Beyond the Spousal Tax Credit: Rethinking Taxation of Dependency and Caregiving (Again!) in the Light of the Law Commission of Canada Report

Paul Kershaw*

PRÉCIS

Dans son récent rapport *Au-delà de la conjugalité*, la Commission du droit du Canada recommande au gouvernement fédéral d'abroger le crédit d'impôt pour conjoints dans la Loi de l'impôt sur le revenu, et d'utiliser les économies ainsi réalisées pour bonifier la Prestation fiscale canadienne pour enfants. Dans cet article, l'auteur vient à la défense de la Commission du droit qui recommande d'abroger le crédit d'impôt, mais propose une stratégie alternative. Sa proposition consiste à la fois à bonifier l'actuel crédit d'impôt aux aidants naturels et à le redéfinir comme un crédit d'impôt remboursable. Le nouveau crédit subventionnerait les contribuables qui donnent des soins socialement précieux à des personnes qui sont dépendantes en raison de leur âge, d'une invalidité ou d'une maladie. Ce crédit serait supérieur à une Prestation fiscale canadienne pour enfants bonifiée en remplacement du crédit pour conjoint et l'équivalent du crédit pour conjoint puisqu'il préserverait les économies fiscales que les familles monoparentales obtiennent actuellement en vertu de l'équivalent du crédit pour conjoint tout en reconnaissant que l'actuel crédit pour conjoints subventionne certains soins pour des personnes dépendantes autres que des enfants. De plus, un crédit d'impôt remboursable aux aidants naturels réintégrerait dans la Loi la reconnaissance symbolique universelle des frais liés à l'éducation des enfants, et corrigerait les iniquités actuellement présentes liées au fait que la valeur du crédit d'impôt pour les soins prodigués par les aidants naturels est inférieure au crédit personnel de base. Étant donné qu'un crédit remboursable pour aidants naturels pourrait avoir un effet dissuasif au travail, surtout pour le « second gagne-pain », l'auteur recommande d'introduire un programme universel de services de garde afin d'alléger certaines barrières à l'emploi. L'auteur défend ce choix politique contre les critiques qui suggèrent une politique plus neutre qui utiliserait les mêmes fonds pour transformer la Prestation fiscale pour enfants en une prestation universelle.

* Post Doctoral Research Fellow, Human Early Learning Partnership of BC, University of British Columbia, Vancouver. I wish to thank Claire Young, Jon Kesselman, Neil Brooks, and three anonymous reviewers for their insightful comments about earlier drafts.

ABSTRACT

In its recent report, *Beyond Conjugality*, the Law Commission of Canada recommends that the federal government repeal the tax credit for spouses and common law partners in the Income Tax Act ("the Act") and use the savings in revenue to enrich the Canada child tax benefit (CCTB). This article defends the Law Commission recommendation to repeal the tax credit but proposes an alternative strategy for replacing it. The proposal is to both enrich the existing caregiver tax credit and redefine it as a refundable caregiver credit (RCC). The new credit would subsidize taxpayers for providing socially valuable care to persons who are dependent by reason of age, disability, or illness. It would be superior to an enriched CCTB as a replacement for the spousal and common law credit because it would both preserve tax savings for single parents that are currently available through the equivalent-to-spouse credit and acknowledge that the current spousal credit subsidizes some care for dependants other than children. The proposed RCC would also reintegrate into the Act symbolic universal recognition of the costs associated with rearing children and address the concern that the Act denigrates unpaid care work by providing a tax credit for full-time unpaid caregivers that is less valuable than the basic personal credit. Since the RCC would retain some disincentives to paid labour-force participation by secondary earners, the article also recommends the introduction of universal child-care programming to overcome one potential barrier to employment. The author defends this policy option from critics who suggest that a more neutral policy would use the same funds to transform the CCTB into a universal child benefit.

KEYWORDS: POLICY ■ TAX EQUITY ■ SPOUSE ■ DEPENDENTS ■ CHILD CARE ■ WOMEN

In its recent report, *Beyond Conjugality*,[1] the Law Commission of Canada recommends that "Parliament should replace the *Income Tax Act*'s[2] spouse and common-law partner tax credit[3] with enhanced or new programs that more carefully target caregivers and children for direct income support."[4] The commission in turn suggests enriching the Canada child tax benefit (CCTB) with the $1.3 billion[5] that the federal government will spend on the spouse and common law provision in 2003.

This article defends the Law Commission recommendation to replace the spousal and common law credit; in particular, it addresses a recent critique of the proposal by Duff.[6] Where relevant, the defence also indicates why repealing paragraph 118(1)(a) of the Act is superior to the alternative policy, advocated by the Canadian Alliance party[7] and recently followed by the Alberta government, of enriching the spousal and common law credit.[8]

The article diverges from the Law Commission recommendation, however, by rejecting the suggestion that federal funds currently allocated to the spousal and common law tax measure should be transferred to the CCTB. Instead, I propose an alternative strategy: to both enrich the existing caregiver tax provision[9] and redefine it as a refundable caregiver credit (RCC). The new credit would subsidize taxpayers for providing socially valuable care to persons who are dependent by reason of age, disability, or illness. The proposed RCC would be superior to an enriched CCTB as a replacement for the spousal and common law credit because it would both preserve the tax savings for single parents that are currently available through the equivalent-to-spouse credit[10] and acknowledge that the current spousal measure subsidizes some care for dependants other than children. The proposed RCC would also reintegrate into the Act symbolic universal recognition of the costs associated with rearing children and address the concern that the Act denigrates unpaid care work by making available to full-time unpaid caregivers a less valuable tax credit than is available to persons who work in the paid labour market.

Since the RCC would retain some disincentives to paid labour-force participation among secondary earners, this article also recommends the introduction of universal child-care programming to offset potential employment barriers. I defend this policy option from a recent critique by Vincent and Woolley,[11] who suggest that a more neutral policy would use the same funds to transform the CCTB into a universal child benefit.

REJECTING THE SPOUSAL AND COMMON LAW CREDIT AS A TECHNICAL TAX PROVISION

The spousal and common law credit permits eligible taxpayers (overwhelmingly men)[12] to claim a tax saving in recognition of the costs of supporting a non-earning spouse or common law partner. As of 2002, the credit is worth $1,037 (16 percent of $6,482). The value of the credit is reduced by 16 percent of the dependant's income above $649; this provision ensures that the tax relief targets families in which the at-home spouse has almost no attachment to the paid labour market.[13] The Law Commission recommends repealing the spousal and common law credit on the grounds that it "does not serve a legitimate government objective"[14] when it is analyzed as a technical tax provision and that it is found to be badly designed when it is examined as a tax expenditure.

According to the commission, a technical tax provision contributes to the computation of a person's tax liability.[15] Since the Act is predicated on the belief that taxes should be levied according to individuals' ability to pay, the income tax includes measures that allow taxpayers to deduct some non-discretionary expenditures from their gross income in order to arrive at a net income figure that better reflects their ability to pay. In keeping with this logic, the spousal and common law credit is sometimes defended on the ground that an individual who undertakes to maintain a financially dependent conjugal partner has less ability to pay and therefore should be entitled to a tax reduction.

The Law Commission rejects this defence of paragraph 118(1)(a) for several reasons. First, the commission suggests, it would seem intuitively that "[i]ndividuals enter into personal relationships with others capable of supporting themselves, presumably because they think such relationships will increase their well-being."[16] Any resulting costs of those relationships should therefore not be assumed to limit the supporting partner's ability to pay.

Second, this defence of the spousal and common law credit "appears to be based upon the assumption that the work of the partner in the home is unproductive or provides no personal benefits to the other partner."[17] But this assumption ignores the fact that a non-employed parent who provides child care at home achieves considerable savings for the family, given that the average monthly cost of licensed centre-based care for children under six in British Columbia, for example, ranges from $494 to $705 and is particularly high for infants and toddlers.[18] In addition, she (or, much less likely, he) has considerably more time for cooking, housecleaning, shopping, and other errands or repairs. In the marketplace, these services are costly to purchase, and a dual-earner couple must purchase far more of them in order to be situated comparably, particularly in terms of leisure time, with a one-earner couple with equal monetary income. Thus, "[f]ar from reducing the ability to pay of the partner working in the paid working force," the Law Commission argues, "supporting a partner who works in the home will often increase the working partner's ability to pay because it will substantially reduce the services they will have to purchase in the marketplace."[19]

Third, the Law Commission argues that the structure of the spousal and common law credit "provides an incentive for one spouse or common-law partner to remain economically dependent on the other," since it compounds barriers to employment for secondary earners.[20] A non-earning partner in a couple is not likely to accept a paid position unless the financial benefits outweigh the cumulative costs, such as child care, transportation, clothing, diminished household production, and the cost of replacing household labour. The spousal and common law credit exacerbates these costs in two ways. First, it treats many married and common law women less favourably than men by effectively taxing them on income that surpasses $649, rather than on income that surpasses the basic personal credit of $7,634. Second, it adds another $1,037 (16 percent of $6,482) to the expenses that the non-earning spouse must take into account in deciding whether to seek paid work. Although loss of a credit of $1,037 alone may not dissuade a non-earning spouse from seeking employment, the total costs of participation in the paid labour force can be a considerable deterrent—particularly given the earnings gap between men and women. Indeed, there is evidence to suggest that women's paid-work decisions are more sensitive to after-tax wages than men's are.[21] Enrichment of the spousal and common law credit to 17 percent of $10,000, as the Alliance party proposed in the 2000 federal election campaign, would only serve to increase the tax measure's disincentive effect by more than $600.

Given the (dis)incentive effect of the spousal and common law credit, the Law Commission argues that the credit

> appears to be designed to promote economic dependency in conjugal relationships. Indeed, historically, it has been used explicitly for this purpose. For example, in 1942 the credit's dependency requirement and the income limit on the dependent spouse were repealed so that husbands could claim the credit even though their wives were working in the paid labour force. This amendment was intended to encourage women to contribute to the war effort by taking up work in factories. After the war, the dependency requirement and the income limit were reinstated. The obvious purpose

> of reinstating these requirements was to encourage married women to return to unpaid labour in the home and make more paid jobs in factories available for soldiers returning from the war.[22]

Since the spousal and common law credit implies a preference for women to remain in the domestic sphere, the commission argues that it impedes the societal pursuit of gender equality and personal autonomy, two commitments that it lists among its fundamental principles.[23] By contravening these principles, the commission concludes, the credit "does not serve a legitimate government objective" when one views it as a technical tax provision.[24]

REJECTING THE SPOUSAL AND COMMON LAW CREDIT AS A TAX EXPENDITURE

Although the Law Commission discounts the objective assigned to paragraph 118(1)(a) as a technical tax measure, it concedes that determining the objectives of particular provisions of the Act is sometimes complicated by the fact that the provisions in question may be concerned with social policy goals rather than with the computation of a person's ability to pay. Tax provisions that depart from this technical tax function are referred to as tax expenditures. Tax expenditures decrease the amount of income on which persons pay tax and thereby reduce the amount of tax owed. The reduction in tax paid is a tax saving, which is functionally equivalent to a direct government spending program that delivers to individuals an amount equal to the tax saving. In this manner, tax expenditures subsidize citizens who perform activities that the government wishes to encourage.

The Law Commission finds that the spousal and common law credit is assigned two worthy objectives when it is evaluated as a tax expenditure but argues that the credit's design undermines its ability to achieve these goals. One objective attributed to the credit is to compensate citizens for their domestic labour. This attribution, however, is belied by the structure of the credit. The commission notes that the tax relief is delivered to the "wrong person"[25]—the breadwinning partner rather than the actual provider of domestic labour who remains at home. In addition, domestic labour is not solely the domain of full-time homemakers. Many women who work long hours in the labour market perform the bulk of the domestic work[26] as well, yet they cannot benefit from the additional tax relief that the spousal credit provides. A second objective attributed to the spousal and common law provision is to contribute publicly to the cost of raising children. In this regard, the commission concludes that the spousal and common law credit is "over-inclusive,"[27] since only about half of the spousal allowance's claimants have dependent children.

The fact that the design of the spousal and common law credit renders it inadequate for pursuing the two ends ascribed to it as a tax expenditure leads the Law Commission to conclude that "its primary objective appears to be to promote dependency in personal relationships."[28] Since this pursuit is not a legitimate government objective, the commission recommends repealing paragraph 118(1)(a) and replacing it with a measure designed specifically to address the tax expenditure objectives that the paragraph serves only imperfectly.

DAVID DUFF ON REVISITING THE TECHNICAL TAX FUNCTION OF THE SPOUSAL AND COMMON LAW CREDIT

In a recent commentary on the Law Commission report, David Duff concedes that the spousal and common law credit "cannot be justified as a reasonable tax expenditure to support caregiving for children or elderly parents" but questions the "view that the credit contradicts the 'technical' tax criterion of equitable taxation according to ability to pay."[29] Duff raises several points.

To begin with, he questions whether taxpayers with economically dependent conjugal partners provide support voluntarily, as the Law Commission assumes. "[T]o the extent that support obligations are mandated under provincial family law regimes," Duff argues, "basic costs associated with these obligations appear to constitute involuntary expenses that reduce the supporting person's ability to pay."[30] In keeping with this view, he concludes that something like a spousal and common law credit "should be available for any relationship in which support obligations are mandated by law."[31]

A legal requirement to provide financial support, however, is not obviously a sufficient condition for tax relief. The public discontent following the Supreme Court decision in *Thibaudeau*[32] moved Parliament to enact legislation that prevents taxpayers with child-support orders made or varied after May 1, 1997 from deducting from their taxable income legally mandated child-support payments paid to their former spouses. Nor does a legally mandated obligation seem a necessary criterion for tax relief in a system that is designed to compute tax liability on the basis of ability to pay. The relevant issue is whether supporting an economically dependent person limits or increases an income-earner's ability to pay, whether there is a legal obligation or not.

On this point, Duff argues that "the value of any household services" performed by an economically dependent spouse or common law partner "should not enter into the supporting person's 'ability to pay,' since 'imputed income' is consistently ignored in defining the income tax base and rightly ignored in any tax that respects personal autonomy."[33] In defence of this position, Duff cites an article by Chancellor, who raises two themes that are particularly germane to the discussion of a spousal and common law credit. First, Chancellor is concerned that measuring imputed income is too challenging, since the value of self-performed services, leisure, and so forth is embedded in subjective satisfactions that are "too idiosyncratic to constitute a tax base. Income must mean something that is measurable and, even in theory, satisfactions are not."[34] Second, Chancellor equates income with "the increase of purchasing power over market goods and services" and argues that "self-performed services and leisure do not increase one's power to appropriate goods and services from the exchange economy."[35]

Vincent and Woolley have recently contested Chancellor's first point as it pertains to unpaid domestic work. They reject as a "myth" the view that "[h]ousehold production is hard to measure; therefore, the tax system should focus solely on money income."[36] "[T]here is a growing realization," they argue, "that it is better to be approximately right, making some sort of estimate of the value of household production, than to be precisely wrong, placing a value of exactly zero on household work."[37] Vincent and Woolley point to a United Nations' study that estimates the value of Canadian household production in 1996 to be 54 percent of conventionally measured GDP; "it does not make sense," they argue, "to simply ignore [household activity] for taxation purposes" when the value of household work may be worth as much as half of all other economic activity.[38] In keeping with this view, they employ "opportunity cost" and "replacement cost" methods to undertake their own estimation of the value of household labour performed by a full-time homemaker. Their results "suggest a range of value for unpaid work between $10,000 and $30,000, with a mid-point figure of $15,000."[39]

According to the Chancellor article, however, the economic value of household production should not be included in computations of income for tax purposes, since "[i]ncome is obtained at the point purchasing power is acquired"[40] and self-performed services do not increase the homemaker's power to purchase market resources. His argument runs as follows: "If an individual with a weekly salary of $200 repairs her own car rather than paying a mechanic $200 to do the job, the individual can now spend that week's salary on something else but her economic power over market resources that week is still only $200—not $400."[41]

This reasoning alludes to a serious practical concern: how is it possible to levy taxes from a full-time homemaker who receives no cash for her work? In the absence of financial remuneration for home production, a homemaker may have no money to pay taxes, despite consuming or providing thousands of dollars worth of self-performed services. This question is not relevant, however, when one is evaluating the need for a spousal or common law credit whose basis is an assumption that home production is a drain on the income-earning partner's ability to pay. Estimates of the value of unpaid housework make clear that this assumption is untenable, particularly if caregiving responsibilities are at issue. Given the costs of regulated child care, a taxpayer with two preschool children may face non-discretionary child-care expenses of $10,000 or more per year if she undertakes full-time employment. The one-earner couple saves this expense: the dual-earner couple and the single taxpayer do not. In relative terms, this $10,000 saving significantly increases the one-earner couple's ability to pay tax vis-à-vis dual-earner couples and single taxpayers with comparable money incomes. To fall back on the position that imputed income does not increase purchasing power for the one-earner couple in absolute terms is to lose sight of the broad objective that taxes ought to be imposed on individuals according to their ability to pay relative to other individuals.[42]

The Act already acknowledges this fact to a limited extent, contrary to Duff's claim that "'imputed income' is consistently ignored in defining the income tax base."[43] The federal government lists the child-care expense deduction (CCED)[44] as a memorandum item rather than a tax expenditure in its annual account.[45] Memorandum items are "measures that would not generally be considered to be tax expenditures and would therefore be included in the benchmark tax system" but are nonetheless listed in the annual tax expenditure report because "reasonable differences of opinion exist as to the structure of the benchmark tax system and hence as to what constitutes a tax expenditure."[46]

There are two arguments supporting the view that the CCED is a technical provision that is part of the benchmark tax system. The first is that the deduction accounts for the fact that child-care expenses are incurred in the process of earning income and therefore reduce a taxpayer's ability to pay. The second is that the CCED minimizes a tax advantage that one-earner couples enjoy as a result of the non-inclusion of imputed income from self-performed child-care services in the calculation of tax liability. The Department of Finance has invoked both arguments in defending the effects of the CCED.[47] The second argument rests explicitly on concerns about horizontal equity and imputed income by assuming that two couples with children who have equal monetary incomes, say $37,000, do not enjoy the same ability to pay tax if one has a single earner and the other has two earners. According to this argument, the CCED implies that a two-earner couple with an income of $37,000 and $7,000 in child-care expenses is better compared for tax purposes to a single-earner couple with one child and an income of $30,000 than to the single-earner couple with an income of $37,000.

The case for retaining the spousal and common law credit either on the ground that it appropriately recognizes a legally mandated obligation or on the ground that it rightly ignores the issue of imputed income is not sufficiently compelling to reject the Law Commission's recommendation to repeal paragraph 118(1)(a) because it violates the principles of gender equality and personal autonomy. The disincentive that the credit generates for supported spouses or common law partners to participate in the paid labour force is, admittedly, small—a point the commission concedes. Nevertheless, there is no reason to retain even a small disincentive unless it is outweighed by another, more pressing, tax concern. However, Duff does not adequately demonstrate that the spousal and common law credit is consistent with the broad technical tax objective of levying taxes according to ability to pay. What is more, the disincentive to female employment is just one way in which paragraph 118(1)(a) contradicts the pursuit of gender equality. What is just as important, the credit reinforces patriarchal social structures by affirming the view that women's dependence on men merits government support. If gender equality is a genuine public policy priority, then structural and ideological barriers of this kind must be challenged wherever possible.

SOCIALLY USEFUL VERSUS PRIVATELY USEFUL CARE

The Law Commission agrees that the tax expenditure objectives imperfectly pursued by the spousal and common law credit are worthy social policy goals and recommends that the revenue saved from repealing paragraph 118(1)(a) "be used in a program that directly targets caregivers and children," such as enriching the CCTB.[48] In the remainder of this article, I advance an alternative option that would pursue the same objectives.

My suggested replacement for the spousal and common law credit is designed to minimize the risk of reinforcing patriarchy that is implicit in the tax system's acknowledgment of conjugal relationships. At the same time, it recognizes the fundamental role that some unpaid-care relationships play in fostering personal autonomy for care recipients and the financial sacrifices that citizens incur to provide this care. It accomplishes these two ends by incorporating a distinction advanced by Eichler between unpaid care that is *socially useful* and care that is just *privately useful*. Eichler describes a "simple test" to distinguish one from the other: "would the public pick up the cost of care if it was not provided by a family member?"[49] If the answer is yes, the care includes a socially useful component, typically provided to children or adults who need care because of chronic or temporary illness, disability, or senility. If the answer is no, as would be the case "when a wife renders services to a physically and mentally fit husband, adult child, for herself, or for some other adult," then the care is a privately useful service.[50] Privately provided care that is socially useful should be publicly recognized and compensated to some degree, since the state profits directly from it in the form of reduced expenditures for the social service and health-care systems. By disallowing tax relief for care that is only privately useful, however, the proposed alternative would ensure that the income tax system acknowledged the economic value of domestic labour and, therefore, did not wrongly depict work performed by a full-time homemaker as a drain on the household's ability to pay tax.[51]

Eichler's test explicitly envisions a tax expenditure designed to subsidize unpaid socially valuable caregiving—not socially valuable income support. Before I turn to the design of a tax expenditure of this kind, let me note that it is possible to imagine administering a different test, one that asks whether the public would provide income assistance for a given person if he or she were not receiving financial support from a family member. If the answer is yes, there may be reason to think the financial support has a socially valuable component that merits public recognition through something like the spousal and common law credit. For instance, Duff argues that in a conjugal relationship "the supported person's 'choice' to earn little or no income is not always voluntary."[52] If the supporting partner's financial contributions are a matter of necessity, then they should be accounted for in determining his or her tax liability.

This position is most compelling when the supporting partner provides the financial support to a spouse or common law partner who is dependent by reason of elderly status, infirmity, or disability. The Act, however, already accommodates this possibility by offering the infirm dependants'[53] and caregiver credits. There is, therefore, no need for a spousal credit in these circumstances.

Duff also contemplates the possibility that a tax filer's non-earning status reflects difficulties in finding paid work and asks if the tax system should account for this possibility.[54] The answer, arguably, lies in the fact that the state has specifically instituted employment insurance, social assistance, and other social services to assist tax filers who struggle in the paid labour force. The fact that some breadwinners financially support an unemployed partner who is seeking paid work but is ineligible for employment insurance (EI) benefits may point to problems with the EI system; it is far from obvious, however, that inclusion of a spousal dependency provision in the Act is the most appropriate remedy for these problems.

The legacy of economic dependence endured by women who have dedicated years to childrearing and other unpaid domestic labour poses a particularly challenging case, since women in this position often have little earnings potential and are therefore poor candidates for employment-promoting programs. One might think that there are in this case especially solid reasons for the state to recognize the social value implicit in financial support provided by an income-earning spouse or common law partner.

This reasoning is flawed, however, since it is inattentive to causation. It is precisely the economic vulnerability typically associated with limited paid labour-force ties that moves the Law Commission and others to recommend eliminating the spousal and common law credit. As I have already discussed, the credit both symbolically and economically compounds incentives that encourage women to decrease their level of labour-force participation in favour of increasing their unpaid care loads. Thus, to claim that a spousal and common law credit is necessary in order to take into account the economic dependence of long-term homemakers is to confuse the credit's fundamental flaw for a justification after it has inflicted its harmful consequences. That said, a concern for the economic security of women who have dedicated their adult lives to homemaking is warranted. The tax measure that I propose below to replace the spousal and common law credit would therefore be available to one non-income-earning married or common law taxpayer in a partnership in respect of unpaid care she or he provides to a spouse or common law partner aged 65 or older. This provision would preserve the status quo for seniors.

RE-EXAMINING THE CURRENT CAREGIVER CREDIT MODEL

The existing caregiver credit offers a helpful model for the design of a tax expenditure that recognizes and encourages citizens who undertake unpaid care with a socially valuable component. The federal government introduced the caregiver credit in 1998 specifically to recognize the "irreplaceable" work performed by "an unprecedented number of Canadians—mostly women—who are today providing care for family members at home—very often an elderly parent or a disabled child."[55] The maximum value of the credit, as of 2002, is $577 (16 percent of $3,605). The tax relief is reduced by 16 percent of the amount that the dependant's net income exceeds $12,312. The credit is not available if the caregiver claims the equivalent-to-spouse credit on behalf of the dependant. If two or more people support the dependant, they may split the tax credit between them, but the total claim for tax relief may not exceed $577. The federal government estimates that the credit will cost $50 million in 2003.[56]

Two structural elements of the caregiver credit distance (but do not totally exempt) this tax measure from the problems implicit in the proposal to further value unpaid domestic care by enriching the spousal credit. First, in some cases, the tax expenditure is delivered directly to care providers in recognition of their work. In this respect, the caregiver credit stands in stark contrast to the spousal and common law credit, which always directs tax relief to the breadwinning partners of at-home caregivers. The distinction is important symbolically, since the caregiver credit acknowledges that some of women's unpaid care labour merits compensation as a socially and economically important contribution. Second, the caregiver credit targets tax relief only to socially useful care, or care that relieves the health and welfare system of work it might otherwise perform, and does not subsidize care rendered to an able-bodied spouse, child, or other adult—care that has only private utility for recipients and providers. By making this distinction, the caregiver credit reinforces the perception that unpaid-care labour is a valuable household resource, one that increases, rather than diminishes, household economic security. The subsidy it delivers recognizes the social value of some unpaid care as well as the financial sacrifices that individuals incur to perform this socially useful work.

Although the caregiver credit is an important symbolic gesture on the path to appropriately valuing women's provision of unpaid care work, it does have shortcomings. In particular, it is far too explicitly oriented to the financial component of caregiving, the stereotypically male contribution. This orientation is manifest in two ways. First, since the credit is not refundable, persons without taxable income will not benefit directly from it. This outcome is a suspect one for a tax measure that is ostensibly designed to value caregiving, since nurturing others on a full-time basis often makes it impossible to earn sufficient income to claim a non-refundable tax credit. The consequences are especially perverse for full-time at-home caregivers. In one-earner heterosexual couples, it is far more likely that the at-home spouse, almost always a woman, will shoulder the majority of care work for an in-home dependent relative. Yet the structure of the caregiver credit makes the tax subsidy available only to the breadwinning spouse in a family of this composition and thus repeats one critical shortcoming of the spousal and common law credit. Although there is indeed an important financial component to caregiving, as reported by many ethnic minority, immigrant, and poor women for whom earning and caring have historically been interwoven domains,[57] the structure of the caregiver credit ignores the care-labour component in one-earner families. Given the gendered division of labour, women are disadvantaged.

The rapid dissipation of the value of the caregiver credit if the care recipient earns even a limited income further illustrates how the tax measure subsidizes the provision of financial support more than it subsidizes care labour. The referencing of eligibility to the earnings of the care recipient obscures the fact that the amount of care one provides to a disabled or frail relation may be entirely unrelated to that income. An elderly parent with a generous pension may nevertheless require regular home visits from a nurse or other health professional in the absence of care provided by an adult child. In addition, as Young points out, this feature of the caregiver credit "discourages the person being cared for from attempting to earn income outside the home, where possible."[58] Although the disincentive effect of the $577 tax subsidy may be minimal in itself, it compounds agism, frailty, and disability as barriers to care recipients' self-reliance. This consequence is unacceptable, since a primary reason for nurturing dependants is to foster their autonomy, not to impede it.

One could overcome these problems by making the caregiver credit refundable and eliminating the income ceiling for care recipients. These two changes would ensure that the tax credit compensated care work as well as monetary expenditures made on behalf of care recipients. The first change would mean that persons with little or no taxable income, including full-time at-home caregivers, would nonetheless benefit directly from the tax-delivered subsidy if they provided care to eligible dependants. The second would ensure that persons who provided socially useful care to persons who were financially self-reliant would also be eligible to receive the symbolic recognition and tax relief accorded by the caregiver credit. Both changes would parallel Quebec's income tax policy, which provides an ascendant lodging tax credit to assist persons who have elderly relatives living with them. The Quebec credit is refundable and is not limited to care recipients who are financially dependent on the taxpayer.[59]

A REFUNDABLE CAREGIVER CREDIT TO REPLACE THE SPOUSAL AND COMMON LAW PROVISION

In place of the spousal and common law credit, I propose a new refundable caregiver credit (RCC) that is not limited to care provided to persons who are financially dependent. The new provision would replace the spousal and common law credit, the equivalent to spousal credit, and the existing caregiver credit. The $1.86 billion that is spent on these three tax expenditures would be redirected to the RCC.[60] Further empirical analysis is needed to determine the net savings or costs to the federal government that would accompany the introduction of the RCC.

The changes to the existing caregiver credit that I recommend below are driven not so much by theoretical commitments as by careful consideration of the financial effects of income tax revisions for different family arrangements, the resultant incentive effects, and the political feasibility of proposed amendments.

Proposed Eligibility Criteria for the RCC

Eligibility for the RCC should be more inclusive than eligibility for the existing caregiver credit in two respects. First, the purview of the RCC should include care that is provided to children aged 17 or less. This change would permit the tax provision to recognize a much broader range of socially useful care and ensure that it contributes directly to the cost of raising children—a function that is sometimes attributed to the spousal and common law credit. Second, following the Law

Commission's analysis of dependent-relative tax credits, the eligibility criteria of the RCC should include non-kin residents in the taxpayer's home who are dependent by reason of age, disability, or illness.[61] A tax measure that is designed to compensate caregiving should recognize the socially useful care that individuals provide even in the absence of a familial connection. The savings to the health and welfare systems are no less real because the care recipient is not related to the caregiver by blood or conjugality.[62] Both changes to eligibility are important if replacement of the spousal and common law credit is to be politically feasible. The revised caregiver credit will be available to a significant proportion of families with at-home spouses, the group for which replacing the spousal credit will be most controversial, only if it recognizes a very broad range of relationships.

Proposed Values for the RCC

If the caregiver credit is to replace the spousal and common law credit, then the amount of tax relief it delivers should be increased. I propose four distinct levels of tax savings; the level would vary with the circumstances of caregiver and care recipient. For 2002, the maximum value of the credit would be 16 percent of $11,239 (or $1,798), the second-tier value would be 16 percent of $7,634 (or $1,221), the third-tier value would be 16 percent of $4,757 (or $761), and the fourth-tier value would be 16 percent of $1,152 (or $184). These values are dictated largely by the value of existing tax measures. In subsequent years, the four value-tiers would be indexed to inflation.

The four value-tiers represent political decisions that would be necessary to ensure that providers of socially useful care were not penalized by the decision to replace the spousal credit with the RCC. Many caregivers/families would gain at least $184 in tax relief. The purpose of this moderate increase is to foster acceptance for the proposed tax changes among diverse stakeholders. Although the inclusion of four different values would complicate the structure of the recommended tax provision, claiming the tax relief would be no more onerous than the challenge posed in 2000, when some taxpayers had to deal with three distinct tax rates for capital gains (the rate varied with the date of sale). Since the RCC would be refundable, the government could complete the relatively complex calculation on behalf of individual tax filers and issue cheques quarterly—or even monthly, as it does in the case of the CCTB. This administrative policy would ensure that recipients need not visit a tax preparation service in order to calculate the value of the RCC or wait until tax time in order to benefit from the tax expenditure.

The maximum value of the RCC, $1,798, would be available to

- a single taxpayer who resides with at least one child under 18, or one mentally or physically infirm dependant, or one individual over 65;
- a spouse or common law partner who resides with and provides full-time at-home care for at least one mentally or physically infirm dependant, or one individual over 65.

Tax relief of $1,221 would be delivered to

- a spouse or common law partner who resides with and provides full-time at-home care for at least one child under 7.

Less valuable sums of tax-delivered assistance would be provided on the following terms:

- $761 for a spouse or common law partner who resides with but does not provide full-time at-home care for at least one mentally or physically infirm dependant, or one individual over 65;
- $184 for a spouse or common law partner who resides with at least one child under 7, but who does not provide full-time at-home care for the child; and
- $184 for spouse or common law partner who resides with at least one child aged 7 to 17 regardless of the earnings of the caregiver.

Under this proposed strategy to replace the spousal and common law credit, a single tax filer would be able to claim the RCC only on behalf of one care recipient, regardless of the number of eligible care recipients with whom he or she resided. Similarly, married and common law couples would be permitted to claim the RCC only on behalf of one dependant, regardless of the number of eligible care recipients with whom the couple lived. If there were more than one eligible care recipient, tax filers would be allowed to claim the care relationship that provided the greatest tax relief. Under this proposal, as I discuss below, the infirm dependants' credit would continue to be available to taxpayers who supported multiple elderly, ill, or disabled dependants.

A tax filer would be deemed to provide "full-time at-home" care if he or she satisfied the following criteria:

- neither the tax filer, nor his or her spouse or common law partner claimed the CCED;
- neither the tax filer nor his or her spouse or common law partner used publicly subsidized care more than once a week on average during the previous year; and
- the tax filer was what Eichler terms a "derived dependant" without taxable income.[63]

The term "derived dependant" recognizes that providing full-time care is incompatible with regular labour-force participation and that the earnings of tax filers who undertake full-time unpaid care are limited. The RCC would therefore include provisions to claw back the maximum tax subsidy for spouses and common law partners at a rate of 16 percent of taxable income in excess of $649, a rate that is consistent with the reduction rate of the present spousal and common law credit. The RCC would reach its minimum values for income that exceeded $7,131.[64]

It is necessary to treat single caregivers differently from common law or married caregivers in order to accommodate differences between the spousal credit and the equivalent-to-spouse credit. The former does not discriminate between privately and socially useful unpaid care, since it subsidizes some one-earner couples in which the homemaker does not nurture a young child or an infirm or elderly dependant. The latter, by contrast, subsidizes only single taxpayers whose provision of care to a child or elderly relative has a socially valuable component; it also delivers financial assistance to families of a type that endures disproportionately high rates of low-income status.[65] At a minimum, income deprivation that single parents frequently encounter demands that any revision of the personal income tax should not exacerbate the relative economic insecurity of this family type. The RCC that I propose would ensure that single caregivers were eligible for at least an additional $184 in tax relief in all situations in which they are currently permitted to claim both the equivalent-to-spouse credit on behalf of one dependant *and* the caregiver credit on behalf of a second dependant. Single caregivers who currently claim only the equivalent-to-spouse credit would stand to gain a further $577 in tax relief (for a total of $761). Since the RCC would also be refundable, some poor single-caregiver families that currently do not receive the full value of the equivalent-to-spouse and caregiver credits stand to gain considerably more tax-delivered assistance, since receipt of the RCC would not be contingent upon earning taxable income.

The maximum tax saving under the proposed RCC, $1,798, is equivalent to the tax relief currently generated by the basic personal credit and the current caregiver credit together. Thus families in which an at-home spouse cared for an infirm or elderly dependant would receive additional tax relief of at least $184, the difference between the existing spousal credit ($1,037) and the basic personal credit ($1,221). Some low-income single-earner couples might benefit further, given that the proposed tax relief would be refundable.

The second-tier figure of $1,221 is equivalent to the tax saving produced by the basic personal credit. In this case, the RCC would deliver a minimum additional tax rebate of $184 to couples in which one spouse remained at home to rear a preschool child or children.

The proposed third-tier value of $761 is the current value of the caregiver credit ($577) plus the difference of $184 between the current values of the basic credit and the spousal and common law credit ($1,221 – $1,037).

Finally, the $184 difference between the basic personal credit and the spousal credit is the minimum amount that the RCC would deliver. It would constitute universal tax recognition of the additional costs of rearing children.[66] I recommend the allowance of only a token amount for this purpose for a number of reasons. First, as table 1 shows, limiting the tax saving to $184 ensures that dual-earner families would *not* gain more than single parents from a decision to replace the spousal credit with a revised caregiver provision. Second, the interconnected CCTB and national child benefit systems already provide considerable refundable tax relief to low- and medium-income families in recognition of the costs associated with raising children. As of 2004, the maximum tax expenditure under the CCTB will be $2,500 for a family's first child.[67] Third, children over the age of six are in school;[68] consequently, a decision by a parent to remain at home full-time usually reflects personal preferences that extend well beyond the desire to provide full-time socially useful care.[69]

Under the proposed RCC, as under the current caregiver credit, more than one tax filer would be able to claim tax relief for care provided to the same dependant, as long as the total tax saving did not exceed the amount that the credit would generate for the person for whom it would be least valuable. I recommend against including a clause that would automatically deliver the tax saving to the "primary caregiver" under the rebuttable presumption that this person was a woman. Although women continue to shoulder primary responsibility for care work, a caregiver tax credit that either partner in a married or common law relationship may claim has some potential to challenge ideological assumptions. At tax time, couples would have to decide how to allocate the available tax saving. This decision might in turn spur conversations between spouses and common law partners about the division of labour within the home, rather than reinforce the assumption that women should be primary caregivers. In addition, the proposed structure for the revised credit includes a financial incentive for an at-home spouse or common law partner to receive the tax expenditure. Since the maximum value is available only to full-time at-home and single caregivers, a single-earner family would benefit more if the non-earning spouse took the credit. This structural feature should allocate the tax-delivered subsidy directly to the person who is most likely performing most of the care labour in one-earner families.

The Proposed RCC Would Be a Tax Expenditure— Not a Technical Tax Provision

In introducing the proposed RCC, the government should make explicit the point that the new measure is a tax expenditure designed to deliver some financial assistance to taxpayers who engage in care activities that have social value from which the general public is thought to benefit. As a tax expenditure of this kind, the credit would not be performing what the Law Commission describes as the technical tax role of assisting in the computation of tax liability by allowing providers of financial support to dependants to deduct an amount from their gross income to arrive at a net income figure that better reflects their ability to pay. I recommend reserving this technical tax function for the current infirm dependants' credit, which provides tax savings for financial support of eligible dependants whether they reside with the taxpayer or not. The maximum value of the credit is $577 (16 percent of $3,605) per dependant. The credit is reduced by 16 percent of the dependant's income that exceeds $5,115. Eligible dependants are currently defined as a child, grandchild, parent, grandparent, sibling, uncle, aunt, niece, or nephew of the taxpayer or the taxpayer's spouse or common law partner.[70]

Following the Law Commission, I agree that "[t]here is no justification for limiting entitlement to [the infirm dependent's credit] to persons with dependants who are relatives,"[71] since the public purse benefits from savings whether the care recipient is related to the caregiver or not. Eligibility criteria for the infirm dependant's credit should therefore be broadened to include mentally or physically infirm dependants whether or not they are related to the taxpayer by blood or conjugality. If the proposed RCC is implemented, the eligibility criteria for the infirm dependants' credit should be further amended to prevent the infirm dependants' credit from being claimed for financial support provided to dependants on behalf of whom the proposed RCC is also claimed by either the taxpayer or his or her spouse or common law partner. In the case of a single taxpayer who claimed the RCC, the infirm dependants' credit would be available only if the taxpayer cared for more than two persons dependent by reason of age, illness, or disability, since the top value-tier of the RCC is designed to replace the tax relief currently provided by both the equivalent-to-spouse credit and the caregiver credit.

Who Gains and Who Loses from the Proposal To Replace the Spousal and Common Law Credit?

In a recent evaluation of the Law Commission's *Beyond Conjugality*, Woolley considers who stands to gain and who stands to lose as a result of the commission's recommendation to replace the spousal and common law credit with an enriched CCTB. Since the commission is not specific about how the CCTB should be enriched, Woolley examines a revenue-neutral policy change that would increase the CCTB by $306.85 per child.[72] Her findings are as follows:

> [T]he big winners from replacement of the spousal tax credit with direct support for children would be single-parent families: their level of taxes is unchanged, but they receive a substantially enhanced CCTB—an average net gain of $412 per family. . . .
>
> It is worth noting that the results for single-parent families would change significantly—and many single-parent families would lose—if the equivalent-to-married tax credit were eliminated. The commission does not recommend this reform; however, it seems somewhat inconsistent to eliminate the "married" tax credit while maintaining the equivalent-to-married tax credit in its present form.
>
> Turning to two-adult families with children, what is striking is that, for every single income category, the average gain from an increase in CCTB outweighs the loss of the spousal tax credit. . . .
>
> The people who would lose from the replacement of the spousal tax credit would be single income, two-adult families without children under 18, since none of these would benefit from an enhanced CCTB. However, if some of the funds were used to provide support for people providing elder care, a suggestion mooted by the commission, these households would be much more likely to experience benefits.[73]

The RCC alternative described in this article responds to Woolley's analysis and improves upon the enriched CCTB replacement strategy in two ways. First, it is more consistent than the CCTB strategy, since it both repeals the equivalent-to-spouse provision and the spousal tax credit and enhances the tax saving currently enjoyed by single parents. Table 1 shows that single parents with only one dependant would be the biggest winners from the introduction of the RCC. Second, the RCC proposal is more neutral than the proposed increase in the CCTB, since it does not favour those who care for children over those who care for elderly or disabled persons.

Table 1 shows that three groups of one-earner couples stand to gain $184 from the RCC proposal: those with children under the age of 7, those with an infirm or elderly dependant who is not a spouse, and those with a spouse or common law partner aged 65 or more. Since the added tax saving proposed for full-time unpaid caregivers reflects the difference between the present spousal amount and the basic personal credit, the RCC would respond to the concern implicit in the Alliance party and Alberta government initiatives that the former be raised to the level of the latter. Under the tiered-value system of the proposed RCC, the income tax system would no longer risk undervaluing the work of homemakers in performing socially valuable care by providing less tax relief to full-time caregivers than taxpayers with earned income receive from the basic personal credit.

Table 1 also shows that three groups of one-earner couples stand to lose from the proposal to replace the spousal and common law credit with a refundable caregiver provision. The most controversial group consists of one-earner couples in which the non-earning spouse is dependent by reason of illness or disability. Under the present system, the couple can claim the spousal and common law credit, which delivers $1,037 in tax relief. Under the multi-tiered RCC, however, an income-earning partner who financially supported an infirm dependant under the age of 65 would be eligible only for a credit that delivered $761 in tax savings. This third value-tier of the proposed RCC is based on the value of tax relief that the Act provides under the caregiver and infirm dependants' credits,[74] which is well below the amount available through the spousal and common law tax measure. There is no obvious reason why financially supporting an infirm or elderly spouse or common law partner should merit more tax relief than supporting an infirm dependant who is related to the taxpayer in another way. Thus the disparity between the present spousal provision and the current caregiver and infirm dependants' credits raises questions about what level of tax relief should be delivered by a technical tax provision designed to account for the impact on ability to pay of providing financial support for disabled dependants. This question, however, is beyond the scope of this article.

The other two groups of one-earner couples that stand to lose under the RCC proposal are those without children under 7 and those without infirm or elderly dependants, including a non-earning spouse 65 or older. The proposed reductions in tax relief for these groups are consistent with the argument that only socially useful care should receive tax recognition for the purpose of measuring tax liability. The RCC would symbolically acknowledge the social value of domestic labour and further divorce the income tax system from patriarchal norms that imply that women's provision of unpaid care diminishes a household's ability to pay tax. Although some social-conservative groups may resist this strategy on the ground that it undermines the "traditional family," the tiered-value system that I propose for the RCC would be consistent with social-conservative arguments about the

TABLE 1 Who Gains and Who Loses Under the Proposed RCC Relative to the Status Quo[a]

Dependant	Single person	One-earner couples	Two-earner couples
Child under 7	+$184 to +$761[b]	+$184	+$184[c]
Child 7-17	+$184 to +$761[b]	–$853	+$184
Infirm/elderly dependant who is not a spouse/common law partner	+$184 to +$761[b]	+$184	+$184[c]
Non-earning spouse/common law partner aged less than 65 who is dependent by reason of infirmity	n/a	–$276	n/a
Non-earning spouse/common law partner aged 65 or more	n/a	+$184	n/a
No children under 18, no infirm/elderly dependants, or no non-earning spouse age 65 or over	0	–$1,037	0

[a] The calculations here indicate changes in federal taxes only. They do not include the tax savings that some persons will receive because the proposed credit is refundable. Some low-income single adults and one-earner couples stand to gain more (or lose less) than the figures given here indicate because they currently lack sufficient taxable income to take advantage of the non-refundable equivalent-to-spouse or spousal credits.

[b] A single taxpayer gains $184 under the proposed RCC if he or she currently claims the equivalent-to-spouse credit and the caregiver credit. If the single taxpayer claims only the equivalent-to-spouse credit, she or he will gain an additional $577 in tax relief, for a total of $761 in new tax savings.

[c] This figure assumes that the lower earner in the couple earns more than $7,131, the annual income threshold at which the proposed RCC reaches its minimum value. The lower earner stands to gain more if her or his income is below this threshold.

extent of the financial sacrifices that homemakers make. In recognition of the high opportunity costs that stay-at-home caregivers incur, full-time homemakers who performed socially useful care would receive significantly more tax savings under the RCC than would citizens who strove to balance earning and caring: $1,798 or $1,221 versus $761 or $184. The more valuable tax expenditure is restricted to the at-home caregiver, even though many women in the paid labour force perform considerable amounts of unpaid domestic labour on top of their paid work.[75]

Although the nominal value of the RCC would appropriately acknowledge that full-time at-home caregivers accept particularly high opportunity costs, table 1 shows that the proposed credit is consistent with feminist wishes to increase the value that society assigns to unpaid care work and yet not reinforce patriarchal systemic forces. Thus the RCC would restructure the system of incentives to deter exclusive female domesticity in households that do not provide care for preschool children or for aged, infirm, or disabled relations by significantly limiting the tax relief available to these families. The table also shows that the RCC would have little effect on the existing incentives for married and common law partnerships that do provide this care. Just as single-earner couples would typically gain $184 under the RCC, so would dual-earner couples; consequently, replacement of the spousal provision by the RCC would not increase the obstacles to women's employment.

The Need To Offset Employment Disincentives Would Persist Under the Proposed RCC

Although the RCC would not increase barriers to female participation in the paid labour force, the credit's tiered-value system would retain labour-market disincentives for persons who provided socially useful care that are similar to the disincentives implicit in the spousal provision. The disincentives would remain because the RCC's value for dual-earner couples would be considerably less than its value for single-earner couples. As a result, the RCC would have to be accompanied by other policies that offset the proposed tax credit's potential employment barriers for secondary earners. One essential element would be a pan-Canadian child-care system. Cleveland, Gunderson, and Hyatt, and Powell as well, argue that nearly all studies of mothers' employment decisions show that child-care costs discourage both participation in the labour force by women with children and the purchase of market-based child care.[76] Their studies find that an increase of 10 percent in the expected price of child care correlates with reductions of 3.9 percent in the mother's probability of engaging in paid employment and 11 percent in the probability of her buying care arrangements from the child-care sector. The shift from market-based to more informal care arrangements further weakens the labour-market ties of people (almost always women) who agree to provide care at little or no cost.

Numerous critiques of the Act's CCED indicate that this tax provision is not up to the task of functioning as an adequate child-care subsidy.[77] I recommend instead the implementation of a pan-Canadian child-care system modelled on the program now institutionalized in Quebec. Under this program, parents pay a daily fee of $5, which covers roughly 20 percent of the cost of care.[78]

The Quebec child-care model has been criticized by two studies recently published by the Institute for Research on Public Policy (IRPP), one by Baril, Lefebvre, and Merrigan,[79] the other by Vincent and Woolley.[80] Both studies find that the Quebec child-care system is "for the most part benefiting families where the parents [are] participating in the labour market."[81] A "more efficient" system, the studies argue, "would not unduly influence [parent] choices."[82]

In place of Quebec's child-care arrangement, Baril, Lefebvre, and Merrigan recommend that the same funding be used to introduce "a nontaxable universal family allowance."[83] They offer two options: the first is a demogrant of $1,752 annually per child under 18; the second is a tiered universal-allowance system of $2,754 for children under 7, and $1,377 for children 7 to 15. Similarly, at a Canada-wide level, Vincent and Woolley suggest universalizing the CCTB by changing its clawback structures to deliver a minimum benefit of $1,625 per child under 18. The cost of the program would be roughly $6 billion[84]—a figure comparable to the additional $5.3 billion that Cleveland and Krashinsky estimate would be necessary to develop a national child-care program that subsidized on average 80 percent of the cost of care for children aged 2 through 5,[85] on par with the Quebec system.

All three IRPP proposals would provide more cash in hand for parents with children. This outcome would allegedly remedy two problems that are germane to the discussion in this article.[86] First, it is suggested that a universal child benefit would advance horizontal equity in the tax treatment of persons with and without children by appropriately recognizing the responsibilities and added costs of caring for children that all parents incur regardless of their income. Second, a universal demogrant is said to be more neutral than universal child-care programming. Additional funds in parents' pockets allegedly increase their freedom to choose either to remain at home with their children or to go to work and hire child-care services, whereas child-care programming privileges the latter option.

These arguments by the IRPP fall short on two accounts. First, it need not be up to the tax system alone to achieve horizontal equity between families with children and families without children. Ultimately, this goal must be the objective of the tax, transfer, and social-programming systems collectively.[87] At present, Canadian social programming includes substantial investment in elementary, secondary, and post-secondary education into which taxpayers without children pay. What is missing is a comparable investment in early childhood education.

Second, the IRPP critiques assume that the social, economic, and policy context before the introduction of the child-care program in Quebec was neutral vis-à-vis families' caregiving decisions, an assumption that ignores the historical evolution of social institutions in response to the patriarchal division of labour. After the Second World War, policy makers assigned primary responsibility for caregiving to diverse groups of women, both ideologically and practically, by reinstating the financial-dependency requirement in the spousal tax credit[88] and withdrawing war-time funding for child care.[89] Labour-market expectations about an ideal worker were constructed by men on the basis of male experience and produced employment norms for hours of work that were largely incompatible with primary responsibility for unpaid caregiving.[90] Early post-war attitudes depicted women in the labour market as "secondary earners" and as being less productive than men, owing to pregnancy and their primary role in childrearing.[91] The socialization of young girls to assume domestic roles as wives and mothers also encouraged many women to invest less in human capital than men invested, and social expectations about "appropriate" occupations for women promoted employment segregation.[92] All of these factors are implicated in the gender earnings differential that powers a self-reinforcing cycle in which it becomes "economically rational" for heterosexual couples to maximize household income by investing in the man's career and the woman's domesticity.[93]

The proposal to reject a universal child-care system in favour of a demogrant that is allegedly more "neutral" ignores the systemic forces that underpin this cycle and, as a result, fails to challenge them.[94] More cash in hand for either familial or non-familial care would not be an additional incentive to women to increase their labour-force ties or to men to increase their attachment to unpaid care responsibilities. Families would receive the subsidy regardless of their labour-force patterns. Therefore, women's after-tax earnings would still have to surpass the cost of care arrangements and lost domestic productivity before some couples would think it worthwhile for mothers to pursue paid employment. Since the maximum values of the allowances proposed by the two studies, $2,754 and $1,625, fall well short of the average cost of regulated care,[95] the IRPP recommendations retain a considerable risk that couples would decide that becoming a two-earner household was "not worth it." In fact, by delivering an additional few thousand dollars to ease the transition, the IRPP demogrants might further shift the balance of incentives in favour of encouraging couples to decide that one parent (typically the mother) should withdraw from the labour force. Decisions of this kind buttress rather than contest the patriarchal division of care labour. By contrast, the Quebec child-care system institutionalizes incentives that mitigate systemic factors underpinning patriarchy by reducing the cost of non-familial care to encourage stronger labour-market ties among women.[96]

CONCLUSION: THE LAW COMMISSION OF CANADA ON EQUITY AND NEUTRALITY

Replacement of the spousal and common law credit with the proposed RCC (supplemented by a universal child-care system) would reintroduce into the Act limited recognition of the non-discretionary costs of rearing children. The principal motive for the proposal, however, is a wish to use policy levers to minimize gender inequality. To this end, the RCC would

- distance the income tax system from the assumption that women's unpaid household work is not economically valuable and therefore is a drain on a supporting spouse's or common law partner's ability to pay;
- distance the income tax system from the assumption that women's dependence on men merits tax relief;
- deliver a government expenditure to persons who provide unpaid care that has a socially valuable component and thus ensure that many full-time at-home caregivers have at least some income that is independent of a spouse or common law partner;
- eliminate the barrier to paid employment that the spousal credit poses to secondary earners whose households do not include any children under 7 or any infirm, disabled, or elderly dependants; and
- introduce new tax relief that would disproportionately benefit single caregivers, most of whom are women and who are more likely than other citizens to have low income.[97]

The commitment to gender equality explicit in the RCC strategy results in the elimination of tax savings that are enjoyed disproportionately by one-earner couples. Nonetheless, the proposal respects and responds to two key concerns articulated by this constituency. First, the tiered-value structure of the RCC recognizes that full-time caregivers incur considerably higher opportunity costs in order to provide socially useful care than do persons who retain some attachment to the paid labour force. Second, the RCC would remedy the fact that the Act risks undervaluing unpaid care work by providing full-time homemakers with a tax credit that is less valuable than the basic personal credit available to tax filers with earned income.

The priority ascribed to gender equality under the RCC proposal is consistent with one of the fundamental principles that the Law Commission of Canada cites in its report. According to the commission, "[t]he legal regulation of personal adult relationships *should attempt to promote equality* within relationships and protect against potential inequality between individuals within these relationships."[98] Similarly, the commission adds that

> Some government laws and programs have the unfortunate consequence of encouraging women's dependence on men. It is important that governments keep this legacy of inequality in close personal relationships in mind when redesigning policies and programs to recognize and support close personal relationships. The state's role should be neutral regarding the roles that people assume in their personal relationships. This means facilitating the formation of healthy relationships by *creating conditions in which people are able to exercise choices free of coercion* and by avoiding policies that encourage economic dependence.[99]

In recognizing that neutrality may require the introduction of incentives designed to create conditions that are free from coercion, systemic or otherwise, the Law Commission appears to sanction policy that treats different relationships differently on the basis of their qualitative attributes if differential treatment is necessary to foster a social context in which genuine choices are possible. This insight merits careful consideration, particularly in the light of the arguments from neutrality advanced against child-care programming by the two IRPP studies that I discussed above.

The Law Commission does not, however, employ this important insight consistently throughout *Beyond Conjugality*. For instance, in its discussion of "autonomy" as a guiding principle, the commission states that

> [a]utonomy is compromised if the state provides one relationship status with more benefits and legal support than others, or conversely, if the state imposes more penalties on one type of relationship than it does on others. It follows then that an important corollary of the value of relational autonomy is a principle of state neutrality regarding the form or status that relationships take.[100]

This position on autonomy does not clearly provide the state with as much latitude to use policy levers to challenge social relations and patterns that have deleterious consequences for diverse groups of women as the commission's position on relational equality provides. The Law Commission would therefore be well advised to reconcile its discussions of autonomy with its important insight about relational equality in order to establish a more coherent position in urging state neutrality in the treatment of different relationships.

NOTES

1 Law Commission of Canada, *Beyond Conjugality: Recognizing and Supporting Close Personal Adult Relationships* (Ottawa: Public Works and Government Services, 2001), 77.

2 RSC 1985, c. 1 (5th Supp.), as amended (herein referred to as "the Act"). Unless otherwise stated, statutory references in this article are to the Act.

3 Paragraph 118(1)(a).

4 This recommendation echoes work by a number of other scholars. See Ontario, *Fair Taxation in a Changing World: Report of the Ontario Fair Tax Commission* (Toronto: University of Toronto Press in cooperation with the Ontario Fair Tax Commission, 1993), 304; Maureen A. Maloney, "What Is the Appropriate Tax Unit for the 1990s and Beyond?" in Allan M. Maslove, ed., *Issues in the Taxation of Individuals* (Toronto: University of Toronto Press in cooperation with the Ontario Fair Tax Commission, 1994), 116-154, at 146; Julie A. Nelson, *Feminism, Objectivity and Economics* (New York: Routledge, 1996), 108; and Claire Young, *What's Sex Got To Do with It? Tax and the "Family"* (Ottawa: Law Commission of Canada, May 2000), 113.

5 Canada, Department of Finance, *Tax Expenditures and Evaluations 2002* (Ottawa: Department of Finance, 2002), table 1, under the heading "Family."

6 David G. Duff, "Recognizing or Disregarding Close Personal Relationships Among Adults? The Report of the Law Commission of Canada and the Federal Income Tax" (2002) vol. 50, no.3 *Canadian Tax Journal* 1021-30.

7 In the 2000 federal election campaign, the Canadian Alliance proposed to enrich both the basic personal credit and the spousal and common law credit to 17 percent of $10,000 as part of its "flat" tax platform. The 2002 values of the credits were 16 percent of $7,634 and 16 percent of $6,482, respectively. The Alliance sought to equalize the two credits as one step in its plan to eliminate the fact that some one-earner couples paid more tax than two-earner couples with comparable money incomes. See Jonathan Kesselman, "Flat Taxes, Dual Taxes, Smart Taxes: Making the Best Choices" (2000) vol. 1, no. 7 *Policy Matters* 1–104, at 36.

8 The Alberta government increased the value of its provincial spousal credit when it introduced its flat tax. Until 1999, the province's spousal exemption was $6,055 and its basic personal exemption was $7,131. The province has since increased both exemptions to $12,900 and eliminated marginal tax rate progressivity by introducing a single rate of 10 percent for all taxable income. The Klein government defends the new flat-tax regime on the ground that "single-income families won't be penalized for choosing to have one parent stay at home." See Alberta Treasury, "Single Income Tax Rate Lowered to 10 Per Cent," *News Release*, January 3, 2001.

9 Paragraph 118(1)(c.1).

10 Paragraph 118(1)(b).

11 Carole Vincent and Frances Woolley, "Taxing Canadian Families: What's Fair, What's Not" (2000) vol. 6, no. 5 *Choices* 1-42.

12 As of 1997, 94 percent of stay-at-home parents in single-earner couples were women. See Statistics Canada, *Women in Canada 2000*, catalogue no. 89-503-XPE, 110.

13 Before 2000, the definition of "spouse" excluded same-sex couples. In response to an Ontario Court of Appeal ruling in *Rosenberg et al. v. Canada (Attorney General)*, 98 DTC 6286, the federal government amended the definition of "spouse" to include same-sex partners in subsection 252(4) of the Act for the purposes of registration of occupational pension plans. The federal government has since implemented the Modernization of Benefits and Obligations Act, SC 2000, c. 12, which amends the Act by inserting a distinction between "spouse" and "common-law partner." The former term now refers exclusively to married persons, whereas the latter refers to partners in both heterosexual and same-sex couples who have cohabitated for a continuous period of at least one year. These definitional changes are accompanied by a

further provision that amends every reference to "spouse" or "spouses" in the Act so that it now reads "spouse or common-law partner" and "spouses and common-law partners." The effect is that same-sex partners are now treated under the Act as "spouses" were treated previously but without granting them this title. On this point, see Young, supra note 4, at 33.

14 Supra note 1, at 75.

15 Ibid., at 64.

16 Ibid., at 75.

17 Ibid., at 75-76.

18 Barry Forer and Theresa Hunter, *2001 Provincial Child Care Survey: Final Report* (Victoria: British Columbia Ministry of Community, Aboriginal and Women's Services, Child Care Policy Branch, 2001).

19 Supra note 1, at 76.

20 Ibid.

21 Maloney, supra note 4, at 124; and *Fair Taxation in a Changing World*, ibid., at 264 and 270.

22 Supra note 1, at 74. For a more detailed description of the spousal and common law credit's history, see Young, supra note 4, at 26-34.

23 Supra note 1, at 16-19. The same concerns about gender equality and personal autonomy also underpin the Law Commission's more general defence of retaining the individual as the basic unit of taxation in the Act. See ibid., at 70-71.

24 Ibid., at 75.

25 Ibid., at 77.

26 For instance, 1996 census data found that roughly one half (51.1 percent) of full-time employed fathers in heterosexual relationships with a child under six provided 14 or fewer hours of unpaid child care per week. In contrast, nearly one half (48.7 percent) of full-time employed mothers with a child under six performed 30 or more hours of care weekly. See Statistics Canada, "Labour Force Activity, Occupation and Industry, Place of Work, Mode of Transportation to Work, Unpaid Work," *The Daily*, March 17, 1998.

27 Supra note 1, at 76.

28 Ibid., at 77.

29 Duff, supra note 6, at 1024.

30 Ibid.

31 Ibid., at 1025.

32 *The Queen et al. v. Thibaudeau*, 95 DTC 5273 (SCC).

33 Duff, supra note 6, at 1024.

34 Thomas Chancellor, "Imputed Income and the Ideal Income Tax" (1988) vol. 67, no. 3 *Oregon Law Review* 561-610, at 562.

35 Ibid., at 590-91.

36 Vincent and Woolley, supra note 11, at 34.

37 Ibid., at 35.

38 Ibid.

39 Ibid., at 36. It is worth noting that Duff, also, recognizes the economic value of unpaid caregiving. He argues that "[w]here a supported spouse or common law partner cares for children . . . a [spousal or common law] credit provides at least some recognition for the economic values of these services." See Duff, supra note 6, at 1025. This line of reasoning, however, is subject to the criticism of the design of the spousal and common law credit that I

discussed above: if the tax measure is meant to support families with children, it should target the tax relief specifically to those families rather than be "over-inclusive."

40 Chancellor, supra note 34, at 591.

41 Ibid., at 601.

42 Chancellor appears willing to concede this implication, since he rejects the view that the definition of income for tax purposes should be whatever facilitates interpersonal comparisons that promote horizontal equity (ibid., at 600). Although there may be sound reasons for excluding some self-performed services from interpersonal comparisons of ability to pay, the decision to disregard very valuable, and increasingly measured, home production offends the well-accepted tenet that the income tax system should treat similarly situated persons equally.

43 Duff, supra note 6, at 1024.

44 Section 63.

45 *Tax Expenditures and Evaluations 2002*, supra note 5, at table 1, under the heading "Memorandum Items."

46 Ibid., under the heading "Estimates and Projections of Tax Expenditures."

47 See Canada, Department of Finance, *Labour Force Participation and Employment Effects of the Child Care Expense Deduction* (Ottawa: Department of Finance, 1986). This publication explains that "The CCED acknowledges both that child care expenses are a cost of earning income and that working parents have a reduced ability-to-pay tax than taxpayers in similar economic circumstances who do not have to incur child care expenses." The paper then draws attention to the non-taxation of unpaid child care:

> Labour supply in general, and the decision to enter the labour force in particular, depends on the after-tax, after-work-related-expenses and wages of the household's members, on the value of the alternative utilization of their time, and on the level of non-labour income. In the case of families with children, this alternative utilization of the time is often homework and child care. If one parent stays home to care for his/her children, the value of these services is not taxed. However, in the absence of [the Child Care Expense Deduction], if this same parent works and has to purchase child care services in the market, the cost of these services has to be paid out of after-tax income. In such a case, the system would tend to discourage the participation in the labour force of the parent who would normally care for children, most often the mother, as well as leading to inequities between one-earner and two-earner families with children requiring care.
>
> By allowing the lower-income parent to deduct from income child care expenses incurred in the course of earning income, the deduction makes the tax system more neutral with respect to the decision to work at home or in the labour force. With no CCED, the taxation of earnings from paid employment and non-taxation of (unpaid) child care and other work in the home tends to discourage second earners from seeking work outside the home.

The federal government again referred to the non-taxation of imputed income when defending the CCED at the United Nations in response to the charge that the tax measure discriminates against families with full-time at-home parents. See Canada, Status of Women Canada, *Response of the Government of Canada to the Communication of Beverley Smith to the United Nations Commission on the Status of Women* (Ottawa: Status of Women Canada, 1999), 21. The report explains that

> [t]he CCED does not mean that the deducted income is not taxed. The deduction is based on income that is paid to a child care provider and that income is taxed in the hands of the child care provider. It could be argued that in a single-earner family this is the same person. If the parent who stays at home to provide child care both uses the income deduction and earns taxable income as the child care provider there is no net effect. In this case, the tax on the income paid to the child care provider minus the deduction based on child care expenses would be close to zero.

48 Supra note 1, at 77.

49 Margrit Eichler, *Family Shifts: Families, Policies, and Gender Equality* (Toronto: Oxford University Press, 1997), 135.

50 Ibid.

51 For another discussion of privately valuable versus socially valuable household production, see Vincent and Woolley, supra note 11, at 34.

52 Duff, supra note 6, at 1024.

53 Paragraph 118(1)(d).

54 Duff, supra note 6, at note 26.

55 Canada, Department of Finance, 1998 Budget, Budget Speech, February 24, 1998, 26.

56 *Tax Expenditures and Evaluations 2002*, supra note 5, at table 1, under the heading "Family." The government of Canada anticipated that the caregiver credit would cost $120 million when it was introduced in 1998. See Canada, Department of Finance, *Government of Canada Tax Expenditures* (Ottawa: Department of Finance, 1998), 12. This projection well surpasses the figure of $24 million figure that has since been estimated on the basis of 1998 tax data in the 2002 tax expenditure budget. See *Tax Expenditures and Evaluations 2002*, supra, at table 1, under the heading "Family." The substantial disparity raises questions about the efficacy of the income tax system as a subsidy-delivery mechanism in terms of its capacity to reach intended recipients. The same question arises about the CCED. Increases in the maximum deductible limits in 1998 did not produce the $85 million in additional expenditure projected by the 1998 tax expenditure budget (see *Government of Canada Tax Expenditures*, supra, at 16). Estimates based on 1998 tax records indicate that the decline in federal revenue between 1997 and 1998 was only $30 million. See *Tax Expenditures and Evaluations 2002*, supra, at table 1, under the heading "Memorandum Items."

57 Patricia Hill Collins, "Shifting the Center: Race, Class and Feminist Theorizing About Motherhood," in Evelyn Nakano Glenn, Grace Chang, and Linda Rennie Forcey, eds., *Mothering: Ideology, Experience, and Agency* (New York: Routledge, 1994), 45-66, at 46.

58 Claire F.L. Young, *Women, Tax and Social Programs: The Gendered Impact of Funding Social Programs Through the Tax System* (Ottawa: Status of Women Canada, 2000), 60.

59 Ibid., at 59.

60 *Tax Expenditures and Evaluations 2002*, supra note 5, at table 1, under the heading "Family." The federal government projects that in 2003 the spousal and common law credit will cost $1.3 billion, the equivalent-to-spouse provision will cost $510 million, and the caregiver credit will cost $50 million.

61 Supra note 1, at 73.

62 Eichler, supra note 49, 140-42. She points out, however, that the provision of a tax credit for care provided to non-kin must not legally oblige the taxpayer to continue to provide care and financial support in the future. The purpose of extending eligibility to non-kin is to reward voluntary care provision that is socially useful, not to penalize people's generosity.

63 Ibid., at 135.

64 For care provided to at least one mentally or physically infirm dependant or one individual over 65, the $1,798 (16 percent of $11,239) top value will decline by 16 percent for every dollar of income that exceeds $649 until it reaches a minimum value of $761 (16 percent of $4,757); $649 + $11,239 – $4,757 = $7,131. For care provided to at least one child under 7, the $1,221 (16 percent of $7,634) top value will decline by 16 percent for every dollar of income that exceeds $649 until it reaches a minimum value of $184 (16 percent of $1,152); $649 + $7,634 – $1,152 = $7,131.

65 National Council of Welfare, *Poverty Profile 1998* (Ottawa: Public Works and Government Services Canada, 2000) (available online at http://www.ncwcnbes.net/).

66 Canada's tax and transfer system historically included the universal family allowance program and a universal child tax exemption that performed this function. As of 1993, these mechanisms were eliminated in favour of a child tax benefit (now replaced by the CCTB) targeted to low-income families. During the 2000 federal election campaign, the Alliance party committed itself to remedying the lack of universal recognition of child rearing in the Act by introducing a new $3,000 tax deduction per child. This plan would have disallowed the first $3,000 of child care expenses that can be claimed under section 63 but left the CCED's upper deductible limits unchanged.

67 Canada, Department of Finance, Economic Statement and Budget Update, October 18, 2000.

68 Although six-year-olds are in school for at least four months of the year, to be consistent with the CCED the RCC would employ age seven as the eligibility cut-off for the more valuable benefit tier.

69 For families in which one parent does not earn income because he or she is elderly, infirm, or disabled, the supporting taxpayer is eligible to claim the third tier of the RCC—$761 in tax relief.

70 Subsection 118(6).

71 Supra note 1, at 73.

72 Frances Woolley, "Intimate Matters? An Evaluation of the Law Commission of Canada's Recommendations on the Tax Treatment of Close Personal Relationships" (2002) vol. 50, no. 3 *Canadian Tax Journal* 1040-55, at 1042.

73 Ibid., at 1046.

74 Recall that the $761 figure represents the $577 value of the present caregiver credit plus $184 in additional tax relief that results from calculating the value of the RCC on the basis of the basic personal credit rather than the spousal and common law credit.

75 Conway reports that full-time working women in dual-earner heterosexual families are almost as likely to carry all responsibility for domestic labour as are women who are employed part-time and women who remain outside of the paid workforce. See John F. Conway, *The Canadian Family in Crisis*, 3d ed. (Toronto: Lorimer, 1997), 207. This observation indicates the need for the state to supplement any RCC with dependant-care programs for children, the elderly, and the infirm that are delivered outside of the Act and that can measure more accurately than any RCC the care needs of both recipients and providers regardless of the provider's labour-force attachment. As the Women and Taxation Working Group of the Ontario Fair Tax Commission reports, "[t]he tax system is an inappropriate policy instrument for providing varied amounts of support based on needs that cannot be measured through easily quantifiable indicators such as income." See Ontario Fair Tax Commission, *Women and Taxation: Working Group Report* (Toronto: Ontario Fair Tax Commission, 1992), 45. Nevertheless, the decision to eliminate the spousal and common law credit without replacing it with an alternative tax measure is politically infeasible in a policy arena in which the interests of one-earner couples are represented by an Official Opposition that wishes to increase the value of the spousal credit. Given this political reality, a tax credit that targets caregiving specifically is the best available alternative to the spousal and common law credit. A credit of this kind would recognize much of the work that full-time homemakers perform without legitimizing and reinforcing the perception that women's unpaid work impairs a household's economic well-being.

76 Gordon Cleveland, Morley Gunderson, and Douglas Hyatt, "Child Care Costs and the Employment Decision of Women: Canadian Evidence" (1996) vol. 29, no. 1 *Canadian Journal of Economics* 132-51; and Lisa M. Powell, "Family Behaviour and Child Care Costs: Policy Implications" (1997) vol. 18, no. 1 *Policy Options* 11-15.

77 Commentators identify a number of problems with the CCED. First, the maximum tax savings produced by the deduction falls thousands of dollars short of the average annual cost of licensed care for children under six, particularly in British Columbia and Ontario, and particularly for infants and toddlers. Second, the CCED's takeup rate is low, in part because

subsidies delivered through the tax system are less visible to parents than subsidies delivered by direct grants. Reports indicate that as few as 30 to 60 percent of eligible taxpayers take advantage of the tax relief that the CCED makes available. Third, the CCED's tax relief is generally delivered at tax time, 3 to 15 months after care arrangements have been purchased. As a result, the deduction typically provides little assistance to parents who cannot afford care without receiving public financial assistance in advance. Fourth, section 63 provides a tax saving regardless of the quality of care that is purchased and whether or not the care arrangements are regulated; it thus ignores evidence about the connection between regulated care and healthy early childhood development. Fifth, the deduction does not offer the state a means by which to address systematically the low wages and few benefits that are paid to care providers. Instead, it often facilitates the purchase of care at very low rates of remuneration and sometimes in contexts in which providers are vulnerable to abuse, particularly immigrant women who work as live-in caregivers. The sixth and the most frequently cited failing of section 63 is that it provides an "upside-down subsidy" by delivering tax savings that are most valuable to high-income earners and least valuable to Canadians with no taxable income. The CCED therefore produces the least tax relief for the very women for whom the costs of non-parental care arrangements pose the largest obstacle to labour-market participation. For further discussion of these issues, see Kathleen A. Lahey, "Developments in Taxation Law: The 1994-95 Term" (1996) vol. 7 *Supreme Court Law Review* 381-420, at 416-17; Claire F.L. Young, "Child Care—A Taxing Issue?" (1994) vol. 39, no. 3 *McGill Law Journal* 539-67; Gordon Cleveland and Douglas Hyatt, *Subsidies to Consumers or Subsidies to Providers: How Should Governments Provide Child Care Assistance?* (Ottawa: Human Resources Development Canada, Applied Research Branch, 1997), 22; Audrey Macklin, "Symes v. M.N.R.: Where Sex Meets Class" (1992) vol. 5, no. 2 *Canadian Journal of Women and the Law* 498-517, at 509; Sandra Bach and Susan D. Phillips, "Constructing a New Social Union: Child Care Beyond Infancy?" in Gene Swimmer, ed., *How Ottawa Spends 1997-98: Seeing Red: A Liberal Report Card* (Ottawa: Carleton University Press, 1997), 235-58, at 253; and Katherine Teghtsoonian, "Who Pays for Caring for Children? Public Policy and the Devaluation of Women's Work," in Susan B. Boyd, ed., *Challenging the Public/Private Divide: Feminism, Law, and Public Policy* (Toronto: University of Toronto Press, 1997), 113-43, at 122.

78 Jocelyne Tougas, *Reforming Québec's System of Childhood Care and Education: The First Five Years*, Occasional Paper no. 17 (Toronto: University of Toronto, Centre for Urban and Community Studies, Child Care Resource and Research Unit, 2002).

79 Robert Baril, Pierre Lefebvre, and Philip Merrigan, "Quebec Family Policy: Impact and Options" (2000) vol. 6, no. 1 *Choices* 1-52, at 23.

80 Vincent and Woolley, supra note 11.

81 Baril, Lefebvre, and Merrigan, supra note 79, at 10. See also Vincent and Woolley, supra note 11, at 26.

82 Baril, Lefebvre, and Merrigan, supra note 79, at 3.

83 Ibid., at 26.

84 Vincent and Woolley, supra note 11, at 27-28.

85 Gordon Cleveland and Michael Krashinsky, *The Benefits and Costs of Good Child Care: The Economic Rationale for Public Investment in Young Children* (Toronto: University of Toronto, Centre for Urban and Community Studies, Child Care Resource and Research Unit, 1998), 72.

86 Vincent and Woolley also wish to reduce the high effective marginal tax rates that families with net incomes between $20,000 and $30,000 face. See supra note 11, at 27. This issue is beyond the scope of this article.

87 Hence the minimum $184 value of the proposed RCC would represent only symbolic recognition of the added responsibilities and costs that families with children incur relative to taxpayers without children, who nevertheless benefit from the social value that results from the rearing of the next generation.

88 Supra note 1, at 74.

89 Maureen Baker, *Canadian Family Policies: Cross-National Comparisons* (Toronto: University of Toronto Press, 1995), 199.

90 Marty M. Slaughter, "The Legal Construction of 'Mother,'" in Martha Albertson Fineman and Isabel Karpin, eds., *Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood* (New York: Columbia University Press, 1995), 73-100.

91 Carole Pateman, *The Disorder of Women: Democracy, Feminism, and Political Theory* (Stanford, CA: Stanford University Press, 1989), 179-209, at 190.

92 Paul Phillips and Erin Phillips, *Women and Work: Inequality in the Canadian Labour Market* (Toronto: Lorimer, 1993), 60.

93 Slaughter, supra note 90, at 83.

94 Baril, Lefebvre, and Merrigan's lack of attention to the systemic factors that influence the patriarchal division of labour is made conspicuous by the absence of the division of labour from their discussion of reasons for governments to deliver public subsidies to "people who have made the private choice to have children." See supra note 79, at 5. They observe that "society needs children," since children "are the source of renewal of the human capital of an economy"; that "equal opportunity" for children requires the redistribution of material rewards from rich to poor families; and that parents encounter difficulties in balancing work and family. Their discussion makes no reference, however, to the gender division of labour or to the barriers to gender, race, and class equality that this division poses.

95 Across Canada, the average annual cost of regulated care for a three-year-old ranges roughly from $4,500 to $5,500 and usually rises substantially for children under three. See Jane Beach, Jane Bertrand, and Gordon Cleveland, *Our Child Care Workforce: From Recognition to Remuneration: More than a Labour of Love* (Ottawa: Human Resources Development Canada, Child Care Human Resources Steering Committee, 1998), 27.

96 For a more detailed discussion of this theme, see Paul Kershaw, "The Politics of Time: Integrating a Richer Appreciation for Work-Family Balance into the Canadian Welfare Regime" (2002) no. 49/50 *Canadian Review of Social Policy* 113-38.

97 Women head more than 80 percent of all one-parent families. In 1997, 56 percent of single-mother families had incomes that were lower than Statistics Canada's low-income cutoffs. By contrast, just 12 percent of non-elderly two-parent families with children had low incomes and 24 percent of lone-parent families headed by men. See Statistics Canada, supra note 12, at 33 and 139.

98 Supra note 1, at 16 (emphasis added).

99 Ibid., at 17 (emphasis added).

100 Ibid., at 18.