Squandering Our Inheritance: Re-Forming the Canadian Welfare State in the 1990s

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SQUANDERING OUR INHERITANCE:  
RE-FORMING THE CANADIAN WELFARE STATE  
IN THE 1990s  
RANDBLL ELLSWORTH*

ABSTRACT  
Cet article étudie l'évolution des processus distincts de réformes dans les  
domaines de l'assurance-chômage, du Régime de pensions du Canada, des  
prestations aux personnes âgées de la sécurité de la vieillesse, des indemnités  
aux travailleurs accidentés et de l'aide social. Il étudie également les  
changements au système de paiements de transfert entre les gouvernements  
fédéral et provincial de même que les gouvernements provincial et municipaux.  
Après avoir examiné la situation actuelle des programmes sociaux et des  
ententes fiscales, l'article traite des thèmes communs qui ont ressorti des  
processus de réforme et de leurs répercussions sur l'État providence canadien.

"Some are lucky, some are unlucky. That's life, I think you have to keep  
trying."1  
Jean Chretien

"... it's winners and losers and don't get caught on the wrong side of that  
line."2  
Bruce Springsteen

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Clinic Resource Office of the Ontario Legal Aid Plan (CRO). The CRO provides legal  
research and resource and training materials to practitioners in Ontario community  
legal clinics. Any opinions expressed herein are those of the author and not necessar-  
ily those of the Ontario Legal Aid Plan.

1. E. Greenspon, "PM challenged on jobs, Quebec" The Globe and Mail (11 December,  
1996) A1 at A4. The Prime Minister was responding to a question from a member of  
the audience in CBC’s Electronic Town Hall. The questioner, who had been unable to  
find full time employment, had asked when the federal government was going to create  
enough jobs. The Prime Minister suggested that, if the questioner could not find work  
where she lived, then she should think about moving.

2. From the song “Atlantic City” on the album Nebraska (1982).
A. INTRODUCTION
Without a doubt, these have been "interesting" times for those engaged in the social policy field. The social safety net in this country has been and is being re-examined strand by strand. Strangely, there appears to be little recognition that it is the strands together which form the net. Each strand is allegedly being made more efficient, more affordable and more cost-effective, with little consideration to the final net which the strands will form when they are finally rewoven.

Over the last three years, in Ontario alone, the following programs and legislation have been subject to review and reform: unemployment insurance, the Canada Pension Plan, old age security payments to seniors, workers' compensation and social assistance. Further, the system of transfer payments between the federal government and the provincial government and between the provincial government and its municipalities for the purpose of funding social services and social assistance has been greatly altered. It is difficult to imagine any portion of the "welfare state" which has not been touched by some aspect of these reforms.

Fortunately (or unfortunately, depending upon your outlook), the process is not over. For various reasons, and from various perspectives, it may be useful and necessary to review these different programs, which have evolved over several decades in an independent, haphazard way. What seems to make little sense is that they are being reviewed independently and that the probable result will continue to be independent programs. There needs to be greater recognition of the fact that these programs are financially and administratively interdependent and are meant to protect against or ameliorate certain conditions which are shared by many of the people who rely upon the individual programs.

The purpose of this paper is to briefly examine the evolution of these separate reform processes, to summarize the present state of these processes and, most importantly, to analyze the similarities in the issues which are dealt with in these processes and their implications for the welfare state in Canada.

B. OVERVIEW OF THE RE-FORMING
This overview is presented in a chronological manner rather than on a program by program basis. It is not an attempt at any comprehensive overview or critique of any of the reviews of the particular programs, but rather it is an attempt to convey the sheer magnitude and diversity of the reviews as they unfolded.

The starting date for this chronology is October of 1994. It is then that the federal government finally introduced its long awaited (and long delayed) discussion
paper Agenda: Jobs and Growth – Improving Social Security in Canada,\textsuperscript{3} which set out options for restructuring federal social security programs and spending. While this date might appear to be arbitrary, it is arguable that the prelude to and release of the Green Paper placed social policy issues squarely in the forefront of public consciousness.

This is not to suggest that events in the field of social policy prior to October 1994 were of little import. In fact some events prior to this date must be flagged in order to place future developments in context. In 1990 the Progressive Conservative federal government decided, unilaterally, to “cap” payments under the Canada Assistance Plan\textsuperscript{4} to Ontario, British Columbia and Alberta, which placed increasing burdens on the budgets of the affected provinces, due to the rise in social assistance costs.\textsuperscript{5} A significant federal/provincial initiative was the “social and economic union” clause in the Charlottetown Accord.\textsuperscript{6} The “cap on CAP” and the demise of the Charlottetown Accord probably marked the beginning of the end of the era of cooperative federalism in the area of social policy.

Prior changes of significance in the area of unemployment insurance included the federal government’s withdrawal as a contributor to the UI fund, increases in the entrance requirements for UI eligibility, a reduction in the number of weeks for which benefits were payable, reductions in the benefit rate payable and an “enhanced” rate of benefits for claimants with low earnings.\textsuperscript{7}

\begin{enumerate}
\item (Human Resources Development Canada) (Supply and Services Canada) October, 1994 [hereinafter the Green Paper]. There were also a series of nine supplementary papers released which provided more detailed information about the current system and the options outlined in the discussion paper.
\item R.S.C. 1985, c. C-1 [Hereinafter CAP]. CAP provided for 50-50 cost sharing of social assistance costs between the provinces and the federal government. The “cap” on the transfers to these provinces was 5% per year.
\item For a discussion of these implications, see R. Ellsworth & I. Morrison, “Poverty Law in Ontario: The Year in Review” (1991), 7 J.L. & Social Pol’y 1 at 13-17 [hereinafter Review 1991].
\item The text of the Accord provided, in part:

\begin{quote}
The policy objectives set out in the provision on social union should include but not be limited to:

providing adequate social services and benefits to ensure that all individuals resident in Canada have reasonable access to housing, food and other basic necessities...
\end{quote}

This text is taken from the August 28 revised draft of the Charlottetown agreement, as reproduced in the Globe and Mail (1 September, 1992), A1, A8.
\item For a discussion of the implications of these changes see Review 1991 at 37, R. Ells-
In the area of workers' compensation in Ontario, the changes were no less wide ranging. The beginning of the decade brought some of the most significant changes to the "historic compromise" which was at the heart of the workers' compensation system. Bill 162 eliminated the "pension for life" for workers who suffered injuries in the workplace and replaced it with a dual award, wage loss system, in which injured workers received a lump sum award as compensation for the injury and were eligible for further benefits if they suffered a wage loss as a result of the injury. In May of 1994 the NDP provincial government introduced Bill 165. Bill 165 introduced a "purpose" clause into the Workers' Compensation Act which required the Workers' Compensation Board to act in a "financially responsible and accountable manner". Further, Bill 165 removed the automatic, full inflation protection for injured workers' benefits under the Act and replaced it with a partial indexation formula. The bill also made provision for a special supplement to be paid to the poorest of the permanently disabled workers.

It would be tedious and overwhelming to discuss the numerous legislative changes to the social assistance system in Ontario since the start of the decade. Much of the eligibility and entitlement criteria are contained in the regulations made under the two governing pieces of legislation. There have been 35 major or minor changes to the regulations under the Family Benefits Act and 40 such changes to the regulations under the General Welfare Assistance Act. During

8. The principle underlying workers' compensation legislation was that workers' gave up their right to sue their employers with respect to workplace accidents in return for a no-fault compensation system.


12. Supra, note 10. This is contained in section 147(14) of the present Act. The supplement was aimed at workers who had suffered a permanent disablement prior to 1990 but had only received a small pension as compensation for that injury. Many of the recipients of this supplement were also in receipt of social assistance.


the same time period there have also been several law reform proposals for the social assistance system, including *Back on Track* and *Time for Action* as well as *Turning Point*, the NDP provincial government’s white paper on welfare reform.

Finally, the beginning of the decade saw the federal government change the way in which *Old Age Security Act* benefits were paid. The technique used for this was the “clawback”: high income seniors continued to receive the “universal” OAS payment, but were required to pay some (or all) of that amount back at income tax time, if their income from all sources exceeded a certain ceiling.

All of which brings us back to October of 1994. The *Green Paper* contained detailed options for reform of the Unemployment Insurance system and for CAP. In November of 1994, the Ontario government announced a Royal Commission into the workers’ compensation system, with a mandate to make recommendations on reforming the system. In February of 1995 Finance Minister Paul Martin delivered the federal budget which outlined a pending reform of the OAS/GIS regime, announced a forthcoming review of the CPP and proposed the Canada Social Transfer, a new arrangement between the provinces and the federal government for sharing the cost of social programs.

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18. See National Council of Welfare, *A Pension Primer*, (Minister of Supply and Services; Summer 1996) at 4. High income seniors were required to pay back 15 cents of every dollar of net income above this ceiling. In 1995 that ceiling was $53,215.

19. *Supra.*, note 3 at 42-52 (for UI) and at 72-79 (for CAP).

20. “Labour Minister Launches Royal Commission on Workers’ Compensation”, Ministry of Labour News Release (November, 1994). The Royal Commission was charged with examining the financial viability of the system, benefit and entitlement issues, the scope of coverage and the relationship between workers’ compensation and other income replacement schemes and to explore other compensation models for workplace injuries.

21. The Honourable Paul Martin, *Budget Speech*, (February 27, 1995). The Canada Social Transfer is discussed at 17-19. The review of the CPP and changes to the OAS/GIS
By June of 1995, the legislative provisions establishing the Canada Health and Social Transfer (CHST) had received Royal Assent.22

Also in June of 1995, a new Conservative government came to power in Ontario, with a decidedly different philosophy on social policy than its NDP predecessor. In July of 1995, this new provincial government cancelled the Royal Commission on workers' compensation and announced its own review of the system, to be conducted by a minister of the provincial cabinet.23

In August of 1995 the provinces established the Ministerial Council on Social Policy Reform and Renewal, which was created to present a united front on the part of the provinces for dealing with Ottawa on social policy issues.24 In its September Throne speech, the Ontario government outlined its plans for “workfare”.25 In October, provincial regulations reducing the level of welfare assistance in Ontario by 22% came into effect and there were indications that the province was intending to follow through on its campaign pledge to create a separate income support program for the disabled and the elderly.26

In November of 1995 the B.C. government announced that it would impose a three-month residency requirement for the purposes of welfare eligibility in the province, in contravention of the terms of CAP.27 In December of 1995 the Ministerial Council on Social Policy Reform and Renewal released its preliminary report to the provincial premiers (although not to the public), which

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regime were discussed at 20-21. One reform that Martin did announce was another change to the payment of OAS benefits. Commencing in July, 1996 the benefits would be calculated and paid with the “clawback” amounts included, based upon the person’s previous year’s tax return.


23. “Ontario to Review workers’ compensation” The Globe and Mail (28 July, 1995) B8. The review was to be conducted by Cam Jackson, Minister without Portfolio responsible for WCB.


26. Ontario Regulation 385/95, effective October 1, 1995, implemented the social assistance rate cut. With respect to this new income support program see Ontario, Legislative Assembly, Official Reports of Debates (Hansard), (10 October, 1995) at 172-174.

27. A residency requirement was prohibited by section 6(2)(d) of CAP. A residency requirement was also prohibited by the terms of the CHST; see the discussion below under Fiscal Arrangements.
contained "a statement of principles to guide social policy reform" and "a framework and agenda for change and renewal". Also in December, the federal government introduced the new *Employment Insurance Act*, which was to replace the *Unemployment Insurance Act*.29

January of 1996 saw the release of the Ontario government's discussion paper on workers' compensation reform, with a concomitant consultation process.30 In February, the federal, provincial and territorial governments released the discussion paper on the CPP also complete with consultation process.31 The federal government finally outlined its proposal for repealing the OAS/GIS retirement pension scheme and replacing it with the "seniors' benefit" in March.32 On April 1, 1996, CAP was effectively repealed and the Canada Health and Social Transfer became operational.33

In June of 1996 the *Employment Insurance Act* came into force. As well, the report on the consultations on the *CPP Paper* was released.34 The federal government also announced the creation of a task force to examine issues specifically related to people with disabilities.35 The Ontario government released its report on the consultations on the workers' compensation discussion paper.36 Finally, at a federal/provincial first ministers' conference where the


29. *Employment Insurance Act*, S.C. 1996, c. 23 [hereinafter the EIA]. The EIA was initially introduced in December 1995. However, Parliament was prorogued and the Bill died. When Parliament reconvened, the Bill was reintroduced in substantially the same form. It received Royal Assent in June of 1996.


33. *Supra.*, note 22.


35. E. Greenspon, "Tax deal studied to aid disabled", *The Globe and Mail* (6 June, 1996) A1. The task force was to look at the federal role in direct programs for disabled Canadians and financial support for this community. Included in this was an analysis of tax policy and how it impacts upon the disabled.

36. The Honourable Cam Jackson, Minister without Portfolio Responsible for WCB
Ministerial Council Report (1995) was presented, a national child-benefit scheme was one of the focal points for the discussion of social policy issues.37 In August of 1996, on the eve of the Premiers' conference in Alberta, the Ontario government released a "working paper" which posited the complete transfer of responsibility for the design and delivery of health, welfare and education to the provinces.38 While the "working paper" served as a backdrop and a counterpoint to the Premiers conference, the Premiers released their own "consensus" on social policy reform, which emphasized the continued leadership of the provinces on social policy, accepted that the integration of income support programs for children and the disabled were of the highest priority and recommended the creation of the Federal/Provincial/Territorial Council on Social Policy Renewal (with the initial focus of the provincial/territorial designates to that Council being the development of "mechanisms and processes to develop and promote adherence to national principles and standards").39 In September amendments to the regulations under the GWA allowed for the institution of workfare in Ontario, and the first workfare placements began.40 In October, the Ontario government began "consultations" on its new Guaranteed Support Plan, which was to cover the disabled and elderly who were then covered by the social assistance legislation. As well, the federal task force which was studying disability issues released its report, calling on the federal government to institute new programs and tax credits for the disabled, which would increase the government's expenditures by $100 million annually.41 Finally,

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38. T. Courchene, ACCESS: A Convention on the Canadian Economic and Social Systems, (August, 1996). The working paper was released by the Ministry of Intergovernmental Affairs of the Government of Ontario, although the paper states that the views are those of Professor Courchene. It is, of course, difficult to accept that the Ontario government would release the paper if it did not accept some of the analysis and solutions set out in the paper. It is also difficult to believe that the Ontario government would have released the paper at the time that it did unless it was interested in having the contents of the paper influence the Premiers' conference.


40. O. Reg. 383/96, effective September 1, 1996.

41. Federal Task Force on Disability Issues, Equal Citizenship for Canadians with Disabil-
federal and provincial finance ministers met in October to discuss the options for reforming the CPP, but reached no consensus.42

After a meeting in November, the Federal/Provincial/Territorial Council on Social Policy Renewal announced that it had agreed to examine options for the national child benefit programs (which would involve some combination of the existing federal child tax benefit and provincial welfare payments for children) and that it hoped to have a program proposal for approval by January 1997.43

In Ontario, the provincial government introduced entirely new workers' compensation legislation, which was to provide "a balanced approach to reform by preserving fair and secure benefits for injured workers while at the same time restoring the financial viability of the Workers' Compensation Board".44

In December, the federal government reached agreements with the provinces of Alberta and New Brunswick respectively, in which those provinces agreed to provide job training and other employment services. In exchange for assuming these responsibilities, the federal government would provide each of the provinces a payment out of the Employment Insurance fund.45 Other provinces were reported to be close to reaching similar agreements with the federal government. Ontario, however, did not intend to enter into such an agreement unless the federal government offered more money.46

In January of 1997 the Ontario government announced a massive restructuring of the funding arrangements for social services between the provincial government and Ontario municipalities. Most significantly, the province and municipalities were now to share the cost of funding social assistance on a 50-50 basis, a change from the previous 80% provincial-20% municipal arrangement. The

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44. Ontario, Legislative Assembly, Official Reports of Debates (Hansard), (26 November, 1996) at 5338; speech by Elizabeth Witmer, Minister of Labour. The new bill was entitled the Workers' Compensation Reform Act, 1996 (Bill 99) [hereinafter Bill 99].
45. J. Tibbits, "N.B. agrees to shoulder load on services for unemployed", The Globe and Mail (14 December, 1996) A4 and B. Laghi, "Alberta vows UI savings in job-training", The Globe and Mail (7 December, 1996) A4. Under the terms of the agreement with Alberta, the Alberta government agreed that at least 65 per cent of the people served would be current UI recipients (with the rest presumably being welfare recipients) and that the government would find jobs for at least 15,000 claimants. The Alberta government could not impose a residency requirement for using the program.
46. "N.B. agrees to shoulder load on services for unemployed", ibid.
province also pledged to create a special reserve fund, which would be available to municipalities to defray any unexpected increase in social assistance costs.\textsuperscript{47} Also in January, four federal ministers responded to many of the recommendations contained in the federal task force report on disability issues, although the response seemed to be a simple reaffirmation of the status quo.\textsuperscript{48} Finally, the Federal/Provincial/Territorial Council on Social Policy Renewal was reported to have reached an agreement on a national child benefit program which would consist of an enriched child tax benefit and increased spending by the provinces on social services directed specifically at children (such as day care, nutrition programs, school lunches, etc.).\textsuperscript{49}

In February of 1997, the last month of this chronological outline, the federal, provincial and territorial finance ministers reached an agreement on reforming the CPP.\textsuperscript{50} This agreement appeared to have been made possible because the Ontario and federal governments reached an understanding, in which the federal government would cap or reduce EI premiums in exchange for Ontario's support for the proposed changes to the CPP.\textsuperscript{51} February of 1997 was also the month in which the federal government released its budget. That budget contained the outline of the new National Child Benefit System\textsuperscript{52} as well as provisions which responded to some of the concerns raised by the federal task force on disability issues.\textsuperscript{53}

\begin{itemize}
\item \textsuperscript{47} M. Mittelstaedt & J. Rusk, “Municipalities facing major changes to social spending”, \textit{The Globe and Mail} (14 January, 1997) A3.
\item \textsuperscript{49} G. Abbate & C. McInnes, “Provinces back B.C. child plan”, \textit{The Globe and Mail} (29 January, 1997) A1. The plan was dependent on a sufficient infusion of cash into the child tax benefit by the federal government. The amount of money Ottawa was prepared to spend was to be announced in the federal budget in February 1997. The increased spending by the provinces would actually be a redirection of monies already spent on children through the social assistance system.
\item \textsuperscript{50} \textit{Statement by the Honourable Paul Martin, Minister of Finance to the House of Commons} (14 February, 1997).
\item \textsuperscript{51} E. Greenspon, “Martin strikes CPP deal” \textit{The Globe and Mail} (14 February, 1997) A1.
\item \textsuperscript{52} Department of Finance, \textit{Building the Future for Canadians: Budget 1997 – Working Together Towards a National Child Benefit System}, (Her Majesty the Queen in Right of Canada, 1997) [hereinafter \textit{Working Together}]. This proposal will be discussed in more detail below.
\item \textsuperscript{53} Department of Finance, \textit{Building the Future for Canadians: Budget 1997 – Helping Canadians with Disabilities}, (Her Majesty the Queen in Right of Canada; February, 1997). These measures included the broadening of the medical expense tax credit, the creation of a refundable medical expense credit and the creation of an Opportunities Fund (which was to help develop strategies to reduce barriers to participation and aid
C. A SNAPSHOT OF SOCIAL PROGRAMS AND FISCAL ARRANGEMENTS – CIRCA MARCH 1997

At the time of writing, the social policy landscape is in some combination of array and disarray. What follows is a general summation of the situation at this time.

1. Social Programs

(a) Employment Insurance

Maximum benefits available under the new Employment Insurance Act are lower and are payable for a shorter period of time. Further, benefits received will be "clawed back" at income tax time if the recipient's annual income (as defined) exceeds $48,750 a year. People who draw on EI repeatedly will see the level of their benefits reduced even further. However, low income families will receive a higher level of benefits than other claimants, and the level of those benefits will actually increase over the next couple of years. Finally, "employment benefits", such as wage subsidies, earnings supplements and assistance for self-employment, are available under the Employment Insurance Act.

(b) Canada Pension Plan

Under the terms of the agreement reached by the federal/provincial/territorial finance ministers retirement, survivor's and disability benefits payable to any future recipients will be lower. Further, CPP disability recipients who have

54. *EIA*, sections 10(8)(c) and 17. The maximum benefit rate is $413 and will remain at that level until 2001. The maximum number of weeks for which the benefit is payable is 45.

55. *EIA*, section 145. This basic ceiling will remain in effect until 2001. However it is lowered to $39,000 if the recipient has made multiple EI claims for regular benefits.

56. *EIA*, section 15. Initially a claimants benefit rate is 55% of his or her weekly insurable earnings. This benefit rate is reduced by 1% for every 20 weeks of EI benefits paid within the five years preceding the claim.

57. *EIA*, section 16 and Employment Insurance Regulations, SOR/96-332, as amended by SOR/96-436 and SOR97-31. For 1997 the benefit rate is 65% of the claimant's weekly insurable earnings, and this rate rises by 5% per year, reaching 80% by the year 2000. However, the amount of this increased benefit cannot exceed the maximum weekly benefit payable ($413).

58. Provision for these "employment benefits" is contained in Part II of the *EIA*. Part II also allows for making agreements with the provinces to administer these benefits.

59. *Securing the Canada Pension Plan: Agreement on Proposed Changes to the CPP*, (Human Resources Development Canada, Department of Finance: February, 1997) at 14-16. The earnings-related portion of those benefits will now be based on the average of the Years' Maximum Pensionable Earnings (YMPE) in the last five years. At present
their benefit converted to a retirement pension at age 65, will receive a lower retirement pension than they would have prior to this agreement.\textsuperscript{60} Eligibility requirements for a disability benefit will also be more restrictive, such that an applicant will now have to have made contributions to the CPP in four of the last six years (rather than the previous requirement of two out of the last three years) in order to be eligible.\textsuperscript{61} Finally, the agreement also provides for a rapid increase in the contribution rate payable by employers and employees, from 5.85\% of contributory salary and wages in 1997 to 9.9\% by the year 2003.\textsuperscript{62} Further, the base upon which this contribution rate is levied will increase, because the Year's Basic Exemption is to be frozen at $3500.\textsuperscript{63}

(c) **Seniors Benefit**

The new Seniors Benefit is scheduled to come into effect in the year 2001, although no legislation has been introduced yet. The maximum benefit payable to single seniors and to senior couples will be $120 a year more than what would have been available under the OAS/GIS regime, will be based on the individual's (or couple's) previous years' tax return and will be fully indexed to inflation.\textsuperscript{64} The entire new benefit will be non-taxable and (as with the current GIS payments) will be subject to reductions for outside income. However, the deductions for outside income will, in the case of senior couples, be based on the amount of family income (as is also the case for the GIS payment) and the

\begin{itemize}
  \item \textsuperscript{60} Ibid. at 15. At present a disability recipient's retirement pension is based on the YMPE at the time of retirement. In the future, the retirement pension will be based on the YMPE at the time of disablement and then indexed to inflation. This in and of itself will make the pension lower. The impact is also compounded by the fact that the calculation of the pension will be based in the five year average of the YMPE, as noted above.

  \item \textsuperscript{61} Ibid. at 15. The agreement also states that the administration of disability benefits has been tightened to ensure that "only those intended by the legislation receive disability benefits."

  \item \textsuperscript{62} Ibid. at 11-12. Under the existing schedule of contributions the contributory rate for the year 2003 is supposed to be 7.35\%. The contribution rate is shared 50-50 by employers and employees.

  \item \textsuperscript{63} Ibid. at 12. The Year's Basic Exemption (YBE) is presently set at 10\% of the YMPE, so that when the YMPE increases, so does the YBE. Freezing the YBE will have a disproportionate impact on low income earners, because they will pay an increasingly larger percentage of their income as CPP contributions. However, a lower YBE will mean that more low income earners will contribute to the CPP and thus may be eligible for benefits.

  \item \textsuperscript{64} Supra, note 32 at 28-29, 32. Single seniors will be entitled to a maximum of $11,420 and senior couples will be entitled to $18,440.
\end{itemize}
amount of the monthly payment will be divided equally between the two individuals. Further, the threshold at which these reductions will take effect will be much lower than under the OAS/GIS scheme, although the threshold will be indexed to inflation. The Seniors Benefit will not be payable to single seniors whose outside income exceeds $51,700 or to senior couples whose family income exceeds $77,500. It is estimated that single seniors with outside income of $35,000 or less and senior couples with outside income between $30,000 and $35,000 and less will receive the same or higher benefits under the new Seniors Benefit. Further, it is anticipated that by the year 2030 the new Seniors Benefit will save the federal government more than $8 billion a year.

(d) Workers' Compensation

Under the terms of Bill 99 there will be a reduction in the level of benefits payable for a workplace injury, and the "inflation protection" for those benefits will be even further reduced. As well, the Workers' Compensation Board will no longer be providing vocational rehabilitation services to injured workers. Instead, a worker who is unable to return to employment with the accident employer will be required to "cooperate" in the development and implementation of a labour market re-entry plan (LMRP), the goal of this plan being to

66. Supra, note 32 at 28-29. For each dollar of outside income the Seniors' Benefit will be reduced by 50 cents, until it reaches the value of $5160 for a single senior or $10,320 for senior couples (these amounts are equal to the OAS payment that these individuals would have received under the present scheme). For single seniors, this would occur at an amount of outside income equal to approximately $14,000 and for senior couples, this would occur at an amount of outside income equal to approximately $18,000. Once outside income reached approximately $26,000, the remaining benefit would again be subject to a deduction of 20 cents for every dollar of outside income; see Table 1 in The Seniors Benefit at 66-67. At present, GIS payments are subject to a deduction of 50 cents for every dollar of outside income and are eliminated when outside income is between $14,000-15,000. However, presently OAS payments are not reduced until an individual's outside income exceeds $53,215; see National Council of Welfare, A Guide to the Proposed Seniors Benefit, (Minister of Supply and Services; Summer 1996) at 5, 27.
68. Ibid. at 11-13.
69. Supra, note 32 at 34.
70. At present, an injured worker's benefits are calculated on 90% of his or her pre-accident net average earnings. This rate is reduced to 85% by Bill 99. Further, at present most benefits are partially indexed to the rate of inflation. The formula used is (3/4 x Consumer Price Index) - 1%, although the CPI figure cannot be higher than 4%. Under Bill 99 this formula is reduced to (1/2 x CPI)-1% with the same cap on the CPI; see Bill 99, sections 43(2), 49 and 50.
return the worker to the labour market and to reduce or eliminate the worker’s loss of earnings from the injury. A worker who fails to cooperate with the LMRP process could face a reduction or suspension of his or her workers’ compensation benefits. Finally, Bill 99 will also severely restrict entitlement to compensation for certain specific types of disability, most notably chronic pain and mental stress.

(e) Social Assistance

As noted above, social assistance benefits were reduced by 22% in October 1995. There is no inflation protection for benefits under either the General Welfare Assistance Act or the Family Benefits Act and, in the year and a half since that time, these benefit levels have not been adjusted. However, the major change in the social assistance program over this time has been the introduction and implementation of a workfare/welfare-to-work program, known as Ontario Works. The components of Ontario Works as set out in the regulations under the GWA included: a) employment supports (including assistance with employment participation expenses such as child care and transportation, assistance with job searching and basic education or job specific skills training pro-

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71. Bill 99, section 42. It would appear that the over-arching principle of the labour market re-entry plan (LMRP) will be to return the worker to any type of employment as quickly as possible. A worker will only be entitled to one LMRP which will last for a fixed time period and will have a fixed cost; see supra, note 36 at 21–22.

72. Bill 99, section 43(5). In the past, workers who failed to cooperate with their vocational rehabilitation programs would lose their entitlement to the supplement which they were paid to participate in the VR program. However, in most cases, they would still remain eligible for the wage loss benefit.

73. Bill 99, section 12(4) and (5) for mental stress and section 13 for chronic pain.

74. Supra, note 26. This reduction applied to all social assistance recipients except for the aged and disabled recipients under the Family Benefits Act. The maximum benefit rate for a single employable person was $520 a month. The maximum benefit rate for a mother with a child under the age of 12 years was $957.

grams);  

b) employment placements (the placement of a job-ready recipient into a private sector non-subsidized job), and;  
c) community participation (unpaid community service activities, including community improvement and community service projects). Initially, seniors, the disabled and sole support parents are exempt from participation in the Ontario Works program. Participation by all other recipients is mandatory.

Ontario Works began in twenty “pilot” municipalities across Ontario in September of 1996 and it was anticipated that the program would apply on a province-wide basis by the beginning of January 1998. Participating municipalities are required to file a “business plan” for approval, outlining how the municipality plans to implement the components of Ontario Works. The “business plan” must include information about: a) the number and type of recipients who will be referred to each component of Ontario Works; b) how recipients in need of basic education and training will be identified and referred to existing community resources and; c) the number of recipients who will access employment and community support funding. Provincial funding for the delivery of the various components of Ontario Works will be based upon municipalities meeting these targets.

A new definition of “disability” for social assistance purposes is also on the horizon. Under the Guaranteed Support Program, a proposal discussed at

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76. Section 4.3(3)2, Regulation 537, R.R.O. 1990, as amended. See also Ministry of Community and Social Services, *Program Guidelines for Early Implementation of Ontario Works*, (August 1996) at 5, 12.

77. Section 4.3(3)3, Regulation 537, R.R.O. 1990, as amended. See also *Program Guidelines for Early Implementation of Ontario Works, ibid.*, at 15–16. It is envisaged that these “placements” would be arranged by a private sector agency who would be paid based on a percentage of the social assistance savings associated with the placement of a recipient.

78. Section 4.3(3)1, Regulation 537, R.R.O. 1990, as amended. See also *Program Guidelines for Early Implementation of Ontario Works, ibid.*, at 9–11. These community placements can be arranged by the municipality or can be initiated by the recipient.

79. *Program Guidelines for Early Implementation of Ontario Works, ibid.*, at 5. In the future, sole support parents with “older” children will be expected to participate as well.

80. Ministry of Community and Social Services News Release, “People will work for their welfare cheques starting this September” (12 June, 1996) at 2.

81. Ministry of Community and Social Services, *Guidelines for the Development of Business Plans for the Early Implementation of Ontario Works*, (August 1996) at 6-9. However, the province’s announcements with respect to the “downloading” of the cost of funding of social assistance will obviously have some implications for the province’s funding of Ontario Works. See the discussion below.

82. At present, the definition of disabled person is contained in section 1(5) of Regulation
public consultations, the definition would only include as “disabled” those people with physical or mental disabilities which resulted in “severe” restrictions on their activities of daily living or their ability to engage in employment. Further, only disabilities expected to last for longer than two years were to be covered. Nor did it appear that factors such as the age, education or literacy level of the disabled person would be taken into account in determining their employability. Clearly such a definition would result in fewer people qualifying for this new program. Those who did not qualify would end up on welfare and would be subject to Ontario Works.

Some proposed improvements in the program included an increased asset limit for recipients, an increased inheritance trust capital limit and an increased asset exemption for personal injury awards. However, people with disabilities would still be required to apply to welfare before being transferred to this new program, meaning that initially they would be subject to the much more restrictive asset rules under that program.

(f) Canada Child Tax Benefit

Essentially, the Canada Child Tax Benefit (CCTB) is the federal contribution toward the creation of a National Child Benefit System. The National Child Benefit System is meant to ensure a more comprehensive and coordinated approach to child benefits. The objectives of this National Child Benefit System are to prevent and reduce child poverty, to promote attachment to the labour

336, R.R.O. 1990, as amended. That definition states:

1(5) “disabled person” means a person who has a major physical or mental impairment that is likely to continue for a prolonged period of time and who, as a result thereof, is severely limited in activities pertaining to normal living, as verified by objective medical findings accepted by the medical advisory board.

There is also a definition of “permanently unemployable person” in the regulations, which states:

1(5) “permanently unemployable person” means a person who is unable to engage in remunerative employment for a prolonged period of time as verified by objective medical findings accepted by the medical advisory board.

83. At the time of writing, there had been no definition publicly proposed. The Ministry of Community and Social Services held public consultations on October 8 and 9, 1996 where the proposals for this new definition were discussed. The author’s discussion of this new definition is based upon the notes of one of the participants and an “Open Letter to the Minister of Community and Social Services from the Income Maintenance Group” in Archtype, Vol. 14 No. 3/4 (Winter, 1997) at 20-22.

84. Ibid., “Open Letter to the Minister of Community and Social Services” at 21-22.

85. Ibid. at 22.
force (by ensuring that families are always better off as a result of working) and to harmonize programs and benefits directed at children.\textsuperscript{86}

It would appear that the CCTB is simply an enrichment of the existing Child Tax Benefit/Working Income Supplement. At present the Child Tax Benefit provides families with a maximum payment of $1020 per child. The amount of the payment is reduced once family income exceeds $25,921 and disappears when family income exceeds $66,700.\textsuperscript{87} The Working Income Supplement now provides $500 per family (if the family has a minimum of employment income) to offset the costs of children for low income families.\textsuperscript{88} The amount of the payment is reduced once family income exceeds $20,921 and disappears at $25,921.\textsuperscript{89}

The new CCTB will be achieved in a two-step process. The first step involves a restructuring of the Working Income Supplement to provide a benefit for each child in the family (rather than per family): $605 for the first child, $405 for the second and $330 for each additional child.\textsuperscript{90} This change is to take effect as of July 1997. The second step involves combining the enriched Working Income Supplement with the existing Child Tax Benefit, which would be payable to the working and non-working poor alike. Under the CCTB a family would receive $1625 for the first child and $1425 for each additional child and the value of the benefit would be reduced according to the same criteria as the present Child Tax Benefit/Working Income Supplement.\textsuperscript{91} There is no indication that either the benefit levels or the income reduction thresholds would be fully indexed to inflation.\textsuperscript{92} The new CCTB is supposed to be in place by July 1998.

\textsuperscript{86} Supra, note 52 at 15.
\textsuperscript{87} Ibid. at 11.
\textsuperscript{88} Ibid. at 12. Families must have a minimum earned income of $3750.
\textsuperscript{89} Ibid. at 16. The Working Income Supplement disappears at the same time as the Child Tax Benefit starts to be reduced.
\textsuperscript{90} Ibid. at 16. The value of the new Working Income Supplement will be payable and be reduced based upon the same income criteria as the present Working Income Supplement.
\textsuperscript{91} Ibid. at 18. The CCTB would begin to be reduced once net family income reached $20,921. When net family income reached $25,921, the value of the CCTB would be the same as the current value of the Child Tax Benefit ($1020) and would be reduced in a like manner.
\textsuperscript{92} At present the benefit and threshold levels under the Child Tax Benefit are only indexed to the amount of inflation which exceeds 3 per cent; see Canadian Council on Social Development, "Backgrounder: Integrating children's benefits: what will result?", (January, 1997). In its analysis of the National Child Benefit System, the Caledon Institute of Social Policy noted that "both levels of governments should fully index their child ben-
Once this new CCTB is in effect, it will reduce the amount of money which the provinces are required to spend on poor children through their social assistance systems. The federal, provincial and territorial governments are supposed to develop a “reinvestment framework” which will govern the reallocation of these social assistance funds. These reinvestments are to be “targetted at improving work incentives and supporting children in low-income families” and could include in-kind benefits, child care services, a child credit, an earned income credit or some combination of the above.93

2. Fiscal Arrangements
(a) Canada Health and Social Transfer
Prior to the introduction of the CHST, federal provincial fiscal arrangements were governed by three different programs. Under Established Programs Financing (EPF) the federal government provided a “block” transfer to the provinces (a combination of cash and “tax points”94) which was initially tied to funding for post-secondary education and health care.95 Under the Canada Assistance Plan, the federal government shared the costs of the provision of social services and social assistance on a 50-50 basis with the provinces. Essentially, the individual provinces determined how much was spent in these areas and the federal government was required to pay for half of the cost.96 Under the Equalization program the federal government made unconditional transfers to the less well off provinces, to assist them in providing comparable levels of public services at comparable levels of taxation.97

In essence, the CHST simply combined the payments for health, post-secondary education, social assistance and social services under the EPF and CAP into one payment. Equalization payments were not to be affected. The CHST payment was to be a combination of cash and tax points. There were few conditions attached to this federal transfer, save that the provinces were required to ensure

93. Supra, note 52 at 16.
94. A “tax point” is a percentage of the basic federal tax. If a province’s income tax is 50 per cent of the basic federal income tax, this would constitute 50 “tax points”; see M. Mendelson, Looking for Mr. Good-Transfer: A Guide to the CHST Negotiations (Ottawa: Caledon Institute of Social Policy) October, 1995 at 3.
95. Budget Plan, Tabled in the House of Commons by the Honourable Paul Martin, Minister of Finance, (February 27, 1995) at 51 [hereinafter Budget Plan (1995)]. In fact, there were no requirements attached to the money transferred under the EPF.
96. Ibid. at 52.
97. Ibid.
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that the five principles of the Canada Health Act were enforced and the provinces were not allowed to establish a residency requirement for the purposes of determining entitlement to or on-going eligibility for welfare. There was however, no obligation that the provinces spend any of this money on health, post-secondary education, social services or social assistance.

For 1996–1997 the amount of this transfer was to be $26.9 billion, a reduction of $2.5 billion from what the amount of the transfer would have been under EPF/CAP. In 1997–1998 the CHST transfer was to be $25.1 billion, a $4.5 billion reduction from the EPF/CAP amount. In a five-year funding arrangement negotiated between the federal government and the provinces, the amount was to remain at $25.1 billion for fiscal 1998–1999 and 1999–2000 and then to increase by a rate somewhat lower than the growth rate of the Gross Domestic Product. Further, the federal government has committed to ensuring that the cash portion of the CHST does not fall below $11 billion for the term of this five-year arrangement.

For the 1996–1997 fiscal year the CHST amount was to be allocated in the same proportion as the EPF/CAP amounts were in 1995–1996. From 1997 on, the

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98. R.S.C. 1985, c. C-6, as amended.
99. See Federal-Provincial Fiscal Arrangements Act, R.S.C. 1985, c. F-8, as amended, section 13(1)(b) and (c). Under the Canada Health Act the provinces were required to maintain a public health insurance scheme which was universal, comprehensive, accessible, portable and publicly administered; see section 7.
100. Section 15(1) of the Federal-Provincial Fiscal Arrangements Act, as amended by S.C. 1996, c.18 s.49.
101. Ibid., section 15(2).The payment is to increase by 2% less than the growth rate of GDP for 2000–2001, by 1.5% less than the growth rate of GDP for 2001–2002, and by 1% less than the growth rate of GDP for 2002–2003.
102. Ibid., section 15(3). This is a symbolic, if not important, commitment. One of the general criticisms of the CHST as it was initially designed was that, in approximately 10-15 years the cash portion of the transfer could disappear. This would occur if the amount of the yearly transfer was not indexed (or only partially indexed) and the real monetary value of the tax points continued to increase; see, for example T. Courchene, Redistributing Money and Power: A Guide to the Canada Health and Social Transfer, (Toronto: C.D.Howe Institute, 1995) at 56-59 and K. Battle, Constitutional Reform by Stealth, (Ottawa: Caledon Institute of Social Policy, May, 1995) at 3-4. The federal government's guarantee that the cash portion will not drop below $11 billion was meant to address this concern, but is subject to two observations. First, the federal government has stated that based on current projections the cash portion of the CHST would not drop below $11 billion between 1998 and 2003 anyway. Second, the $11 billion floor appears only to be guaranteed for the life of the five year funding arrangement; see Budget Plan, Tabled in the House of Commons by the Honourable Paul Martin, Minister of Finance, (March 6, 1996) at 57 [hereinafter Budget Plan (1996)].
103. In effect, this extended the effect of the “cap” on CAP payments to Alberta, British
amount of a province’s allocation under the CHST will be adjusted in accordance with changes in the province’s population since 1995. As well, during the life of the five-year funding arrangement each province’s allocation is supposed to be adjusted to “more closely reflect” its proportion of the total Canadian population. This “adjustment” was meant to correct for the inequities created by the “cap” on CAP, which had reduced the CAP allocations for some provinces during the early 1990s.\textsuperscript{104}

One final aspect of the CHST bears mention. With the demise of the Canada Assistance Plan, most of the conditions which attached to the transfer were also removed, the prohibition against a residency requirement for welfare being the notable exception. Two important conditions of CAP funding which no longer apply are the requirement to provide assistance to all persons “in need” and the requirement to have an appeals procedure for welfare decisions.\textsuperscript{105} Under the CHST, the Minister of Human Resources Development and his or her provincial counterparts are supposed to “work together to develop, through mutual consent, a set of shared principles and objectives for the other social programs … that could underlie the Canada Health and Social Transfer”.\textsuperscript{106} In part this was the impetus for the creation of the Ministerial Council on Social Policy Reform and Renewal.\textsuperscript{107} While the Ministerial Council has taken some initiative in developing national principles and standards,\textsuperscript{108} to date there has been no official federal-provincial recognition of any principles or standards to govern the use of the CHST monies.

(b) Downloading the cost of social services and welfare to Ontario municipalities

The restructuring of the funding arrangements for social services in the province of Ontario was of major proportions. The province had announced that it would take over full funding of the education system. In exchange, under the changes proposed, municipalities would face increased cost responsibilities of 150% or

\textsuperscript{104} Budget Plan (1996) at 58-59. For Ontario, Alberta and British Columbia the allocation for 1996–1997 would have been based on the reduced amounts they were already receiving as a result of the “cap”; see Courchene, \textit{Redistributing Money and Power}, supra. note 102 at 22–23. If these provinces’ allocations were only adjusted for the change in population since 1995, the effect of the “cap” would have been perpetuated.

\textsuperscript{105} Supra, note 4, section 6(2).

\textsuperscript{106} Supra, note 99, section 13(3).

\textsuperscript{107} Supra, note 24.

\textsuperscript{108} Supra, note 39 at 12–13.
more in the following areas: child care, long term care, homes for special care, emergency hostels, public health and social housing.\textsuperscript{109} Most importantly, the municipalities would be responsible for assuming 50\% of the cost of assistance provided under the \textit{General Welfare Assistance Act} and 50\% of the cost of the sole support parent case load under the \textit{Family Benefits Act}. Prior to this announcement, municipalities had only been responsible for 20\% of the cost of \textit{GWA} (with the province paying the other 80\%) and had not been responsible for any of the cost of the \textit{FBA} caseload.\textsuperscript{110} Further, the province announced that municipalities would be responsible for funding 50\% of the cost of the new income support program for the disabled.\textsuperscript{111}

This exchange of funding responsibilities between the province and the municipalities was supposed to be revenue neutral. However, the province also announced that it would be establishing the Municipal Social Assistance Reserve Fund “as a prudent safeguard against unforeseen local economic circumstances”, to be used to defray unexpectedly high social assistance costs in a municipality.\textsuperscript{112} In fact, the proposal to “download” the cost of these programs to the municipal level met with widespread opposition. There had been no previous consultation with municipalities about such a proposal and it was contrary to the conclusions and recommendation of all major studies on the restructuring of municipal/provincial fiscal arrangements.\textsuperscript{113} There were clear inequities which would result from funding an income redistribution scheme, “which would be driven by economic conditions which are completely outside the control of municipal governments,” out of property taxes, which bear no correlation to an individual’s ability to pay the tax.\textsuperscript{114}

\begin{itemize}
  \item \textsuperscript{109} A. Golden, “Tory downloading will hurt Metro the most”, \textit{The Toronto Star} (22 January, 1997) (page unknown). In some areas like long term care, homes for special care and social housing the municipalities did not have any previous funding responsibilities.
  \item \textsuperscript{110} Ministry of Community and Social Services News Release (14 January, 1997), “Ecker Announces New Plan for Social And Community Health Services” at 1, 4.
  \item \textsuperscript{111} \textit{Ibid.} at 6. See the discussion of the Guaranteed Support Program above. The municipalities were not expected to share in the design of this program.
  \item \textsuperscript{112} \textit{Ibid.} at 1. See also, \textit{supra} note 47. Initially the fund was supposed to contain $700 million, but it was anticipated that this amount would be increased. However, there was no indication as to how the monies in the fund would be allocated or what the eligibility criteria would be for accessing the fund.
  \item \textsuperscript{114} See Report of the Commissioner of Community Services to the Human Services Com-
restructuring would be revenue neutral for the municipalities was also challenged.\textsuperscript{115} Finally, it was noted that, while municipalities would have this added financial responsibility, they would not have any input into the design and implementation of the programs they were funding.\textsuperscript{116}

Perhaps in recognition of these (and other) criticisms the provincial government seemed to backtrack from its initial proposals. Two joint provincial/municipal teams were established, which were to “advise the government on a wide range of design, transition and management issues relating to a new alignment of responsibilities.” The first issues to be discussed by the team created to deal with social and community health services were the design of the Municipal Social Assistance Reserve Fund and “the potential for ‘alternative’ cost-sharing methods for social programs.”\textsuperscript{117}

Further, the urgency of the restructuring seemed to have abated, with legislation on the cost-sharing and on the reserve fund not expected until the end of 1997 and with full implementation possibly delayed until the year 2000.\textsuperscript{118}

\textbf{D. THEMES FROM THE RE-FORMATION}

1. \textit{“Trickle Down” Social Policy}

What is apparent from the chronological outline of events and the overview of social programs and fiscal arrangements is that while the Canadian welfare state

\textsuperscript{115} Ib\textit{id.} at 4–5, 7. The Commissioner of Community Services for Metropolitan Toronto noted that the Community Services Department’s budget would need to increase by almost $1.4 billion to cover the added financial responsibilities while the municipality’s required expenditures on education would only be reduced by $1.25 billion. In fact, it was estimated that under the new financial arrangements, Metropolitan Toronto would have almost $380 million added to its financial responsibilities; see “The ugly face of the Tory tax cut,” \textit{The Toronto Star} (18 January, 1997) at B2.

\textsuperscript{116} \textit{Supra}, note 114 at 8-9.

\textsuperscript{117} Ministry of Community and Social Service News Release, “Municipalities to have a say as partners on Who Does What Reforms” (21 January, 1997) at 1. In fact, by March of 1997, it was reported that such an “alternative cost-sharing method” was being discussed. In exchange for municipalities assuming the costs of construction and maintenance of school buildings, school busing and the business administration costs of local education the province would assume the full cost of welfare and long term health-care costs; see J. Rusk, “Ontario to scrap offloading proposal”, \textit{The Globe and Mail} (14 March, 1997) A1.

\textsuperscript{118} J. Rusk, “Teams set up to discuss Ontario fiscal reforms”, \textit{The Globe and Mail} (22 February, 1997) A12.
has undergone substantial change in the 1990s, the re-formation has been achieved on a program by program basis. There has not been a comprehensive review and reform of Canadian "social policy". Perhaps the clearest example of the absence of any comprehensive approach can be seen in proposals contained in the CPP Paper and in the province's discussion paper on workers' compensation reform. The discussion paper proposed reducing a worker's compensation benefits by the amount of CPP payments received, rather than allowing the "stacking" of CPP and workers' compensation benefits. It was argued that this "overcompensation" of the injured worker was a disincentive to his or her return to employment.119 The CPP Paper, on the other hand, proposed reducing the CPP disability pension payable by the amount of workers' compensation benefits received, to ensure that the accident employer would bear the cost of a workplace injury, and to reduce the disincentives to return to work that resulted from the "stacking" of these benefits.120

Further, the reform of the individual programs has occurred with little consideration for the impact that they will have on other programs and policies. These impacts simply "trickle down" through the system. For example, throughout the 1990's the tightening of the eligibility criteria for unemployment/employment insurance has resulted in fewer people qualifying for UI/EI benefits and those who do qualify are receiving lower benefits and are exhausting their benefits more quickly. This has in turn led to an increase in the number of people applying for and receiving social assistance in Ontario. The financial burden of this increasing social assistance caseload was compounded by the reduction in the federal government's contribution to the cost of social assistance, first through the "cap" on CAP and subsequently through the reduced CHST monies. The province responded to these circumstances in several ways. First, there was a concerted effort made to ensure that disabled social assistance recipients who might also be eligible for CPP applied for the CPP disability benefit. This in turn led to a noticeable increase in the number of CPP disability recipients121 which lead to a tightening of the disability eligibility criteria under that program and was one of the major reasons behind the impetus to reform the CPP.122

119. Supra, note 30 at 38–39.
120. Supra, note 31 at 38. In fact, at the public consultations on the CPP Paper in Toronto on April 15, 1996, which the author attended, one of the Ontario representatives on the consultation panel was not even aware of the conflict between the proposals in the CPP Paper and those in the discussion paper on workers' compensation produced by his own government.
122. Supra, note 31 at 24.
Second, and perhaps more significantly, the province reduced the level of social assistance benefits for all employable persons and made the eligibility criteria much more stringent (such as the requirement to participate in Ontario Works). Finally, the province proposed to download the cost of funding social assistance to the municipalities.

It is this last response which could have the most far-reaching impact, if it is not amended. For example, while there are no conditions attached to how the province spends the money it receives from the federal government under the CHST, municipalities are statutorily obligated to provide social assistance.\(^\text{123}\) Given their limited powers for raising revenue, municipalities are likely to demand that benefit levels be even further reduced and eligibility criteria be even further restricted, so as to limit the cost of providing social assistance. Further, municipalities are likely to use the Ontario Works program as a method of cost control, by forcing recipients to participate who are not really employable (i.e., sole support parents with very young children, the disabled who should eventually be transferred to the Guaranteed Support Program) and terminating those who refuse to participate.\(^\text{124}\) Finally, given the nature of the other responsibilities which could be downloaded to the municipalities, the funding of social assistance will be in direct competition with services which have a great deal more public support, such as nursing homes and homes for the aged, and whose cost is expected to increase rapidly over the coming years.\(^\text{125}\) It is unlikely that there will be any support for the provision of social assistance beyond the minimum required by law.

In the end, it is the most disadvantaged individuals who will suffer the greatest degree of hardship as a result of the lack of comprehensive social policy reform. This may not have been the intent, but it is certainly the result of the practice of "trickle down" social policy.

2. **Devolution of the responsibility for social policy to the provinces**

Without a doubt, it is the provinces who are the lead players in the social policy field. They have sole responsibility for the design and delivery of workers’ compensation. For all practical purposes, given the lack of conditions attached to the CHST monies, they have sole responsibility for social assistance. They

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124. This of course leads to a question of whether there will be a meaningful appeals process for decisions under Ontario Works. With the repeal of CAP the province is no longer obliged to even have an appeals system for social assistance decisions.

125. See, for example, note 114 at 18 for a discussion of this issue in the context of Metropolitan Toronto.
have joint stewardship with the federal government over changes to the CPP, and through this joint stewardship they have managed to influence the Employment Insurance program to some extent, by linking increases in CPP contributions to reductions in EI premiums. Further, the provinces are becoming the sole provider of job training and other employment services, both under the EIA and through their welfare programs. Finally, the Ministerial Council on Social Policy Reform and Renewal was instrumental in the evolution of the National Child Benefit System. Provision of income support to the elderly under the Senior’s Benefit is the sole area of social policy where the federal government has acted alone.

As noted above, the CHST recommendation that the federal government and the provinces develop “a set of shared principles and objectives for the other social programs” was part of the motive for creating the Ministerial Council. Of course, the unilateral alteration of federal-provincial transfer payments (which the CHST represented) would have been motive enough. In the Ministerial Council Report (1995) the Ministerial Council set out its recommendations for “new directions” in the field of social policy including a national income support program for children, consolidation of income support for people with long term and significant disabilities, harmonization or integration of income support for working age adults and the continuation of the federal delivery of income support for the elderly.126 The Ministerial Council Report (1995) also outlined the principles which the provinces determined should govern social policy reform as follows:

- social programs must be accessible and serve the basic needs of all Canadians;
- social programs must reflect our individual and collective responsibility;
- social programs must be affordable, effective and accountable; and
- social programs must be flexible, responsive and reasonably comparable across Canada.127

Further, it was the Premiers’ Paper – Next Steps, released at the annual Premiers’ conference in August 1996, which recommended the creation of the Federal/Provincial/Territorial Council on Social Policy Renewal and posited an integrated child benefit as the highest priority.

In one sense, the role of the Ministerial Council is welcome as it appears to signal a more systemic and comprehensive approach to social policy. The fact that a consensus was reached on such complex issues was remarkable. However,

127. Ibid. at 5–7.
this consensus, which was reached in private and without any input from Canadians concerned about social policy issues, has now become the framework for the provinces “negotiations” with the federal government with respect to future social policy issues in Canada. There is concern that the consensus which the provinces have achieved does not envision a strong national presence in the development and enforcement of “national standards” and is designed only to enhance provincial powers and/or relieve provincial fiscal responsibilities. It is arguable that some provincial governments might be happy with no role for the federal government in this area, as was proposed in the Ontario government’s “working paper” released prior to the 1996 Premiers’ conference. Finally, there should be concern over how committed the provinces might be to even the principles adopted by the Ministerial Council, where it does not suit their political agenda. In the Ministerial Council Report (1995) it is stated:

Initiatives to eliminate government deficits and manage debt should not result in a unilateral shift of costs from one government to another. This will require ongoing and frank consultation on the impacts of the proposed strategies and the possible development of alternatives to meet fiscal requirements.

Clearly, the province of Ontario had forgotten this principle when it developed its proposals for downloading the costs of social services and social assistance to the municipalities.

3. The Rhetoric of Social Policy Reform

The change in the language in which social programs and social policy was being discussed was pervasive and persuasive. At times it bordered on mean-spirited and it always seemed directed at justifying and rationalizing the reductions and limitations in the various programs.

In the build up to the release of the Green Paper the federal government seemed to consciously emphasize the worst stereotypes about social program recipients. Lloyd Axworthy, Minister of Human Resources Development, warned high school students that they could no longer expect to “bum around for a while” on welfare after they leave school. Noting that the country was $500 billion

128. Actually, the Premiers’ Paper – Next Steps does not even contemplate enforcement of national standards. Rather, it refers to developing mechanisms and processes for “promoting adherence” to national principles and standards (at 13).

129. Supra, note 38.

130. Supra, note 28 at 17.

131. G. York, “The clock is ticking” on social reform plans, The Globe and Mail (21 Feb-
in debt, Prime Minister Jean Chretien warned that it was no longer acceptable to work for a few months and then spend the rest of the year on social assistance “sitting at home and drinking beer”.\textsuperscript{132}

More often the language was much subtler. It was argued that social programs were too “passive” (i.e., simply providing people with income), that they fostered “dependency” and that they needed to be more “active” (i.e., focusing on getting people back to work). “Generous” social programs were said to cause “disincentives” to work. Programs needed to be reformed to eliminate “waste and duplication”, to reduce “fraud and abuse”, to ensure that benefits were only paid to the “truly needy” or the “truly disabled”.

This change in rhetoric was indicative of a growing disdain for those in need of income support. This disdain was not limited to the affluent or those who had never had to rely on an income maintenance program. Recipients of various programs often had little regard for other recipients, whether they were recipients under the same or a different program. Further, it did not seem to matter whether there was any truth in the language. Governments either knew or were told that these assumptions and beliefs were often incorrect or inaccurate.\textsuperscript{133} However, as the language served to make their actions more palatable to the Canadian public, they did little to correct these mistaken opinions.

4. \textit{Social Programs Must Be “Sustainable”}

A common reason for pursuing reform was to ensure that social programs would be “sustainable” and would be there for those who will need them. In announcing the pending reforms of both the \textit{OAS/GIS} system and the \textit{CPP}, Finance Minister Paul Martin stated:

\begin{quote}
Canadian seniors deserve to know that those public pensions will be there for them. That in turn requires reform to ensure that the pension system is sustainable in the long term.\textsuperscript{134}
\end{quote}
Ontario’s Labour Minister Elizabeth Witmer stated that the reforms to the province’s workers’ compensation system contained in Bill 99 would be “sensitive to the needs of injured workers and sustainable by the employers who fund the system”.

The quest for “sustainability” is often tied to a funding crisis for the social program in question. Of course, achieving “sustainability” can be done in two ways. Either revenue collection could be increased (by raising taxes or increasing the amount of a statutory payroll deduction) or benefit payments could be lowered (either by reducing or freezing the benefit amount or by only partially indexing the benefit). In almost all cases, “sustainability” is achieved through lowering benefit payments. The standard reasons given for refusing to rely on increased revenue collection are that Canadians are “tax weary” and will not accept tax increases or that increasing payroll taxes hinders job creation. This approach ignores the fact that every year Canadians are faced with implicit tax increases because income tax brackets are not fully indexed to inflation and it also ignores much evidence which indicates that payroll taxes do not have this impact on the creation of jobs. It also would appear to ignore the fact that people who receive income support payments spend a greater proportion of that income in the domestic economy than would people who receive an income tax or payroll tax reduction.

5. Reducing, Freezing or De-indexing Benefits
The benefits available under social assistance, EI, workers’ compensation, CPP and the CCTB have been reduced. The only payments which are scheduled

135. Supra., note 44.
137. This issue will be explored in the next section.
138. The one notable exception to this approach is the increase in the contribution rate under the CPP. However, it should be noted that this increase was directly related to a decrease in the employment insurance premium, and actually resulted in a windfall for employers. This is because employers make a greater percentage contribution to every dollar of revenue raised under EI than they do under the CPP.
140. The Canada Child Tax Benefit is included in this grouping because the value of that benefit will also be reduced for low income families with only one child. Prior to the changes announced for the Child Tax Benefit, the Working Income Supplement was
to increase are the Senior’s Benefit (by $120), the benefits payable to low income families under EI and benefits payable to low income families with more than one child under the CCTB. Further, only benefits payable under the CPP and the Senior’s Benefit are fully indexed to inflation. Benefits payable under social assistance and EI can only be increased by direct government action, and the benefits available under workers’ compensation and the present Child Tax Benefit are only partially indexed to inflation.141

As noted above, the most common justification for the reduction, freezing or de-indexation of benefits is that the costs of such programs are no longer “sustainable”. However, other rhetorical tools have also been used to rationalize these actions. For example, it is argued that social programs are a “disincentive” to employment; because people can satisfy their needs with money from the program they are not inclined to work. Therefore, if the benefit levels are reduced, then people will have an economic imperative to seek work. It was also argued that reform was necessary to ensure that only the “truly” needy or the “truly” disabled were receiving assistance. Implicit in these messages was the fact that there were people receiving assistance who did not need it or were not entitled to it. However, there has never been any serious discussion as to what makes someone “truly” needy or what minimum level of income replacement would be considered adequate and socially acceptable. The rhetoric about “disincentives” to work and the targeting of benefits to the “truly” needy sounds disingenuous with respect to social programs which are both under-inclusive and provide less than subsistence levels of benefits.

Further, even accepting that social programs are sufficiently inclusive and provide adequate benefits, the absence of full inflation protection cannot be justified. For example, in the area of social assistance, much effort is devoted to determining an applicant’s or recipient’s level of assets and level of income from outside sources. Once determined, the level of assets and income is constantly reviewed. The rationale for this investigation is that social assistance is supposed to be the income maintenance program of last resort and individuals are expected to exhaust other financial resources before a benefit is payable.

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141. There is also only partial indexation for the amounts which are transferred to the provinces under the CHST.
However, having determined that an individual is "truly" needy because he or she has no other sources of income, what possible justification can there be for allowing this minimal level of income to erode through the workings of inflation? The absence of full inflation protection for benefits payable under any program is, in effect, a benefit reduction for which the government responsible for the program never has to answer.

6. "Encouraging" Attachment to the Labour Force
As noted above, one of the critiques of most social programs is that they are not sufficiently "active" in terms of getting people back to work. In fact, attachment to the labour force is an increasingly important aspect of the design, funding and eligibility criteria of most programs. Contributions based on covered employment are the means of funding social insurance programs like EI, CPP and workers' compensation. As well, in some cases a minimum attachment to the labour force is also required before being eligible for benefits. Finally, the benefit levels under the social insurance schemes are higher than those schemes, like social assistance, which are funded out of general revenues. While this would appear to be an explicit reward for labour force attachment, it is also a further disadvantage to those, like women and the disabled, who face acknowledged barriers to employment and thus, if they are entitled at all, would more likely receive lower benefits. The most recent example of a benefit being provided as a "reward" for attachment to the labour force can be seen in the Canada Child Tax Benefit. The benefit will be paid to all low income families with children. However, while it will represent an increase for some low income families who have income from employment, it will provide no benefit to low income families who rely on social assistance, as it will be deducted dollar for dollar from their social assistance entitlement. Instead, it will serve as an "incentive" to find employment.

In some circumstances, the reason for the break in the attachment to the labour force can be cause for refusing or disentitling a person to benefits. The most common examples of this occur under the Employment Insurance Act and the General Welfare Assistance Act. A person who voluntarily leaves their employment without just cause or who loses their job by reason of their own misconduct is disentitled from receiving EI benefits, regardless of how long or how much they might have contributed in EI premiums. Under the GWA loss of employ-

142. See for example the Years' Basic Exemption under CPP and the requirement under section 7 of the EIA to have worked for a minimum number of hours before being eligible for benefits.

143. Section 30 of EIA. Prior to the amendments made to the Unemployment Insurance Act in 1993, loss of employment under these circumstances would result in a disqualifica-
ment under these circumstances will result in a person being ineligible for benefits for three months.\footnote{144}

If a person does have a break in their attachment to the labour force and does qualify for assistance under any given program, an almost immediate and on-going requirement for that recipient is to “re-attach” to the labour force. The emphasis of this requirement is not on how best to “re-attach” the individual to the labour force so as to preclude a future reliance on an income maintenance program. Rather, the emphasis is on how quickly the individual can be “re-attached” to the labour force.\footnote{145} Further, the failure to “re-attach” can result in a suspension or reduction of benefits.

Most often this effort at “re-attachment” is manifested by a job search requirement. Sometimes minimal skills and education upgrading is available. Only in the rarest of cases is comprehensive retraining or occupational rehabilitation offered. That this is the case is of course not surprising. Retraining and rehabilitation programs are very expensive to provide and can threaten the “sustainability” of the program in question. However, this approach is not in keeping with the rhetoric about retraining. The \textit{Green Paper} discussed the importance of “employment development services” at length, recognizing that while they were more expensive than simple income support, they were an important investment in helping people get off social programs and back into the paid labour force. The objective of these services should be “helping people find good jobs”.\footnote{146}

Finally, the reform of social programs took little account of the changing nature of the workplace or the labour market. The increase in non-standard employment, including part time work, self-employment and temporary and contract work, is well known.\footnote{147} Most of those engaged in non-standard employment do not have access to traditional employment benefits such as sickness, disability and retirement plans. As such, access to the protections provided by the social

\footnote{144. Section 4.2 of Regulation 537, \textit{supra}, note 14. Prior to this October 1995 change in the regulation, a person who lost their employment under these circumstances would have been ineligible for benefits for one month. If that penalty was “unreasonably harsh”, then assistance could simply be reduced for that period of one month.}

\footnote{145. See for example, \textit{supra}, note 71 with respect to the Labour Market Re-entry Plan under workers’ compensation and \textit{Program Guidelines for Early Implementation of Ontario Works}, \textit{supra} note 76 at 11 with respect to the goals of workfare.}

\footnote{146. \textit{Supra}, note 3 at 30.}

\footnote{147. For a good discussion of this issue see Human Resources Development Canada, \textit{Report of the Advisory Group on Working Time and the Distribution of Work} (Minister of Supply and Services Canada; 1994) at 27-35.}
insurance programs discussed could be of great importance. However, the self-employed are not entitled to EI coverage and are not generally covered by workers’ compensation. Further, depending on the nature of the part time or contract work, coverage for the benefits available under CPP could be limited. Not one of the reform processes discussed gave any serious consideration to expanding coverage to address these issues.

E. Conclusion

There are costs that arise when a person cannot obtain income from employment, or cannot obtain sufficient income from employment, due to the loss of a job, insufficient skills, injury, disability or family responsibilities. Those costs are both social and economic and they do not disappear when we as a society decide that we can no longer “afford” certain types of social programs. When we discuss the costs of social programs, what we are really discussing is who should bear the costs and not whether they should be borne at all.

The response to these social and economic circumstances must be more coordinated. The myriad of income security programs in Canada no longer independently fulfill the important purposes for which they were designed. A new system, one which recognizes the strengths and weaknesses of the present system must be devised. With the gradual decline of government deficits as the primary focus of political discourse, and with growing recognition that social programs have borne an inordinate share of the burden of deficit reduction, it is possible that the time is ripe for a comprehensive anti-poverty strategy. The re-forming of these programs which has occurred during the 1990s has provided an important context for a more comprehensive approach to reform. To continue to proceed on divergent and independent paths will only lead to a repetition of the mistakes which have brought us to this point in the first place.