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Abstract
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Keywords
Women--Taxation--Law and legislation; Women's rights; Income tax--Law and legislation; Income shifting (Taxation); Tax incidence; Canada

Uncovering Women in Taxation: The Gender Impact of Detaxation, Tax Expenditures, and Joint Tax/Benefit Units

KATHLEEN A. LAHEY *

Women have made great progress in gaining individual civil and political rights since the 1800s. However, for nearly a century, the use of couple-based tax and benefit provisions has increased steadily, enshrouding women in new and extensive forms of fiscal coverture that run counter to democratic ideals of economic equality. While the pros and cons of joint taxation have been well-rehearsed, the reality is that between unequal distributions of new and old varieties of tax and benefit items to women and men and the continued expansion of joint tax and benefit items in recent decades, Canada's tax and transfer system now diverts substantial amounts of money away from women and into the hands of male taxpayers or back into government coffers. This article demonstrates how fiscal systems now reinforce and intensify deeply-embedded patterns of gender-specific appropriations of women's

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labour, incomes, and government benefits, and proposes that it is time to implement fully individualized fiscal policies.

Depuis les années 1800, les femmes ont réalisé une avancée spectaculaire pour revendiquer leurs droits civils et politiques. Depuis près d'un siècle toutefois, l'utilisation de dispositions fiscales et sociales fondées sur le couple progresse sans relâche, plongeant les femmes derrière une nouvelle forme sournoise de paravent fiscal qui s'oppose à l'idéal démocratique de l'égalité économique. Même si le pour et le contre de la fiscalité partagée ont fait l'objet de nombreuses discussions, la triste réalité est que, de la distribution inégale entre les hommes et les femmes des nouvelles et des anciennes essences de mesures fiscales et sociales à l'essor constant des dispositions fiscales et sociales partagées au cours des dernières décennies, le régime fiscal et de transferts canadien détourne aujourd'hui des femmes des sommes d'argent considérables pour les mettre entre les mains des contribuables masculins ou les retourner dans les coffres de l'État. Cet article cherche à démontrer la manière dont les régimes fiscaux renforcent aujourd'hui des modèles sexospécifiques profondément enracinés d'affectation du travail des femmes, du revenu et des avantages sociaux, et affirme qu'il est grand temps que soient mises en œuvre des politiques fiscales totalement individualisées.

> [A] married woman who has earned $660 in any one year might just as well … stop working for the rest of the year, unless she is going to earn quite a large sum over and above that.[1]

> Actions to be taken by Governments: Review and modify, with the full and equal participation of women, … from a gender perspective, policies and programmes—including those related to macroeconomic stability, structural adjustment, external debt problems, taxation, investments, employment, markets and all relevant sectors of the economy—with respect to their impact … particularly on women … and adjust them

1. "Married Women," *Saturday Night* 57:43 (4 July 1942) 3 at 3.

> … to promote more equitable distribution of productive assets, wealth, opportunities, income and services.[2]

> [W]hen people say that we cannot afford to pay taxes to provide child and elderly care services, presumably they are not saying that we can no longer afford to look after our children or the elderly. What they must mean is that instead of spreading the cost of these services equitably, through the tax system, across the entire population, we should leave them to be borne by women, by and large, who provide them … unpaid in their … homes.[3]

THE COMMON LAW DOCTRINE OF COVERTURE, or marital "covering,"[4] began to erode in the late 1800s as women gained statutory rights to enter into employment contracts, own their own wages, and own property. By the time the *Income War Tax Act*[5] was enacted in 1917, women had begun receiving national voting rights in Canada. They gained rights to hold political office in the late 1920s, and by 1985 were supposedly freed from the last artefacts of coverture with the enactment of the sex equality provisions contained in the *Canadian Charter of Rights and Freedoms*.[6] As early as 1919, however, it became clear that

2. United Nations, *Report of the Fourth World Conference on Women* (New York: United Nations, 1996) at 20-21 [UN, *Fourth World Conference on Women*].
3. Neil Brooks, "Taxation and the social legacy" (Paper delivered at the Australian Fabian Society Conference - Investing in Ourselves: Fair and Effective Taxation for an Enterprising Australia, Melbourne, 31 May 2003), online: <www.fabian.org.au/914.asp> [Brooks, "social legacy"].
4. The common law doctrine of coverture originated in Roman civil law, which treated the *paterfamilias* ("father of the family") as incorporating all the civil capacities of all members of the household, including wives, and the family or household as the basic social and juridical unit. Civil codes achieved similar results with the husband's power of management. This was a purely private form of patriarchy because women could not be citizens of the Roman state and thus had no public rights. Sir William Blackstone, *Commentaries on the Laws of England*, translated by William Carey Jones (San Francisco: Bancroft-Whitney, 1916) vol 1 at 625-34.
5. *Income War Tax Act, 1917*, SC 1917, c 28.
6. Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

concepts of fiscal coverture[7] would not be removed so easily from Canadian tax and spending laws.[8] Indeed, nearly a century later, fiscal coverture appears to be more deeply entrenched than ever, with well over a hundred specific income tax provisions treating spouses and now cohabitants as special forms of tax units.

The three passages quoted at the beginning of this article bracket the history of fiscal coverture in Canada since 1919. The first passage[9] was published in 1942. It reveals that tax impediments to married women's paid work, which were originally enacted to open up jobs for returning veterans after World War I (WWI), were suddenly in the way again as Canada entered into World War II (WWII). The power of fiscal coverture is revealed in the speed with which those post-WWI income limits on married women's income were repealed in 1942 and then reinstated in even stricter form when veterans returned again.[10]

Fiscal coverture justifies the use of tax and spending laws built around the "male breadwinner" model of adult relationships. In this model, women are dependants, not providers, and work not for pay, but for the betterment of the family unit. Use of tax and spending laws to uphold this model was considered to be appropriate for married women during the early years of income taxation because women's fiscal beings were treated as having merged with their husbands' as the two became 'one' when married. It is on this basis that public income supports are still usually withheld from women who have husbands considered to be responsible for supporting them, and tax benefits go to husbands who

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7. Fiscal coverture originally arose in English income taxation when married women's earnings, which were treated as belonging to the husband under the doctrine of coverture, were treated as his income for tax purposes. Even after married women's property legislation gave women ownership of their own earnings, income tax legislation continued to include women's earnings as husbands' incomes for tax purposes. The same result was achieved via husbands' management of the matrimonial estate in civil code income tax systems. When women in England protested the resulting over-taxation of their earnings, their husbands were given a special deduction in 1894, but the benefits of that deduction remained the property of the husbands. Nicholas A Barr, "The Taxation of Married Women's Incomes—II" (1980) 6 Brit Tax Rev 478 at 478-79.
8. The 1917 *Income War Tax Act* in Canada established women as individual taxpayers. However, married individuals had access to double personal exemptions. During the 1920s, this deduction was limited to couples in which the second spouse had very little income. See Kathleen A Lahey, *The Benefit/Penalty Unit in Income Tax Policy: Diversity and Reform* (Ottawa: Law Commission of Canada, 2000) at 29 [Lahey, *Benefit/Penalty Unit*].
9. "Married Women," *supra* note 1.
10. In 1942, the spousal deduction rules were amended to permit husbands to continue claiming the deduction even if their wife was in paid work, and a new individual deduction was also given to women in paid work. This was done to remove fiscal barriers to women's war work. At the end of the war, both changes were reversed in order to make sure that WWII veterans would find employment. Lahey, *Benefit/Penalty Unit*, *supra* note 8 at 29.

do support their wives. Indeed, in 1948, reinstatement of this form of fiscal coverture was justified on the basis that the wartime rules that had removed tax barriers to married women's paid work had "sinned grievously against the general fairness and equity of the income tax structure"[11] by treating married women as if they were single.

The second passage is from the United Nations (UN) *Platform for Action* (*Beijing Platform*), adopted half a century later at the 1995 Fourth World Conference on Women in Beijing.[12] The *Beijing Platform* contains an exhaustive list of specific equality-promoting steps that states agreed to take to implement women's internationally recognized equality rights. This text includes tax and other fiscal provisions in the long list of economic and fiscal measures that states agree to examine for their hidden effects on women. In so doing, it treats government spending programs and revenue laws as two aspects of the same process: the process by which states take responsibility for financing and delivering programs that are designed to benefit the population as a whole, and not just members of favoured groups. At the very least, this document committed signatories to removing fiscal coverture rules from their statutes.

The third passage, written by Neil Brooks,[13] enacts the gender perspectives called for in the *Beijing Platform* and deftly uncovers the core assumption of fiscal coverture—that women are still expected even in the twenty-first century to perform the bulk of unpaid care work in the family unit. In this statement, Brooks shifts the focus from sexist stereotypes to democratic principles of equality of opportunity, sex equality, and equity, and addresses women as equally deserving of policy consideration, respect, and resources that can equalize access to incomes, caregiving, and wellbeing.

In fact, the paper in which he made this statement, entitled "Taxation and Social Legacy," is even more pertinent today. In this paper, he linked the urgency of rejecting stereotyped and misleading systems of thought—about the importance of taxation and about the dangers of gender hierarchies—directly to the fact that fiscal policies devised to deal with present-day challenges always and inevitably shape and create the future: "As taxes are reduced, and governments become even more impotent to deal with social and economic problems, the problems of social inequality will become even more exacerbated … [and] the economic elite is ever more able to defend itself politically."[14]

11. Wilfred Eggleston, "Income Tax Changes for Employed Wives," *Saturday Night* 62:13 (30 November 1946) 8 at 8.
12. UN, *Fourth World Conference on Women*, *supra* note 2.
13. Brooks, "social legacy," *supra* note 3.
14. *Ibid*.

When this was published in 2003, Canada had already lost its status as the highest-ranked country in terms of overall human and gender-related development. Since 2003, Canada has fallen even further in these rankings—down to eleventh on overall development and eighteenth on the UN gender equality scale[15]—and is one of the five member countries of the Organisation for Economic Co-operation and Development (OECD) with the fastest-growing levels of inequality.[16]

Brooks's concern with how the whole fiscal system, and tax law in particular, affects ordinary people is one of the most powerful qualities of his work. From the beginning of his academic career, he has treated sex, gender, and women's equality as part of what matters. He invited the prominent feminist lawyer Louise Dulude to speak on family structure and taxation at a groundbreaking conference on tax policy he organized in 1979. He set up a panel on the taxation unit with Faye Woodman, Louise Dulude, and me and published the results in the journal *Canadian Taxation*.[17] Particularly because Stanley Surrey, one of the chief proponents of the joint filing system adopted by the post-war US Congress, was in attendance at this conference, Brooks brought important visibility to how tax issues affect women. He also made sure that the Ontario Fair Tax Commission included the Working Group on Women and Taxation as part of its review and that women sat on the Working Group on Corporate Taxation. Throughout his career, he has treated sex equality as a core goal of democratic fiscal policies in his own scholarship and teaching. In open opposition to ideologies of gender in fiscal studies, Brooks's recognition that women are fiscal actors in their own right

15. United Nations Human Development Report Office, *Human Development Report 2014*, UNDPOR, 2014, at 160, 172.
16. OECD, *Divided We Stand: Why Inequality Keeps Rising* (Paris: OECD, 2011) [OECD, *Divided We Stand*]. The OECD found that income inequality grew more quickly in Canada between 1980 and 2008 than in all but five other OECD countries. The richest 10% of the Canadian population had incomes ten times as high as the poorest 10%, and the richest 1% of the population alone received 13.3% of total income. The OECD also pointed out that these increases were due both to growing wage gaps *and* to less redistribution: "Taxes and benefits reduce inequality less in Canada than in most OECD countries." OECD, *Country Note: Canada*, Divided We Stand: Why Inequality Keeps Rising (2011) [OECD, *Country Note: Canada*].
17. Louise Dulude, Kathleen Lahey & Faye Woodman, "The Taxation Unit" (1979) 2 Can Tax'n 19 at 19-20.

provides important support to the proposition that tax, benefit, and other fiscal laws should promote women's full autonomy and equality, not undercut it.[18]

The good news is that in recent years, sex equality has been given more attention in economic policy and even in discussions of fiscal policy. Critics of almost all political orientations now at least acknowledge that tax barriers to married women's paid work undermine GDP growth.[19] The "business case" for sex equality links women's increased involvement in paid work with improved organizational performance.[20] The "economic case" emphasizes that the increases in state revenues resulting from women's paid work can be used to support education, health and care services, poverty reduction, and economic stability.[21] The "wellbeing case" maintains that if women's increased paid work time were balanced with men's increased *unpaid* work time, and if increased revenues were directed to expanding care, education, and leisure resources, both women's and men's health and wellbeing overall would increase.[22] The "stability and recovery case" goes further, with the OECD concluding that countries with higher levels of gender equality have lower levels of income inequality, and fare better in dealing with major crises and recessions.[23] Indeed, as economic recoveries from the 2008

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18. Neil Brooks, "The Irrelevance of Conjugal Relationships in Assessing Tax Liability" in John G Head & Richard E Krever, eds, *Tax Units and the Tax Rate Scale* (Melbourne: Australian Tax Research Foundation, 1996) 35; Neil Brooks & Thaddeus Hwong, *The Social Benefits and Economic Costs of Taxation: A Comparison of High- and Low-Tax Countries* (Ottawa: Canadian Centre for Policy Alternatives, 2006).
19. OECD, *Economic Policy Reforms 2011: Going for Growth* (2011); OECD, Economics Department, *Tackling income inequality: The role of taxes and transfers* [2012] 1 OECD J Econ Stud 37 [OECD, *Tackling income inequality*].
20. McKinsey & Company, *Women Matter: Gender Diversity, a Corporate Performance Driver* (Paris: McKinsey & Company, 2007) at 12-14; Catalyst, *The Bottom Line: Connecting Corporate Performance and Gender Diversity* (New York: Catalyst, 2004).
21. Mark Smith & Francesca Bettio, *Analysis Note: the Economic Case for Gender Equality* (Bonn, Germany: Fondazione Giacomo Brodolini, 2008) at 9, 10, 17-19; World Bank, *Gender Equality and Development* (Washington: World Bank, 2012); United Nations Children's Fund, *The State of the World's Children 2007: Women and Children: The Double Dividend of Gender Equality* (New York: United Nations, 2007); Rosella Melanson, "Combler l'écart salarial entre les homes et les femmes: les avantages pour le trésor public" (2010) 22:1 CJWL 13.
22. Canadian Index of Wellbeing, *How are Canadians Really Doing? The 2012 CIW Report* (Waterloo, Ont: 2012), 42-44, 51-60.
23. OECD, *Divided We Stand*, *supra* note 16 at 53.

global crisis continue to falter, substantive gender equality is now recognized as essential to economic durability.[24]

While the need for gender impact analysis of government policies and laws has been increasingly recognized, very little gender impact analysis—fiscal or general—is actually being done by governments and many governments that have initiated gender budgeting have since backed off.[25] In Canada, even though the federal government played an international and national leadership role in developing gender-based analysis, no Canadian government has yet carried out the type of comprehensive gender impact analysis of fiscal issues called for in the *Beijing Platform*. Instead, most governments continue to leave the pervasive gender impact of structural and specific changes in tax laws unexamined while increasingly reverting to ideologies of fiscal coverture to 'contain costs' and 'benefit families.'

Not surprisingly, after decades of political focus on deficit reduction, detaxation, privatization, globalization, "crisis stimulus" and recovery, and GDP growth—and after nearly two decades of ignoring gender impact requirements in policy formation, neither women's equality in general nor issues of fiscal equality appear to remain on the policy agenda. And growing inequalities are catching up with women. More women today are in paid work, but they are working longer hours in more precarious employment conditions for the same shares of market incomes that women received over a decade ago. Women's shares of income by educational attainment have fallen dramatically, some below previously recorded levels. Women have been systemically excluded from crisis recovery and stimulus programs designed to stimulate employment in male-dominated industries, while public services and women's employment sectors are targets of ongoing spending cuts. Young women face higher education debts, longer payback times, and reduced retirement funding compared with young women of a decade ago and with young men of today. All women's health programs federally funded have been closed. Canada still leaves the costs of caregiving "to be borne by women, by and large, who provide these services unpaid in their own homes."[26]

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24. OECD, Gender Initiative, *Closing the Gender Gap: Act Now* (2012) at 18, 24; Canada, Office of the Parliamentary Budget Officer, *Fiscal Sustainability Report* (Ottawa: Office of the Parliamentary Budget Officer, 2010) at 7-10.
25. Mara Kuhl, *Are the Economic Stimulus Programmes Fair for Everyone? A Budget-oriented Gender Analysis of Economic Stimulus Packages I and II* (Bonn, Germany: Friedrich-Ebert-Stiftung, 2010); Office of the Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons* (Ottawa: Office of the Auditor General, 2009) ch 1.
26. Brooks, "social legacy," *supra* note 3.

No policy measure can ever be completely gender neutral. Thus, every fiscal item will have a unique gender footprint. But overall, the major tax changes over the last decade in Canada have been markedly gender regressive, giving larger shares of tax benefits and cuts to men, and smaller shares to women.[27] As these changes have taken place, international experts have agreed that all the components of Canada's fiscal system—including tax rates, tax bases, tax expenditures, benefit rates, benefit clawbacks, and tax cuts—are implicated in the rapidly rising levels of income inequality in Canada.[28] However, none has looked closely at how the whole range of tax and transfer measures affects women as a class.[29] This paper discusses how three types of major and recent tax changes—*i.e.*, structural detaxation, tax expenditures, and joint tax/benefit measures—all concentrate after-tax incomes in the hands of those with larger shares of incomes and assets, and thus in the hands of men, and deserve priority attention.

I. STRUCTURAL DETAXATION

Since the mid-1990s, Canada has pursued austerity and deficit-reduction policies to deal with revenue shortfalls caused by recurring recessions and the desire for increased economic growth. Structural detaxation was initiated in the late 1990s with Canada's "Tax Advantage" program and accelerated significantly in 2006. Since then, the Conservative government has implemented major cuts to the three basic sources of federal revenue: the personal and corporate income taxes and the goods and services tax.

Detaxation has much in common with tax expenditures, including limited budgetary visibility, inequitable distribution, high costs, and lack of rational justification.[30] "Detaxation" is used here to refer to systemic tax changes that remove or significantly reduce taxes imposed on broad categories of transactions, have more diffuse policy purposes than specific tax expenditures, and are very

27. See generally Kathleen A Lahey, "Women, Substantive Equality, and Fiscal Policy: Gender-Based Analysis of Taxes, Benefits, and Budgets" (2010) 22:1 CJWL 29 at 74-82 [Lahey, "Women and Budgets"].
28. OECD, *Country Note: Canada*, *supra* note 16.
29. For example, the detailed examination of the redistributive effects of tax and transfer items published by the OECD is completely non-gendered, and the scope of transfers include some capital subsidies but exclude transfers that take place outside households. OECD, *Tackling income inequality*, *supra* note 19.
30. Neil Brooks, "The Tax Expenditure Concept" (1979) 1:1 Can Tax'n 31.

costly in terms of foregone revenues.[31] The term has also been used to refer to broad tax cuts that create increased opportunities for tax-minimizing conduct or that increase after-tax rewards without requiring changes in behaviour.[32]

The components of Canada's detaxation program were announced before the 2008 recession began. Originally characterized as growth-enhancing tax cuts, they were quickly repackaged as "crisis stimulus" policies when the government was pressured to take anti-recession steps. The first detaxation cuts in 2007/2008 were funded by offsetting them against $38 billion in operating surpluses inherited from the previous government. Thereafter, however, these tax cuts removed at least $130.5 billion from total annual federal revenues and produced total operating deficits of $115.8 billion.[33]

TABLE 1: CUMULATIVE FEDERAL DETAXATION LOSSES BY GENDER, 2008–2012

Type of tax	Total amounts of detaxation	Women's shares of detaxation cuts
GST rate cuts	$48.4 billion	38%
Corporate income tax cuts	$30.4 billion	10–37%
Personal income tax cuts	$51.6 billion	40%
Total revenue losses	$130.4 billion	32–38.6%
Total annual budgetary deficits, 2008–2012	$115.8 billion	

31. Kathleen A Lahey, *Canada's Gendered Budget 2012: Impact of Bills C-38 and C-45 on Women* (Kingston, Ont: Faculty of Law, Queen's University, 2012) at 125-26 [Lahey, *Gendered Budget*].
32. Ali Abidar & Ahmed Laytimi, *National Agriculture Policy–Morocco* (Meknès, Morocco: December, 2005); Pierre Cahuc & Stéphane Carcillo, "The Detaxation of Overtime Hours: Lessons from the French Experiment" (Bonn, Germany: Institute for the Study of Labor, January 2011), online: <ftp.iza.org/dp5439.pdf>; *Cf.* Magoroh Maruyama, "New mindscapes for future business policy and management" (1982) 21:1 Technological Forecasting & Soc Change 53 at 58 (classifying detaxation, along with deregulation, as "passive" incentives that will mainly incentivize well-established businesses to continue their present activities and contrasting detaxation with active incentives, which tend to incite diversification and innovation, and morphogenetic incentives, which facilitate cross-industry interaction and synergies).
33. House of Commons, Minister of Finance, *Canada's Economic Action Plan: Budget 2009* (January 2009) at 255 [Minister of Finance, *Budget 2009*].

As can be seen from Table 1, the tax benefits of these detaxation cuts did not go equally to women and men. Instead, they shifted public fiscal space from the federal government to private individuals in proportion to the amounts that those individuals had contributed monetarily to public revenues. In essence, this fiscal space was privatized by redistributing it from the federal government back to individuals based on their individual income-earning capacities and not equally to all adult members of the population or on the basis of need.

Because these detaxation losses are structural, they will continue to reduce federal taxes by similar amounts on an annual basis in every year going forward and always in proportion to individual income-earning capacities over time as opposed to on a per capita basis. Table 2 shows that for 2012/2013 alone, detaxation left the federal government with $40.1 billion less revenue than it would have otherwise received, all of which was allocated unequally between women and men because it was based on the income tax liabilities of each.

TABLE 2: ANNUAL FEDERAL DETAXATION LOSSES BY GENDER, 2012–2013 FISCAL YEAR

Type of tax	Total amounts of detaxation	Women's shares of detaxation cuts
GST rate cuts	$13.8 billion	38%
Corporate/business income tax cuts	$13.3 billion	10–37%
Personal income tax cuts	$13.0 billion	40%
Total revenue losses	$40.1 billion	29–38%

SOURCE: Annual totals and gender shares are based on SPSD/M v 20 estimation, *supra* note 34, estimated for 2012.

To put these revenue losses into context, $40.1 billion represented 2.8% of Canada's projected GDP for 2012/2013. These losses are in addition to those from earlier cuts between 1995 and 2008 that amounted to another 4% of GDP.[34] As an aside, the federal government has recognized that these types of tax cuts are not particularly effective in stimulating economic growth or productivity.[35]

34. OECD, *Revenue Statistics 1965-2009*, Special Feature: Environmentally Related Taxation (2010) at 81-82.
35. Minister of Finance, *Budget 2009*, *supra* note 33 at 255.

As these figures demonstrate, each of these structural tax cuts is gender regressive. With 60% of the financial benefit of the personal income tax cuts going to men, and men's shares of corporate and GST cuts ranging from 62% to 90%, it is numerically impossible for these tax cuts to help increase women's shares of total consumable incomes above their existing 38% to 40% shares. In fact, it is much more likely that, over time, detaxation will place increased downward pressure on women's existing shares of after-tax incomes.

Two factors make structural detaxation gender regressive. The first is that women hold persistently small shares of incomes and assets, which form the benefit bases on which these detaxation cuts have been allocated. Thus, these tax cuts go to those with the largest incomes and the most wealth. The second is that the cuts will be regressive in incidence to the extent that the rates being cut were originally progressive in incidence. When making these cuts, the federal government contended that they were gender-neutral because they were merely proportionate to women's and men's average tax rates. However, this explanation cannot change the fact that detaxation distributes tax benefits just like other types of tax expenditure, even though they do not meet Surrey's narrow definition of tax expenditures.[36] Detaxation may be more diffuse and less specifically targeted or easily identifiable among the items commonly listed in tax expenditure budgets, but detaxation transfers massive amounts of economic power to individuals and corporations, with virtually no criteria, such as need or equity, being applied to ascertain eligibility to receive these benefits. Detaxation privatizes public revenues by returning or surrendering the state's claims on incomes and cash flows, leaving its fiscal space to selected members of the general population rather than to everyone on an equitable basis. Pierre Cuhac and Stéphane Carcillo call these gains "virtual manna" because they fall into the hands of a subset of people who do nothing to receive them. They thus inspire more efforts to manipulate the tax characterization of conditions that produce these benefits rather than heightened economic engagement.[37]

However characterized, the financial benefits of detaxation have disproportionately gone to men. With 40% of all women having too little income to have any income tax liability in the first place, and with men owning nearly twice the incomes and assets that qualify them to receive the benefits of detaxation, women

36. Stanley S Surrey, *Pathways to Tax Reform: The Concept of Tax Expenditures* (Cambridge, Mass: Harvard University Press, 1973) at 6; Paul R McDaniel & Stanley S Surrey, *International Aspects of Tax Expenditures: A Comparative Study* (Deventer, Netherlands: Kluwer Law, 1985) at 5.

37. Cuhac & Carcillo, *supra* note 32 at 8.

simply do not hold the types of "entry cards" that would enable them to obtain equal access to detaxation benefits. Giving a personal income tax cut to those who have little or no income tax liability gives them nothing at all. Similarly, giving tax cuts to corporations leaves out all those who do not own corporate shares.

Identifying and tracking the gender impact of detaxation is a crucial first step in "uncovering" women in taxation. The present-day gender distribution of detaxation benefits is the legacy of women's historical coverture, which ensured that women entered into the ages of mercantilism and capitalism with unequal access to capital, employment, wages, and caregiving services. Abolition of formal coverture has not erased women's historical economic inequalities, and the very slight redistribution of after-tax incomes from men to women produced by Canada's present-day total tax structure has not been sufficient to overcome the huge capital, income, and care-receiving gaps that still characterize women's economic existence.

By scaling the financial value of structural detaxation benefits to existing individual shares of capital, income, and care-receiving, detaxation essentially sets the slow process of gendered redistribution into reverse. For example, by reducing the 2012 total federal fiscal space by 2.8%, detaxation thus reduces the small amount of gender redistribution previously generated by the total tax-transfer system by 2.8%. Total gendered redistributions have been a mere 4% in the best of recent years.[38] Although it might not seem like much, 2.8% of 4% is significant not only because it turns that 4% rate of redistribution into the smaller figure of 3.888%, but also because that reduced rate of redistribution will remain in place in every year going forward.

Structural effects are generalizations, and so it is important to emphasize that each and every component of general rate-based detaxation will have its own unique gender footprint. I consider two examples here—the regressive effects on women by income class of the 2% GST rate cut that formed part of the overall detaxation package, and the "doubled" regression of forcing private individuals to fund the cost of replacing government benefits and services out of their own private incomes when detaxation leads to cuts in public services and benefits.

A. GENDER IMPACT: TAX RATE CUTS

Table 3 demonstrates the upside-down effect of the reduction of the GST rate from 7% to 5% that began in 2006. The gender effects of these cuts are direct

38. In years in which women received 36% of market incomes, they tended to end up with 40% of after-tax consumable incomes as the result of the redistributive effects mainly of transfer items. See Lahey, "Women and Budgets," *supra* note 27 at 42.

and permanent. Although individuals with low incomes receive the tax benefit of refundable GST tax credits, those credits do not offset all lower-income GST liability. And because women are concentrated in lower income levels, they will receive fewer financial benefits from detaxation of such consumption taxes even though such taxes are assessed at a fixed rate across income groups instead of scaled to taxable income.

TABLE 3: AVERAGE BENEFIT FROM 2% GST CUTS, BY INCOME QUINTILE AND SEX, 2012

Quintile	First	Second	Third	Fourth	Highest	All
Women	$132	$343	$584	$799	$1,348	38%
Men	$222	$451	$708	$991	$1,666	62%

SOURCE: SPSD/M v 20 estimation, *supra* note 34.

As can be seen from these figures, those with the lowest incomes—who need additional government support if such support is being handed out without regard to cost—receive the smallest benefits from the GST rate cuts, while those who need support the least receive the most. And even within low-income groups, women's average incomes are lower than men's average incomes. Thus, women in the first quintile receive annual benefits from GST detaxation of only $132, while men receive $222. Women have the lowest of the low incomes in this quintile, but in violation of all concepts of equity, they receive the smallest detaxation benefits of any group in this table. Maldistributions similarly arise when cuts are made to income taxes. For example, when $1.9 billion in personal income tax cuts came into effect in 2009/2010, women received only 36.6% of those tax benefits. And their shares are unlikely to increase in future years.[39]

B. THE DOUBLED GENDER IMPACT: SPENDING CUTS

The gender impact of detaxation does not end when revenues are diverted into private hands. Structural detaxation is designed to impair governmental fiscal capacities by privatizing potential fiscal space and leaving former tax revenues in the hands of private individuals and corporations. When government programs are then defunded as the result of such self-induced loss of fiscal capacity, detaxation does not just cancel benefits or services; it also shifts the economic

39. SPSD/M v 20 estimation, *supra* note 34.

burden to private individuals to fund their own replacements for benefits or services they had previously received via government programs.

Unlike government services and benefits, which are funded collectively out of government revenues, individuals have to use their own resources to obtain replacement services and benefits, if indeed they can actually afford to provide any such replacements for themselves. Whether such private costs are then incurred on a one-time basis or over a longer period, "private" self-tax systems intensify the regressive effects of detaxation because detaxation allocates the costs of private replacement services and benefits to individuals on the basis of *in*ability to pay: The less the individual's ability to pay for private replacement services and benefits, the fewer replacement services and benefits the individual can obtain. The lower the individual's income, the larger the individual's cost of replacement expenditures in terms of effective self-tax rates. And for those individuals whose incomes are too low to afford replacement services or benefits, they will do without those services or benefits and incur a net loss in wellbeing as a result.

In this way, detaxation undercuts the equity of tax/benefit systems that originally converted tax revenues into benefits for equitable distribution. This second-order effect intensifies or "doubles" the negation of equity generated by detaxation and locks it in for all future years. These regressive effects will continue until the fiscal space surrendered to the private sector and the former public services and benefits shifted to the private domain are returned to governments in some future year—an ending that is in no way guaranteed to future generations.

The "doubled regressivity" of detaxation cuts can be seen by looking at the gender effects of phasing out the universal and individual age 65/66 Old Age Security (OAS) allowances, one of the spending cuts announced in 2012 after years of detaxation cuts were used to justify massive government spending cuts. This example demonstrates how the shift of financing public benefits to private individuals is gender regressive (and income regressive). The first stage of the OAS phase-out is elective, allowing individuals to work past age 65 in exchange for receiving OAS "bonuses" when they retire. The second stage begins in 2023, when age 65/66 OAS will be cancelled for everyone. Both sets of changes to the OAS intensify the regressive effects of detaxation on women, but they do so in very different ways.

1. VOLUNTARY DEFERRAL

In the first stage, before 2023, individuals may defer taking OAS pensions for up to five years in exchange for receiving up to 36% larger OAS pension payments after that five-year deferral.[40] Women will receive fewer benefits from the voluntary deferral program because the realities of women's labour market positions mean that they have less choice than men to work longer: At least 25% of all workers in their 60s end up taking involuntary retirement due to unemployment, underemployment, health issues, or heightened care responsibilities, and significantly more women than men end up in this position.[41] As a universal income security program, the Guaranteed Income Security (GIS) part of the OAS system provides minimum survivable incomes regardless of earnings histories and also permits recipients to engage in some paid work without losing benefits. Thus, for women on the economic margins, whether on social assistance or forced out of liveable earnings, it would be very difficult or even legally impossible to refuse to begin receiving OAS/GIS at age 65.

Given these circumstances, more women than men will need access to OAS as soon as possible and so will be excluded from the new "bonus" deferral system because of labour market and gender realities. For women in this position, their small detaxation gains will be quite insignificant and will not make up for being excluded from the maximum 36% enhancement of deferred OAS pensions. The doubled regression in their situation thus consists of receiving the smallest detaxation benefits plus being structurally shut out of the OAS deferral bonus.

In contrast, men are more likely to be able to continue working up to age 70, and large numbers of them will receive incomes between ages 65 and 70 that are so high that even if they elect to begin receiving OAS at age 65, those benefits will be substantially clawed back. Thus, men are more likely to forego OAS until age 67 or later, not in response to an incentive to increase future benefits, but simply because they would receive no or minimal benefits from receiving OAS anyway.[42] In other words, the OAS deferral benefit represents "manna" to those it will benefit and is not actually providing any incentive to remain in paid work longer in order to obtain larger future OAS payments; remaining in paid work at average male wages is the incentive most likely to operate in that context. For men in this situation, this will be "double manna" because they receive the largest shares of benefits flowing from detaxation tax cuts, and they will also benefit from the 36% OAS bonus when deferring OAS until age 70.

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40. House of Commons, Minister of Finance, *Jobs Growth and Long-Term Prosperity: Economic Action Plan 2012* (March 2012) at 198-99 [Minister of Finance, *Economic Action Plan 2012*].
41. Yves Carrier & Diane Galameau, "How Many Years to Retirement?" in Statistics Canada, *Insights on Canadian Society* (Ottawa: Minister of Industry, 2012) 1 at 2.
42. For illustrations of these types of scenarios, see Service Canada, "Deferring your Old Age Security Pension" (September 2013), online: <www.servicecanada.gc.ca/eng/services/pensions/oas/changes/deferral.shtml>.

2. CANCELLATION OF AGE 65/66 OAS

In the second stage, OAS (and the GIS income support component) will be phased out beginning in 2013 for claimants aged 65 and 66. This phase-out will begin with individuals who were between ages 48 and 54 in 2012, and at the end of the phase-out, those under age 48 in 2012 will receive no OAS/GIS until age 67.[43] The long implementation period is said to enable people to save replacement income for former age 65/66 OAS pensions.

Cancelling age 65/66 OAS beginning in 2023 will be gender regressive for women for two reasons. First, OAS pensions are universal, gender-neutral income security measures. Regardless of earnings histories, both women and men receive the same amounts of OAS at the same ages, and these pensions are not adjusted by marital status. (Note, however, that the GIS benefit is joint and is adjusted to reflect relationship status.) As such, OAS pensions are progressively redistributive from high-income to low-income and from male to female individuals. Cancelling two such benefit years removes a major source of progressive redistribution from the total tax-transfer system and replaces it with private incomes, which are distributed regressively by economic condition, sex, and age.

Second, because existing gender income gaps have changed very little over the last two decades, it is likely that they will remain in place until 2023 and beyond. This is significant because, on average, women's peak earning years arrive earlier in life than men's, and even women's peak incomes are much lower than men's average incomes throughout women's prime working years. Once women's peak earning years pass, and the closer women are to retirement, the lower women's incomes are, relative to men's. The women who will first face reduced and then cancelled age 65/66 OAS pensions are among the same generations of women who will have carried more educational debt than male students, taken longer to pay it off than men, possessed less financial capacity for lifetime asset accumulation than their male cohorts, faced growing income gaps compared with men with equal educations, experienced less access to pension plans and pension benefits than men, and balanced paid work with heavier caregiving and other unpaid work responsibilities than men throughout their lives.[44]

These two factors alone—loss of a gender-equal universal pension and the statistical persistence of age 65/66 gender income gaps—mean that the cancellation of age 65/66 OAS will be significantly gender regressive.

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43. Minister of Finance, *Economic Action Plan 2012*, *supra* note 41 at 197.
44. Lahey, *Gendered Budget*, *supra* note 31 at 179-84.

There is more: Any attempts to replace the lost age 65/66 OAS pension amounts through private savings will intensify that gender regressivity. Despite the obvious gender disadvantages of these OAS/GIS cuts, the federal government expects individuals who will lose access to age 65/66 OAS pensions to set up their own "private" self-funded "tax" systems through individual private savings in order to fund private replacements for OAS pensions lost in those two years. In effect, they are expected, in the best-case scenarios, to save what they can of their annual detaxation benefits to make up for the prospective loss of age 65/66 OAS pensions.

As demonstrated in Table 4, these self-assessed "private OAS replacement taxes" will be gender regressive. Women's lifelong lower incomes mean that they will have to set aside 43% to 70% more of their incomes each year than men their age in order to be able to accumulate savings that will replace the amounts they would have received from OAS during ages 65 and 66. These gender gaps are all regressive not only by gender but also by age.

TABLE 4: AGE 65/66 OAS "REPLACEMENT TAX" AS PERCENTAGE OF INCOME BY AGE AND SEX, 2012

Age in 2012	Lost OAS (age 65/66)	Annual Registered Retirement Savings Plan contribution	Average 2012 income		Registered Retirement Savings Plan deposit as % of income	
			Women	Men	Women	Men
30	$27,398	$532.47	$37,057	$51,632	1.44%	1.03%
40	$21,816	$661.00	$39,944	$59,959	1.66%	1.10%
50	$17,405	$967.53	$42,637	$72,200	2.29%	1.35%
60	- 0 -	- 0 -	$28,569	$66,630	- 0 -	- 0 -

SOURCE: Lahey, *Gendered Budget 2012*, *supra* note 31 at 101, citing Jim Stanford, "How Much Will YOU Lose from OAS Deferral??" (30 March 2012) *Progressive Economics Forum*, online: <www.progressive-economics.ca/2012/03/30/how-much-will-you-lose-from-oas-deferral>.

Gender and age regressivity intersect in setting the rates for this private OAS replacement tax because both women and men will lose the same amounts of OAS depending on their ages in 2023. But women have lower average incomes than men at every age, and those income gaps widen with increasing age. Thus, women who were age 30 in 2012 will lose the same dollar amount of OAS at age 65 as men who were age 30 in 2012 ($27,398). If both men and women began their private OAS replacement self-tax in 2012, women age 30 would have had to make Registered Retirement Savings Plan (RRSP) deposits representing 1.44% of their 2012 incomes in order to accumulate savings of $27,398 by age 65 (the estimated amount they would save to replace their age 65/66 OAS). Men age 30 would only have had to make RRSP deposits representing 1.03% of their average incomes to reach the same target. These "private tax rate" gender gaps increase with age, more than doubling for women who were age 50 in 2012.

Because these "private" self-defined tax systems will be embedded in gendered market relations, these private OAS replacement tax rates will be allocated on the basis of *in*ability to pay, not on the basis of ability to pay. The greater the disparity between women's and men's incomes, the larger the percentage of annual income women will have to "tax" themselves to be able to replace their lost age 65/66 OAS benefits. Thus these private replacement taxes will be inequitable.

There are further negative effects for women. The annual costs of those self-imposed private taxes are likely to exceed the amounts of tax savings that many women will derive from detaxation between 2012 and 2023. So while men receive detaxation "manna" during their working lives, women face higher private replacement taxes to obtain the benefits they would previously have received in exchange for their earlier tax payments. This runs completely counter to the redistributive objectives of the OAS system.

This policy change keeps on giving more forms of "manna" to those with high incomes. The growing use of pension income splitting and Tax Free Savings Accounts (TFSAs) to expand the income ranges of eligibility for both GIS and OAS means that at the same time that women are disproportionately burdened by the OAS cuts, higher-income spouses or cohabitants will be able to use pension splitting and TFSAs to claim larger shares of OAS and GIS benefits. Both TFSAs and pension income splitting expand OAS/GIS clawback zones, create income-splitting opportunities that take advantage of ideologies of fiscal coverture, and benefit men more than women. The Chief Actuary for OAS has estimated that by 2023, when the OAS cuts become involuntary, the costs of government spending on just the GIS component of the OAS system will have already increased by some $4.2 billion because of TFSAs, an increase of 12%.[45] In 2012 alone, high-income spouses received an extra $249.4 million in OAS and $7.3 million in GIS due to pension income splitting, which artificially impoverishes high-income spouses to create eligibility for those benefits.[46]

45. Canada, Office of the Chief Actuary: Office of the Superintendent of Financial Institutions Canada, *Actuarial Report (9th) on the Old Age Security Program*, as at 31 December 2009 (Ottawa: Minister of Public Works and Government Services, 2011) at 10, 11, 84.
46. Lahey, *Gendered Budget*, *supra* note 31 at 81.

Detaxation does not operate in isolation from other policies or from economic realities. By its very nature, detaxation turns revenue systems upside down *and* inside out: It turns cuts to progressive tax rates into regressive tax benefits; it intensifies pre-existing regressivities; and it turns existing economic and social hierarchies into traps that grip ever more tightly as surrender of governmental fiscal space leaves markets with increased authority over income distribution and quality of life from the day individuals enter into market relations until their lives end.

II. TAX EXPENDITURES

Tax expenditures represent a second complex set of fiscal measures that deeply embed gender bias in the revenue and operating functions of governance. In 2010, they removed nearly as much potential revenue from the federal treasury as was actually collected: The combined total of all personal, corporate, and GST tax expenditures came to $172.0 billion in a year in which total federal revenues collected were only $191.5 billion.[47] These $172 billion represented 47% of potential revenue for the year, all of which was surrendered to the private sector through hundreds of tax exemptions, allowances, deductions, credits, deferrals, and special rates.

Like detaxation, the distribution of tax expenditures reflects gendered economic inequalities originally shaped by civil coverture and now replicated whenever these tax benefits are built into or made contingent upon existing allocations of capital, incomes, and caregiving. Despite the large amounts of potential revenue left in private hands as the result of tax expenditures, it is arithmetically impossible for tax expenditures as they are presently structured to help close the gender gap between men's 60% shares of after-tax incomes and women's 40% shares.

Like detaxation benefits, tax expenditures are distributed on an "upside down" basis; specific tax expenditures will provide larger financial benefits for taxpayers with high incomes than they will for those with low incomes. Some technical variations produce more extreme maldistributions than others. For example, tax credits produce the same dollar value of benefits for taxpayers at all income levels, but they do not benefit those with no incomes or too little income to take full advantage of them. Even fully refundable credits only reach those affected by the formal tax system, and they thus exclude many with status

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47. Canada, Department of Finance, *Tax Expenditures and Evaluations 2011* (Ottawa: Public Works Canada, 2012).

under the *Indian Act*[48] and those who have no contact with the formal tax system. Universal benefits are distributionally far more income and gender neutral; but, as pointed out above, even the distribution of benefits like OAS/GIS can be skewed by the operation of income tax expenditures like income splitting.

Given the lifelong gaps between women's and men's incomes, it is no surprise that men receive 62% of total deductions taken in calculating total income assessed, and that the rest of the total tax calculation process only shifts another 2% of total after-tax income from men to women. Table 5 shows women's total shares of tax expenditures in 2010.

TABLE 5: TAX FEDERAL TAX EXPENDITURES BY GENDER, 2010

Type of tax	Total amount of tax expenditures	Women's shares of tax expenditures
Personal income tax rate cuts	$128.6 billion	40%
Corporate income tax	$26.0 billion	30%
GST	$17.4 billion	38%
Total revenue losses	$172.0 billion	38%

SOURCE: Canada Revenue Agency, *Preliminary Statistics* (Ottawa: Canada Revenue Agency, 2012) Table 4.

A. IMPACT ON UNDERLYING GENDER STRUCTURES

The above gender shares of broad categories of tax expenditures reported in Table 5 do not fully reveal the expenditures' incentivizing effects. Providing a comprehensive picture of the actual gender impact of specific tax expenditures is quite complex because this analysis depends on identifying the policy purposes of each provision, the technical way in which it is structured, and the type of tax law in which it is located. However, it is useful to consider three groups of tax expenditures associated with three fundamental inputs into economic production: capital, paid work, and caregiving. Table 6 sets out the amounts of the largest tax expenditures associated with each of these basic economic components together with the gender shares received by women and men in 2012.[49]

48. RSC 1985, c I-5.

49. These results were simulated. See SPSD/M v 20 estimation, *supra* note 34.

TABLE 6: FEDERAL TAX EXPENDITURES: CAPITAL, CAREGIVING, AND EMPLOYMENT BY GENDER, 2012

Tax expenditures by subject matter	Total cost in foregone revenue	Men's shares	Women's shares
Capital:			
Dividend tax credit	$6.5 billion	71.2%	29.8%
Capital gains 50% exemption	$4.2 billion	78.2%	21.8%
Pension income splitting	$2.0 billion	220.6%	120.6%
Total	$12.7 billion	96.5%	3.5%
Caregiving:			
Canada child tax benefit	$9.2 billion	3.7%	96.2%
Dependent spouse credit	$1.7 billion	84.1%	15.9%
Transfer of other credits to spouse	$0.6 billion	84.0%	16.0%
Equivalent to married credit (single parent credit)	$0.6 billion	25.9%	74.1%
Dependent caregiver credit	$0.1 billion	60.6%	39.4%
Total	$12.2 billion	20.6%	79.4%
Employment:			
CPP/QPP contribution credit	$3.8 billion	60.2%	39.8%
Employment credit	$2.2 billion	55.4%	44.6%
EI contribution credit	$1.3 billion	58.3%	41.7%
Working income tax credit	$1.3 billion	47.4%	52.6%
Total	$8.6 billion	65.8%	34.2%
Total all categories	$ 33.5 billion	61%	39%

SOURCE: These results were simulated using SPSD/M v 20 estimation, *supra* note 34.

NOTE: Pension income splitting benefits are treated as additions to existing accumulations of personal wealth, even though those tax benefits are received annually along with annual pension benefits.

What is striking about these figures is that the total revenue foregone for just three of the largest tax subsidies to capital top the list with a total cost of $12.7 billion for 2012, and the top four subsidies for caregiving come close at a cost of $12.2 billion.[50] The gender disparities are also more pronounced in both those categories than in the third category, subsidies for employment.

These three categories of tax expenditures are merely suggestive of how underlying gender hierarchies continue to shape men's and women's relationships to basic factors of economic production, and are by no means comprehensive. Indeed, it could be argued that the employment subsidies listed here do not even form a legitimate independent category because each of those items ultimately benefits owners of capital who employ workers and who would otherwise perhaps have to find other ways to provide greater income, unemployment, and retirement security for workers, as well as higher wages at the bottom end and some compensation for employment-related expenses. That view suggests that nearly two-thirds of these large tax subsidies are all aimed at promoting capital formation, and with the exception of the Working Income Tax Benefit (WITB), the majority of those subsidies go to men, ranging from 220% of income splitting tax benefits to just 55% of employment tax credits.

The caregiving subsidies listed above do not reveal the whole structure of women's unpaid work lives, but they do reveal that Canadian governments are willing to use tax laws to reinforce women's responsibilities for caregiving as an essential input into the physical and social reproduction of human labour, regardless of whether women are single or coupled. Subsidies to private patriarchal relations are revealed in substantial subsidies to high-income spouses/partners for supporting an economically dependent spouse who will presumably care for the supporting spouse, other members of the household, and the home itself. Much smaller subsidies of the same type are also available to single parents who support economically dependent children. But the fact that single parenting is essentially a form of public patriarchal relations is revealed in both the very large subsidy to parents—$9.2 billion in 2012, the largest of all the subsidies in any category—and the very large allocation of this subsidy to women—96.2%.

The gender patterns in these tax expenditures suggest, then, that it is well worthwhile for the Canadian state to subsidize women's caregiving roles whether they are essentially performing them for the direct benefit of spouses/partners or whether they are doing so as a public service in exchange for the Canada Child

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50. The caregiving figure would be $14.9 billion if the Universal Child Care Benefit (UCCB), $2.7 billion for 2012, were included. Women received an estimated 80.1% of that direct expenditure in 2012.

Tax Benefit (CCTB) (and the Universal Child Care Benefit, UCCB). The fact that these large expenditures are aimed at supporting individual women who do care work in their own households (in addition to the UCCB), rather than providing universally accessible public care resources of all kinds, suggests that, at the very least, there is little concern that public subsidies for private caregiving activities inevitably hinder caregivers from devoting more time to the types of economic activities that would give them access to larger shares of capital and employment subsidies.

B. BARRIERS TO WOMEN'S ECONOMIC EQUALITY

In the aggregate, tax expenditures form a very durable system of subsidies that provide incentives to maintain gendered allocations of incomes, and, through their very number, help insulate those allocations from quick change. As can be seen from the lists of tax expenditures in Part III(A), above, not even the very large amount of revenue left in women's hands through the CCTB—$9.2 billion in 2010—can offset the even larger allocations of tax expenditures that go predominantly to men.

In short, no tax expenditures are large enough to close existing gender income gaps. Large subsidies for women's care relations ensure that women still perform substantial unpaid work in their homes. They also ensure that the very process of devoting substantial time to unpaid care work reduces the time caregivers—mainly women—have available for paid work. Thus, larger care subsidies will always tend to "crowd out" women's energies and time for paid work.[51] As women seek to gain equal access to capital incomes and employment incomes, the fact that leaving unpaid work behind them would cost their spouses/partners substantial tax benefits exerts pressure on women to treat paid work as a secondary responsibility.

Even if women can achieve parity with men in allocations of employment-related tax subsidies, parity in relation to subsidies for capital and corporate investments will be much more difficult to attain. Men receive 70% of creditable corporate dividends and 91% of reported capital gains exemptions. Each of these figures bespeaks high levels of male capital and corporate ownership. Even men's shares of those tax expenditures are not distributed equally among men. For example, taxpayers in the richest decile received 91% of all capital gains exemptions in 2012, and 82% of taxpayers in that decile were men. It will take a very long time for women to achieve equal shares of wealth at all income levels,

51. Decima Research, *National Profile of Family Caregivers in Canada–2002: Final Report* (Ottawa: Health Canada, 2002) at 6-7, 33-34.

and existing gender allocations of capital subsidies to men reinforce the barriers to that aspect of economic equality. The long history of civil coverture left women well behind men in terms of ownership and control of the means of economic production, as well as continuing to burden them with disproportionate responsibilities for social (re)production.

III. THE JOINT TAX/BENEFIT SYSTEM

Women's movement towards economic equality is further impeded by the large and growing use of joint tax and expenditure provisions or fiscal coverture. Unlike civil coverture, the legacy of which remains most visible in lopsided gender shares of capital, paid work, and unpaid work, fiscal coverture has never been abolished, and, in Canada, is used extensively in tax and expenditure provisions of all types. Indeed, in the last quarter century, as women's equality rights have been increasingly recognized in constitutional and international law, the use of policies expressing the values of fiscal coverture has been increasing at an accelerating pace.

On paper, the federal *Income Tax Act*[52] (*ITA*) makes it sound as if each individual is a taxpayer. However, there has always been strong pressure on the government to adopt the married couple—and more recently, unmarried common law couples of both opposite and same sexes—as tax and benefit units. The government has not done this by passing laws that redefine the legal tax unit as the couple or by enacting full joint filing of all taxable incomes, as in the United States, but by slowly and steadily inserting growing numbers of "joint" tax benefit, tax penalty, program benefit, and benefit clawback laws into federal legislation. The provinces and territories have tended to follow the federal lead, which means that provincial and territorial governments have adopted similar types of laws.

As a result, Canadian tax law is riddled with well over a hundred different tax provisions that treat spouses or common law couples as presumptively interdependent and financially integrated tax units. These provisions are neither consistent in application nor fair in impact. For example, taxpayers have the right to transfer taxable dividends to a supporting spouse to optimize the tax benefits of the dependant spouse income tax credit, but transferring the same taxable dividends to a low-income spouse could disqualify that spouse/partner from receiving the WITB. At the same time, the recent enactment of pension income

52. RSC 1985, c 1.

splitting laws has made it possible for high-income spouses/partners to obtain not just additional OAS/GIS pensions and benefits, but also additional refundable GST credits, UCCB, and other low-income supports when their split incomes are treated as their real incomes for the purposes of qualifying for such measures.

When joint tax/benefit provisions come under discussion, political positions are highly polarized and tend to focus on one specific measure at a time, such as the dependant spouse credit, the Canada Child Tax Benefit clawback, or pension income splitting. In these discussions, proponents rely on the assumed economic unity of adult couples to justify these provisions, while opponents emphasize how joint measures undercut women's economic autonomy by subsidizing women's unpaid work in the home and creating new fiscal barriers to women's paid work. Advocates of joint tax and benefit provisions essentially argue for the legitimacy of fiscal coverture, while those seeking individual taxation and benefit systems insist that joint fiscal instruments are inconsistent with democratic principles of sex equality, equality of opportunity, and equity.[53]

Joint fiscal measures are invariably treated as creating either/or choices between competing lifestyles. The face-off is usually framed as contrasting the income tax load on single-income couples who can or would like to live on one high income and that of two-income couples, most of which cannot take advantage of joint fiscal measures by virtue of status or types and amounts of incomes.[54] Single individuals are virtually erased from the discussion because they are presumed to fall outside the scope of policy concerns, such as reproductive rates, "choice" for couples as to care arrangements (in home or out of home and publicly or privately funded), or the costs of raising children. Low-income individuals and couples are often left out of such discussions completely, either because it is assumed that joint penalty provisions that reduce low-income supports due to partner incomes are justified (fiscal coverture) or because it is understood that low-income people will have too little income to benefit from joint tax measures anyway.

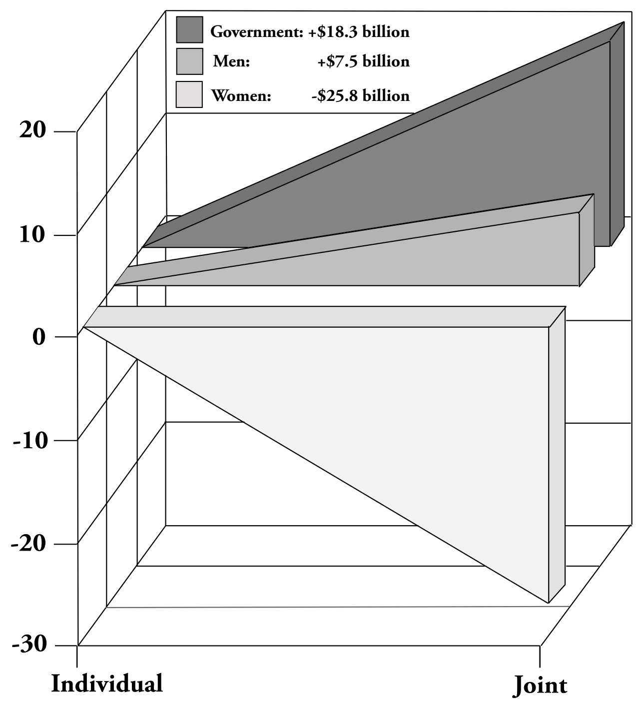
In these debates, governments are usually assumed to be neutral arbiters of equity and the common good. But in fact, as Canadian joint fiscal measures are structured, their most important function is as powerful cost-control tools designed to shift large amounts of economic power from low- and moderate-income women to governments in the name of "target efficiency," while at

53. Lahey, *Benefit/Penalty Unit*, *supra* note 8 at 39-72.
54. See generally Richard Krever & John Head, *Tax Units and the Tax Rate Scale* (Melbourne: Australian Tax Research Foundation, 1996).

the same time offering large tax subsidies to high-income supporting spouses/partners to create the illusion that joint fiscal policies are a boon to all couples.

This can be seen clearly when the annual revenues and outlays from Canada's joint fiscal system are conceptualized as a *three*-way flow involving two spouses/partners and governments that have implemented joint fiscal measures. In Figure 1, tax effects and benefit clawback/extension effects have been aggregated across all policy categories and across all levels of government to demonstrate what happens in Canada when federal and provincial governments get between spouses and partners.

FIGURE 1: JOINT TAX/BENEFIT GAINS AND LOSSES, 2012 (BILLION DOLLARS)



Clearly, women lose a great deal from Canada's joint fiscal system. As shown in Table 7, in 2012, joint tax and spending provisions at all levels of government cost married/cohabiting women a total of $25.8 billion in consumable incomes (including after GST and other commodity taxes are paid on consumption) or an average of $3,182 per woman affected. What is striking about these figures, however, is that governments benefit far more than spouses/cohabitants do from these massive joint tax-transfer losses. Governments received $18.3 billion of women's total losses and only passed $7.5 billion of women's total losses on to men, at an average of $920 per man.

TABLE 7: JOINT TAX/BENEFIT GAINS AND LOSSES AMONG WOMEN, MEN, AND GOVERNMENTS, 2012

Item	**Men**	**Women**	**Net effect on total federal and provincial fiscal balances**
Taxes payable	($8.4 billion)	$2.9 billion	($5.5 billion)
Transfer payments	($0.9 billion)	($22.9 billion)	$23.8 billion
Net fiscal balances	$7.5 billion	($25.8 billion)	$18.3 billion

SOURCE: All the figures cited in this discussion as well as the three-way allocations of costs and benefits of joint fiscal instruments were estimated using SPSD/M v 20. See *supra* note 34.

Looking at the after-tax effects of Canada's total joint fiscal system in this way reveals two important facts. First, the biggest "winners" in this three-way relationship will always be the governments that operate these systems. That is because the main justification in Canada for using joint fiscal instruments—regardless of whether they are set up in the form of tax expenditures and direct benefits, or as tax penalties and benefit clawbacks—is "target efficiency" in providing income support only to those who really "need" it.

Second, men in general, and particularly those with low and moderate incomes, also lose a great deal from this set of "targeted" low-income supports. Because the fiction of fiscal coverture still casts men in the role of main breadwinner, the presence of a conjugal partner is considered to be sufficient grounds for using income-tested benefit caps to withdraw government benefits from those receiving low-income transfers. In modern gender- and sexuality-neutral terms, fiscal coverture ensures that when individuals with incomes live with spouses/cohabitants who would otherwise qualify for low-income supports, they are deemed to share their incomes in ways that justify replacing government benefits with the second adult's private earnings. Through this mechanism, couples of all types are being forced to adhere to the male breadwinner model simply by assuming that all lower-income individuals—who are predominantly women—are economically dependent on their partners, whether they have chosen that financial arrangement or not. The CCTB, which is an income-tested refundable tax credit for lower income couples and women, does account for roughly a third of the $22.9 billion that women lost through this joint fiscal system in 2012, but there are many other provisions in every jurisdiction in Canada that replicate this result every year. These income-targeted low-income supports ensure that the presumptions and expectations of fiscal coverture continue to shape the economic lives of both women and men in the low- and modest-income levels, regardless of what they might choose for themselves.

At the higher income ranges, however, joint tax-transfer rules produce the opposite result. When two spouses/cohabitants are in different income tax brackets, joint tax provisions like pension income splitting not only transfer tax liability to the lower income partner but also can actually increase the higher-income partner's eligibility for low-income reliefs. This occurs because income splitting artificially "impoverishes" the partner with the higher income, as discussed earlier in this article.

Governments may find it convenient to make the case for joint tax and benefit laws in vague terms of "helping single-income parents" or "creating choice," but, in fact, joint fiscal laws increase "choices"—and disposable incomes—only for those who actually start out with the very highest incomes. Everyone else receives less choice—and less money—as a result of Canada's many joint tax and benefit provisions. Table 8 demonstrates how eliminating all joint tax and transfer measures (fiscally "unmarrying" all spouses/cohabitants) would change disposable incomes for women as compared with men. The positive amounts represent increases in disposable incomes, and the negative amounts indicate reductions in disposable incomes.

As Table 8 demonstrates, women lost an average of $3,182 per year (2012) in disposable income as the result of the many joint tax and transfer provisions in federal and provincial systems.[55] These losses are largest at the lowest income levels, which is why these losses so quickly amount to a total of nearly $26 billion net per year for women in the aggregate (2012).

55. Table 8 reports net effects of all joint tax and expenditure on average disposable incomes (before payment of consumption or commodity taxes) instead of net effects on consumable incomes (after payment of commodity taxes). This was done for two reasons: shifting disposable income from higher-income individuals to lower-income individuals will not necessarily shift higher-income consumption practices to those with lower incomes, and there is some suggestion that women's consumption choices are different than men's, particularly if there are children in the household. See *e.g.* Shelley A Phipps & Peter S Burton, "What's Mine is Yours? The Influence of Male and Female Incomes on Patterns of Household Expenditure" (1998) 65:260 Economica 599.

TABLE 8: EFFECT OF FISCAL INDIVIDUALIZATION ON DISPOSABLE INCOMES, BY SEX AND DECILE, 2012

Number of individuals			Change in total disposable income ($ million)			Change in average disposable income ($)		
Decile	**Male**	**Female**	**Male**	**Female**	**Both**	**Male**	**Female**	**Both**
1	523	1263	75	3774	3850	147	2989	2168
2	478	1298	439	5766	6206	919	4441	3493
3	660	1119	784	4034	4819	1189	3606	2609
4	740	1036	101	3723	3622	137	3594	2040
5	858	920	552	3400	2848	644	3696	1602
6	975	802	861	2752	1892	883	3431	1065
7	1007	767	1377	1874	497	1368	2443	280
8	1120	660	1925	1344	570	1719	2052	320
9	1178	598	2004	1185	819	1701	1980	461
10	1384	394	2683	318	2364	1938	808	1330
Total	8923	8857	8205	28182	19978	920	3182	1124

SOURCE: SPSD/M v 20 estimate, *supra* note 34.

NOTE: Totals may not add due to rounding.

If all joint provisions were repealed, then women in the lowest income deciles would have $3,000 to $4,440 more in annual after-tax disposable incomes, and even women in the top income deciles would see nearly $1,000 to $2,000 net increases. Although there are far fewer men in low-income deciles, these men would also see increases in disposable incomes under a purely individualized tax system. However, men in middle- and high-income deciles would experience a reduction in disposable incomes as they lose the many benefits of the very generous joint tax and benefit rules that favour them.

It is also important to note that, overall, complete individualization of Canada's total tax-transfer system would also shift disposable incomes from higher-income couples to lower-income couples. Even though joint low-income penalties (like the CCTB clawback) predominantly affect women, they also affect the total net incomes received by low- and middle-income couples. Joint fiscal measures not only transfer after-tax incomes from women to men at all income levels, but also transfer after-tax incomes from low-income couples to high-income individuals, who are predominantly men.

IV. BETTER TAX POLICIES FOR TOMORROW?

For much of human history, women have been treated as means of (re)production and social provisioning rather than as individuals who are and should be equal owners and producers of wealth and wellbeing. As the doctrine of coverture has slowly given way to the extension of growing numbers of civil and political rights to women since the 1920s, however, tax and spending laws have increasingly reflected the assumptions and ideologies of coverture in fiscal forms during that same period of time. Nearly a century ago, early couple-based provisions introduced into the *Income War Tax Act* built women's economic dependency into the allocation of tax liability by providing tax bonuses for male breadwinners and tax penalties for dual-earner couples. After a short suspension of this mechanism during WWII, those provisions were reinstated and have increased in numbers ever since. There are now well over a hundred joint tax and benefit measures in the *ITA* alone, each of which ties women's financial status to that of presumptively supporting and mainly male partners. Since 2006, accelerating detaxation and the expanded use of capital- and business-friendly tax expenditures have privatized foregone tax revenues or fiscal space to an unprecedented extent, and, in conjunction with austerity and deficit-reduction budget cuts to compensate for lost revenues, the total tax and expenditure system has pushed women further into already unequal economic gender relations in both the private and public spheres.

All three trends—increasing use of detaxation, tax expenditures, and joint fiscal measures to privatize fiscal space—create hidden barriers to women's slow movement towards economic equality. Women received only 37% of the 2012 detaxation tax cuts, and this gender gap will operate on a continuing basis to incrementally increase men's after-tax incomes relative to women's in every year these tax cuts remain in effect. Gender gaps in overall tax expenditures are only slightly smaller: in 2010, women received only 38% of total tax expenditures, which again incrementally increases men's after-tax incomes relative to women's on a continuing basis. With large maldistributions like this built into the largest revenue laws, there is simply no way women can hope to ever get to 50% of after-tax incomes.

In contrast with detaxation and tax expenditures, the after-tax costs of joint tax and benefit items are not just gender unequal but actively penalize women as a class while simultaneously benefitting men as a class. In 2012, this special set of tax and expenditure provisions removed $25.8 billion from married/cohabiting women's consumable incomes at the same time that it placed an additional $7.5

billion in after-tax benefits in men's hands. The difference—$18.3 billion—was left in government coffers, further increasing governmental capacities to continue providing gender-unbalanced expenditures and tax breaks that statistically go disproportionately to male taxpayers. Between the incentive/penalty effects of such joint fiscal mechanisms and the sheer quantity of women's lost after-tax incomes, joint tax and spending items thus extracted $25.8 billion in after-tax incomes from cohabiting or married women and divided it between presumed male breadwinners and governments themselves. It is worth noting that these joint tax and benefit provisions do not benefit all men equally: Women at all income levels lose after-tax incomes to joint fiscal measures, but so do low- and middle-income men.

In short, joint fiscal measures accelerate the concentration of after-tax incomes and wealth in the hands of those with the very highest incomes, who are disproportionately males. Unfortunately, the federal government has not yet grasped the importance of reshaping tax and spending policies around core principles of gender equality. Instead, it has further pursued the use of joint fiscal measures and moved ahead to introduce substantial new joint tax measures in the form of parental income splitting tax credits effective in 2014. This new joint measure, now called the "Family Tax Cut Credit," will shift at least another $2 billion in tax benefits to supporting spouses or cohabitants each year. This shift in turn will increase the total cost to women of joint fiscal instruments even more each year, as depicted in Table 9.

There are many better alternatives: Canadian governments can follow the lead of countries that have re-examined the relationships among fiscal capacity, government programs, and human welfare. Restoring fiscal capacity, establishing direct public care resources and public services to replace tax expenditures, and repealing joint fiscal laws can reverse the processes outlined in this article, and can set Canadians on a course to a far better tomorrow. Canadian governments have already proven in the past that they can generate adequate revenues more equitably and can prioritize the wellbeing of all people, not just those with high incomes and great wealth. What governments must do differently going forward, however, is ensure that all fiscal policy analysis begins by examining how each new and old policy affects women and treat women's economic equality as absolutely essential to getting to those better tomorrows as soon as possible.

TABLE 9: EFFECT OF FAMILY INCOME SPLITTING BY FAMILY TYPE, GENDER, AND DECILE, CANADA, 2014

Range of total family incomes in each decile	$ of $2 bill. to single parent families	$ of $2 billion to 1 two-parent families	% of $2 bill. in each decile	% of $2 bill. to women main earners in each decile	% of $2 bill. to men main earners in each decile
Up to $19,200	$0	$0 million	0%	0%	0%
$19,201 – $27,400	$0	$0 million	0%	0%	0%
$27,401 – $37,700	$0	$1 million	0.1%	0%	0.1%
$37,701 – $47,700	$0	$18 million	0.9%	0.2%	0.7%
$47,701 – $59,600	$0	$64 million	3.3%	0.7%	2.6%
$59,601 – $74,100	$0	$147 million	7.6%	0.8%	6.8%
$74,101 – $92,200	$0	$291 million	15.0%	1.6%	13.4%
$92,201–$116,200	$0	$475 million	24.6%	4.0%	20.6%
$116,201–$157,400	$0	$435 million	22.5%	3.4%	19.1%
$157,401 and up	$0	$502 million	26.0%	4.0%	22.0%

SOURCE: SPSD/M v 20 estimate, *supra* note 34.

NOTE: Deciles and results have been rounded.