citizen and is an Indian within the meaning of the *Indian Act.*

[99] CRA Guide T4114, *supra* note 91.

The CRA uses information from the applicant's income tax and benefit return to calculate how much her CCB payments will be. Because the amount of benefits is based on annual net family income, a cohabiting spouse or common-law partner must also file a return. When a cohabiting relationship ends in the event of the death of one parent or separation, the CRA must be notified as it may affect the amount of payment.[100]

IV. EVALUATING THE CCB PROGRAM

It is probably too early to assess the full impact of the CCB as it is still in its infancy. Nevertheless, some assessment is possible by drawing on available data on the projected cost of the program and the distribution of CCB benefits, and by making inferences from the evidence about the effectiveness of its predecessors.

A. DISTRIBUTION OF BENEFITS

According to the Department of Finance,[101] during the 2016–17 benefit year "over 3.3 million families received more than $23 billion in CCB payments, and the nine out of 10 families who are better off as a result of the CCB received on average almost $2,300 more in benefits." It further claims that the "CCB has helped lift about 300,000 children out of poverty, and it is estimated that child poverty will have been reduced by 40 per cent at the end of 2017 from what it was in 2013." However, there is no official data on the distributional effect.

To assess the distributional effect, we refer to the estimated cost of the program and information reported by the media. The Office of the Parliamentary Budget Officer, in its 2016 report, projected the cost of the CCB in 2016–17 to be $16.9 billion, in 2017–18 (the first full implementation year) $22.4 billion, and in 2020–21, $21.5 billion.[102] In comparison, the cost of the previous system replaced by the CCB was $11.2 billion in 2006–2007 and $14.4 billion in 2014–15.[103] In terms of the distribution of the CCB benefits, the report predicted that families with an adjusted net income below $30,000 would receive the largest average benefit payments: it projected that in 2017–18, 880,000 families earning less than $30,000 would be eligible, accounting for about 22 per cent of total eligible families and receiving 39.7 per cent of total CCB benefits.[104] For these 880,000 eligible families, the amount of payment will depend on the age and number of children: a family with five children under six receives about $32,000 per year, while a family with one child under six receives $6,400; families earning more than $30,000 but less than $65,000 account for 24.6 per cent of eligible families and would receive about 31.7 per cent of the total benefits; and families earning more than $65,000 account for 50.6

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[100] *ITA*, *supra* note 1, s 122.65(8).
[101] Department of Finance, "Strengthening the Canada Child Benefit," online: <www.fin.gc.ca/n18/docs/18-008_4-eng.pdf> [perma.cc/ZA7N-9Y44].
[102] The jump in 2017–18 was explained by the fact that it is the first fiscal year in which the CCB would be fully implemented. The additional cost to the government is $3.4 billion in 2016–17 and $2.5 billion in 2020–21: see Government of Canada, Office of the Parliamentary Budget Officer, "Fiscal Analysis of Federal Children's Benefits" (Ottawa: 1 September 2016) at 10, online: <pbo-dpb.gc.ca/web/default/files/Documents/Reports/2016/CCB/CCB_EN.pdf> [perma.cc/9XNE-CZVH].
[103] *Ibid* at 6.
[104] *Ibid* at 8, 12.

per cent of total eligible families and would receive 29 per cent of total benefits. The report indicates that families earning more than $30,000 would receive about 60 per cent of total benefits, even though the amount per child declines due to the phase-out.

In October 2017, the Government claimed that the CCB "has helped lift 300,000 children out of poverty and, by the end of this year, child poverty will have been reduced by 40 per cent from what it was in 2013."[105] "In the 2016–17 benefit year, over 3.3 million families received more than $23 billion in CCB payments [higher than its projected amount of $16.9 billion], and the nine out of 10 families who are better off as a result of the CCB received on average almost $2,300 more [than the previous system] in benefits, tax-free."[106] As to the type of families receiving the CCB, "about 65 per cent of families receiving the maximum CCB amounts are single parents, of whom 90 per cent are single mothers."[107]

According to the media reports, as of April 2017, the CCB had 4,056,060 eligible recipients, representing just over 7.1 million Canadian children. Of those recipients, 3,579,250—or 88 per cent—were getting monthly cheques at some point in the CCB's inaugural year. [108]

B. TAKE-UP RATE

The take-up rate determines the effectiveness of the CCB. If eligible recipients do not actually benefit from the program, the objective of child poverty reduction is undermined. "There is a long history of public concern over people missing out on government benefits paid out as direct grants."[109] The reported 88 per cent take-up rate for the CCB is lower than that of some other benefit programs; for example, the take-up of the now-defunct Universal Child Care Benefit was near universal.[110]

Because eligible individuals must file a tax return as well as an application for the CCB, those who have do not file cannot benefit from the CCB. Families who were not already signed up for the previous child benefits programs (because a child was born during the changeover in programs, for example) needed to apply for the CCB. If they fail to apply for various reasons, they do not receive the CCB.

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105 Employment and Social Development Canada, "Government of Canada Strengthens Canada Child Benefit" (25 October 2017), online: <newswire.ca/news-releases/government-of-canada-strengthens-canada-child-benefit-653052593.html> [perma.cc/EJG7-9KVU].

106 Finance Backgrounder, *supra* note 94.

107 *Ibid.*

108 Monique Scotti, "As the Canada Child Benefit Turns 1, Who Has Actually Benefited?," *Global News* (21 July 2017), online: <globalnews.ca/news/3614457/canada-child-benefit-turns-1-who-has-benefited/> [perma.cc/7SPQ-U986] [Scotti, "Who Has Actually Benefited?"]

109 Alan Macnaughton. "Take-up of Social Benefits Delivered through the Personal Income Tax System: Evidence-Based Analysis" in Jinyan Li, Larry Chapman & Scott Wilkie, eds, *Income Tax at 100 Years: Essays and Reflections on the Centennial of the Income War Tax Act* (Canadian Tax Foundation, 2017), c 16:1.

110 Strategic Policy and Research Branch, *Formative Evaluation of the Universal Child Care Benefit: Final Report* (Ottawa: Human Resources Skills Development, May 2011). The Report concludes that, "[a]wareness and knowledge of the UCCB is high among eligible parents, as evidenced by the high take-up rate for the Program. … Recent estimates suggest that close to universal coverage has been achieved. However, concerns have been raised by a few key informants with regards to potential gaps in awareness among some sub-populations. This issue was further illustrated in examining the estimated take-up rates, with the lowest coverage occurring in the Yukon and Northwest Territories. However, due to the limitations involved in estimating coverage based on 2006 Census data, it is unknown whether this represents a real gap in coverage" (at 27).

Eligible recipients missing out on the CCB include women living with their children at shelters.[111] Indigenous parents on reserves and in Canada's North are reportedly among those struggling to access the CCB, as many First Nations families are either unaware of the program, distrust the government, or are not qualifying because of lapses in filing their tax returns.[112] New immigrants or refugees may not make timely applications due to lack of awareness of the program or documentation to support the application. Finally, many families may struggle to get their paperwork in order and have limited access to assistance and guidance.[113] It seems likely that some of Canada's most vulnerable children are missing out. This has serious implications for the intended objectives of the CCB.

C. CHILD POVERTY REDUCTION

The CCB and its predecessors were not designed to eliminate child poverty. They do not address the root causes of child poverty, including changes in the labour market, challenges facing immigrants and refugees, and the health or educational background of parents. Instead, the CCB provides parents with some minimum income. It was meant to reduce child poverty, as well as give families more money to help with the high cost of raising their children.[114]

1. AN ENCOURAGING BUT ARGUABLY INADEQUATE RESULT

Lifting 300,000 children out of poverty, as the Government claims to have done through the CCB, is a significant outcome. The CCB was praised by some analysts as "especially powerful" because "it pays far more money to lower- and modest-income households than it does to higher-income households."[115] In the absence of available data on the CCB, some inferences could be drawn from the outcomes of previous child income transfer programs. Some research suggests that previous child income transfers had reduced the poverty gap—that is, the distance below the after-tax low-income cut-off (LICO) for families with two children in a metropolitan centre in Ontario. For example, the LICO in 2000 was estimated at $28,782 and, due to the Canada Child Tax Benefit, the poverty gap was $9,714 for a family earning $15,000 income, $5,798 for a family earning $20,000 income, and $2,823 for a family earning $25,000 income.[116] Presumably,

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[111] The Canadian Press, "Women in Shelters Often Missing Out on Federal Child Benefits: Ombudsman" *Global News* (14 July 2017), online: <globalnews.ca/news/3599011/canada-child-benefit-womens-shelter/> [perma.cc/9PQ4-5S6W]. Taxpayers' ombudsman Sherra Profit recently launched a probe into the Canada Revenue Agency's (CRA's) efforts to reach out to women living in shelters with their children, for instance, after receiving complaints that these parents were not getting the information and guidance necessary to make sure the cheques reached them.

[112] David McKie, "Many Indigenous Families Not Applying for Canada Child Benefit: Documents" (21 July 2017), online: <www.cbc.ca/news/politics/canada-child-benefit-indigenous-1.4211545> [perma.cc/A3JW-QSSW] [McKie, "Indigenous Families Not Applying"].

[113] Scotti, "Who Has Actually Benefited?," *supra* note 108, quoting MP Sheri Benson: "They have to provide birth certificates, notes from their landlord, sometimes notes from their doctor saying that these in fact are their children and they're in their custody. They don't hear back sometimes for up to ten weeks, two-and-a-half months. In the meantime, CRA has cut their benefits."

[114] 2017 Tax Expenditure Report, *supra* note 78 at 74.

[115] Ken Battle, Sherri Torjman & Michael Mendelson, "Social-Policy-Is-Back Budget" (Ottawa: Caledon Institute of Social Policy, March 2016) at 5.

[116] Battle, "Child Benefit Reform," *supra* note 30 at 1244–45.

the CCB could achieve a similar or better reduction in child poverty.[117] However, the recent Census reports that nearly 1.2 million Canadian children lived in a low-income household in 2015.[118] If only 300,000 of these children were lifted out of poverty through the CCB, the majority remain in poverty.

2. LESS EFFECTIVE IN REDUCING RACIALIZED POVERTY

There is no specific data on the racial identity of CCB recipients. While more and better data are needed, from the concerns outlined above regarding the take-up rates of Indigenous families, and new immigrants and refugees we might reasonably postulate that a disproportionate number of the children losing out are racialized. And if this is indeed the case, the CCB will be less effective in reducing racialized child poverty.

D. ADMINISTRATIVE EFFICIENCY

Tasking the CRA with the administration of the CCB program is arguably more efficient than its alternatives, including a new direct-spending program administered by another government agency. The CRA administered the predecessors of the CCB. It has the necessary resources to gather and process information identifying and verifying eligible recipients and family income,[119] and the infrastructure for making timely benefit payments. The CRA has developed programs of outreach and a guide for taxpayers, and it provides a CCB calculator on its website to increase the visibility of the program and encourage people to apply for the CCB. Finally, the CRA administers the personal income tax of most provinces and can thus administer the provincial equivalents of the CCB regime. The total cost of administration is, therefore, lower than other options, such as setting up a system specifically for child poverty reduction through income transfers.

However, there are some potential drawbacks of this delivery model. The CRA does not reach out to families who do not file a tax return. As a large institution tasked to enforce a complex statute, of which the CCB is a small part, the CRA may not be as sensitive as one would like to the individual struggles of families living in poverty. Since the CRA is better known as a tax collecting agency as opposed to a social welfare agency, and the *ITA* is immensely complex, families living in poverty may be intimidated or may not realize that benefits can flow from filing a tax return and prefer to stay away from interacting with the tax system and the CRA. These drawbacks may reduce the take-up rate of the CCB.

On the other hand, as compared to social assistance (welfare) or other income support programs, the *ITA* has some institutional advantages. For example, people interacting with the

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[117] Such as Milligan (2016), *supra* note 32; and Office of the Parliamentary Budget Officer, "Fiscal Analysis of Federal Children's Benefits" (Ottawa: 1 September 2016).

[118] Statistics Canada, "Census in Brief: Children Living in Low-Income Households," online: <www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016012/98-200-x2016012-eng.cfm> [perma.cc/6C25-SQ2J].

[119] Such information comes not only from tax return filers, but also third-party information reporting, such as by employers and financial institutions. Using the social insurance number (SIN) as the main tracking tool, once a taxpayer is in the tax system, the CRA can use the SIN to check for duplication of identity or non-filing of tax returns. The tax returns of spouses are "linked" for several purposes of the *ITA*, including the CCB. In fact, it was the use of computers in the late 1970s that enabled the adoption of income-testing based on family income.

tax system have traditionally been regarded as taxpayers and "contributors" to society.[120] The social stigma typically associated with welfare does not apply to taxpayers. Secondly, the *ITA* is less intrusive than provincial welfare programs, as eligible families apply for the CCB and the application is processed without direct contact with the CRA. The CCB is income-tested and the CRA has the capacity to assess income.[121] This is different from needs-based social assistance programs where the needs of each individual must be established, and which may involve greater intrusion into the privacy of potentially eligible families.

V. MAKING THE CCB MORE EFFECTIVE FOR RACIALIZED CHILDREN

A. ROOM FOR IMPROVEMENT

Compared to its predecessors, the CCB is simpler, more progressive, and more generous to low-income families. The fact that the CCB is not taxable income means that it will not adversely affect the recipients' eligibility for other social assistance programs that are income-tested.[122] It is, in our view, a better vehicle. Compared to child care expense deduction and other tax expenditures, the CCB is particularly beneficial to those Indigenous children whose parents earn income that is exempt from tax under section 81(1)(a) of the *ITA*.[123] Such income typically includes income from property situated on a reserve.[124] When a parent's income is tax exempt, the income is not used to phase out the CCB benefits. As such, the parent is entitled to claim full CCB benefits, even though they cannot deduct any child care expense because this deduction is linked to income from employment or a business that is taxable under the Act. However, there is room for improvement, especially when the CCB is viewed through the lens of racialized child poverty. Below, we suggest some ways of improving the CCB.

B. PUBLICIZING THE SOCIAL INVESTMENT OBJECTIVE

As we have explained earlier, the CCB should not be viewed just as a tax matter or welfare matter. Instead, it should be publicized as a social investment in the most important Canadian resource on at least two grounds. First, such investment is necessary. Unlike the case of natural resources where there may be sufficient market incentives for private investments, having

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[120] For further discussion, see Stairs, "Canada Child Tax Benefit," s*upra* note 35 at 132–62.
[121] Through self-reporting of family income, the CRA obtains information from the CCB claimant and verifies the information through audit and other means. The "income" of the eligible individual and a cohabiting spouse or common-law partner is both the basis for assessing the CCB amount and for assessing a taxpayer's tax liability. The return indicates family status and thus indicates if any other return should be considered together with the eligible individuals to determine total net income for assessing a number of tax credits.
[122] Laurie Monsebraaten, "Ontario Families on Welfare to Keep Full Federal Child Benefit," *Toronto Star* (17 June 2016), online: <www.thestar.com/news/canada/2016/06/17/ontario-welfare-families-to-keep-full-federal-child-benefit.html> [perma.cc/6T7Q-TB9J].
[123] This provision excludes income that is declared to be exempt from income tax by Parliament in section 87 of the *Indian Act,* RSC, 1985, c I-5.
[124] Whether income has a substantive connection with a reserve is established by case. See, for example, *Bell v The Queen,* 2016 TCC 175 (CanLii), and *Bastien Estate v Canada*, 2011 SCC 38.

children and raising them to be good citizens, productive workers, and business owners cannot be left to private decisions or market forces alone. Some parents may not have adequate capital for the investment. As explained in Part II of this article, child poverty has significant social implications. Social investment to generate positive externalities and to help with liquidity constraints can be equated to social investment in education, health care, and other public goods, such as the environment and infrastructure. All Canadians, whether receiving CCB or not, should be encouraged to have pride in the CCB program and understand it as paying for an important "public good" as opposed to merely helping poor families who may be perceived as "undeserving" from a particular moral perspective.

Second, evidence suggests that social investments can pay off: the former Canada Child Tax Benefit payments improved children's educational outcomes and physical and mental health. Families receiving the payments increased spending on food, child care, and transportation and reduced spending on alcohol and tobacco use.[125] Since the stated objectives of the CCB is to give families money to help with the high cost of raising their children and a major cost for pre-school age children is child care, the government could consider promoting a package of social investment in children that includes the CCB as well as "subsidized" or "free" early childhood education.

There are some important concerns that the CCB may discourage parents from working. This is sometimes described as the existence of "welfare wall."[126] These concerns are addressed, to some extent, by the fixed "minimum" amount of the CCB and by making the benefit tax-free so that parents who work will not lose entitlement to the CCB. More can probably be done. However, these concerns should not dilute the importance and extent of social investment in children.

C. INCREASING THE TAKE-UP RATE

Increasing the take-up rate is key to reducing racialized child poverty. One action that could be taken is to increase awareness of the CCB among racialized groups. Because the CCB is available to a parent only if she/he makes the application and files a tax return, the actual pick-up rate may depend on how the parents view the income tax system.[127] It is not uncommon to assume that filing a tax return is for the purpose of paying taxes as opposed to receiving money from the government. Also, people with low financial literacy may miss out on filing tax returns

[125] Prosper Canada, "Federal Government to Help More Canadians Tax File and Access Benefits," (2 February 2016), online: <prospercanada.org/News-Media/News/Federal-government-to-help-more-Canadians-tax-file.aspx> [perma.cc/88Z2-9CNQ].

[126] In "Breaking Down the Welfare Wall" (Caledon Institute of Social Policy, July 1993), Battle explains: "The welfare wall refers to the obstacles that welfare recipients face when they enter or re-enter the labour market. The wall arises from the impact of direct and indirect taxes that welfare households face when they supplement their benefits with earned income. Another tier of the welfare wall is the potential loss of 'income in-kind' such as supplementary health and dental benefits" (at 1).

[127] It was reported that many children in Indigenous communities do not actually receive the CCB because their parents are unaware of the CCB, do not file tax returns, and often do not trust the government: see McKie, "Indigenous Families Not Applying," *supra* note 112. See also U Bajwa for Prosper Canada, "Accessing Income-Boosting Benefits Through Tax Filing" (2015), online: <prospercanada.org/getattachment/ea6b571e-861e-4977-95cd-ba799bfbf12d/Accessing-Income-Boosting-Benefits-through-Tax-Fil.aspx> [perma.cc/LH6T-SN8Q].

to claim social benefits, such as the CCB, delivered through the *ITA*.[128]

To increase awareness and applications for the CCB, more families may be reached through public education, social services, and information disseminated at community centres, daycare centres and immigrant and refugee programs aimed at resettlement and reception of new immigrants and refugees. Education brochures or online materials about the CCB should be prepared in plain languages (English, French, and other languages), setting out the steps to make an application. Such education materials may be included in financial and tax literacy education provided to the children who may be more easily accessed by outreach than the parents. It may even be possible to team with the school systems to reach parents through children as the children are already in the "public" system.

Providing technical assistance in filing tax returns and making the CCB application is also important. Intermediaries play an important role in the operation of the Canadian income tax system in respect of both paying taxes and receiving tax subsidies.[129] The high (93 per cent) general tax compliance rate in Canada,[130] which is among the best in the world, can be attributed to taxpayers' awareness of their tax compliance responsibilities and their access to professional assistance, when needed (*e.g.*, H&R Block).

The take-up rate for the CCB should be at least equal to the tax compliance rate; after all, no one wants to pay more tax, but who would knowingly refuse a benefit? There are well-established tax intermediaries (including tax accountants, lawyers, and financial advisors) who assist taxpayers to comply and minimize taxation. For recipients of the CCB, however, there is a vacuum between eligible families and the CRA; few tax intermediaries advocate for and provide services to families living in poverty. The CCB falls outside the general tax practice and low-income families may not have the inclination or financial resources to hire tax advisors. One wonders if professional intermediaries in social work, social assistance, child welfare, or early childhood education could get involved to reduce this gap.

Perhaps the "intimidation" factor of the *ITA* and the CRA can be addressed with better public education and technical assistance. While not much can be done to "simplify" the *ITA* provisions, the CRA has provided guidance in plain language and offers volunteer tax clinics. It is debatable, however, if the CRA can "step outside" its traditional role of "passively" receiving and verifying self-declared information and proactively approach families who appear eligible for the CCB but have not applied. If a parent has already filed a tax return and notified the CRA about an eligible dependant, it would be possible for the CRA to send a notice to the parent about the CCB in a manner similar to the information included in the Notice of Assessment advising

[128] See Richard Shillington, "Financial Literacy and the Take-Up of Government Benefits," Research Paper prepared for the Task Force on Financial Literacy (Ottawa: Task Force on Financial Literacy, 2011), online: <www.shillington.ca/publications/Financial%20Literacy.pdf> [perma.cc/TR8C-TGKA].

[129] For general discussion, see Steven Klepper, Mark Mazur & Daniel Nagin, "Expert Intermediaries and Legal Compliance: The Case of Tax Preparers" (1991) 34:1 J Law & Econ 205; Brian Erard, "Taxation with Representation: An Analysis of the Role of Tax Practitioners in Tax Compliance" (1993) 52:2 J Pub Econ 163.

[130] See CRA, *Tax Gap in Canada: A Conceptual Study* (June 2017), online: <canada.ca/en/revenue-agency/corporate/about-canada-revenue-agency-cra/tax-canada-a-conceptual-study.html> [perma.cc/2ZEK-U88W]. According to this study, Canada's tax gap for individuals at the federal level is estimated to be about $8.7 billion or 6.4% of personal income tax revenues in 2014. This calculation was based on estimates of taxes that were assessed but not collected and on unreported income from the underground economy.

the taxpayer how much room they have for RRSP contributions.[131] If a parent has never filed a tax return or does not notify the CRA about a child, there is no way for the CRA to proactively reach out to the parent about the CCB.

D. TWEAKING THE TECHNICAL DESIGN

Locating the CCB in the *ITA* means that the drafting and design of the CCB provisions are influenced by the institutional features of the *ITA.* We do not advocate taking the CCB out of the *ITA* or re-drafting sections 122.6 to 122.64. We do not suggest specific changes to the amount of benefit, as this is generally dependent on the democratic will and the overall fiscal condition of the government. Owing to the institutional features of the *ITA*, we do not think it is viable for the CCB to specifically target racialized child poverty or to better address the disproportionate racialization of child poverty. Changing the eligibility test to take into consideration racial background would be unprecedented and out of character for the *ITA*. What we can do is suggest some tweaking.

To the extent possible, we suggest the amount of benefit be benchmarked to some measure of poverty or some measure of cost of living so that the CCB is more effective in reducing child poverty. We recognize the challenges in coming up with an appropriate benchmark because of the lack of a standard for measuring child poverty.[132] Because of the difference in the cost of living in large urban centres and other areas, the standard amounts are less effective in reducing racialized child poverty in Toronto and other urban centres.

The means-tested feature of the CCB is important. However, the use of ANFI to measure means could be reconsidered if evidence shows that it has the effect of discouraging parents from cohabiting to prevent the claw-back or loss of the CCB, or if there is some correlation between this requirement and the recent increase in one-person households with children in Canada.[133] Double income-earning families generally reduce child poverty and the CCB should encourage, or at least not discourage, parents from cohabiting.

Further, to prevent the CCB from benefiting wealthy families who earn low income for tax purposes (such as families owning high-value residential real estate or offshore trusts or companies), the AFNI test should be backstopped by introducing a secondary net worth test that looks at the amount of property owned by the family and amount of per capita consumption in the family. Net worth assessment is used by the CRA in assessing the tax liability of taxpayers and can be used to improve the targeting of the CCB to children in need by redirecting the funds paid to low-income/high-wealth families.

VI. CONCLUSION

[131] Contributions to a Registered Retirement Savings Plan (RRSP) are tax deductible and the annual amount of the contributions is limited by the *Income Tax Act*. If a taxpayer does not contribute to the maximum, the "unused amount" or "unused room" can be used in a future year. The Notice of Assessment indicates such amount. For further discussion of the RRSP, see Li et al, *Principles*, *supra* note 83 at 343–47.
[132] See discussions in part 1 of this article.
[133] In 2011, Statistics Canada reported that for the first time there were more one-person households with children than couples with children: 3,673,305 as compared to 3,524,915; see Statistics Canada. "Canadian Households in 2011: Type and Growth," online: <www12.statcan.gc.ca/census-recensement/2011/as-sa/98-312-x/98-312-x2011003_2-eng.cfm> [perma.cc/2ZBY-FPDL].

It is a fact that child poverty is disproportionately affecting racialized families in Canada. The correlation between poverty and substantiated child maltreatment—often in the form of the "neglect" attributable to inadequate housing and the devastating health consequences of poverty—also figures prominently in the overrepresentation of Indigenous and African Canadian children in the child welfare system. Since 1918, the income tax system has supported families with children through tax expenditures or income transfers. At present, the CCB is the main federal policy instrument to reduce child poverty. It indicates a shift in the tax system from a parent-focused approach to a child-focused approach and highlights the social importance of children. The general design and implementation of the CCB are sound, although both can be improved. The main area for improvement is the take-up rate.

While the CCB does not explicitly target racialized child poverty, nor does it expressly seek to redress the overrepresentation of Indigenous and African Canadian children in the child welfare system, it has an important role to play on both fronts. We suggest that the CCB can be made more effective in directly tackling racialized child poverty and thus indirectly impacting child welfare involvement through emphasizing the social investment nature of the program, better targeting racialized child poverty by linking the benefits to the cost of living, and increasing the take-up rate. On this last point, we are encouraged by recent efforts by the CRA and not-for-profit groups. More can be done through measures aimed at increasing the awareness of the program and technical assistance to eligible families.