PENSIONS, PRIVATIZATION AND POVERTY: THE GENDERED IMPACT

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INTRODUCTION

Interest in pension policy is extremely strong, in part because of the declining value of many pension funds due to the 2007/8 Global Financial Crisis (GFC) and the continuing instability of world equity markets.[1] In Canada, for example, the Ontario Teachers' Pension Plan, one of the largest in the country, lost $19.5 billion in 2008[2] and the Canada Federal Pension Plan lost $18.8 billion between June 2008 and December 2008.[3] The OECD determined that Canada's private pension funds suffered real losses of 21.4% in 2008, a troubling statistic given that private pensions play a key role in ensuring that Canadians attain income security in retirement.[4] One result of the anxiety surrounding the declining value of public and private pension plans has been a proliferation of studies and reports about retirement savings in

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[1] For example, the Credit Suisse Global Investment Returns estimated that global stock market losses between October 2007 and November 2008 totaled US$21 trillion, Susan Thompson, "Global stock market losses total $21 trillion" *The Times Online*, (February 11, 2009) at http://business.timesonline.co.uk/tol/business/markets/article5705526.ece.

[2] http://www.otpp.com/wps/wcm/connect/otpp_en/home/newsroom/news+releases/2009/diversification+strategy+fails+to+avert+losses.

[3] United Press International, "Canada's federal pension plan loses $8.5B" (February 13, 2009) at http://www.upi.com/Business_News/2009/02/13/Canadas_federal_pension_plan_loses_85B/UPI-39961234557652/.

[4] See, http://www.oecd.org/dataoecd/41/3/44008042.pdf. As I shall discuss, Canadians are increasingly being encouraged to save for their retirement through private pension plans such as Registered Pension Plans (RPPS) and Registered Retirement Savings Plans (RRSPS) rather than relying on the public pensions, namely the Old Age Security (OAS), Guaranteed Income Supplement (GIS) and Canada/Québec Pension Plan (C/QPP).

Canada.[5] These reports review current pension policy in Canada (through a variety of lenses) and consider what, if any, changes need to be made. In 2010 the federal government established a public consultation about Canada's retirement income system, inviting a response to questions such as "what is the appropriate role of governments in supporting Canadians to achieve adequate retirement income" and "does the retirement income system currently have the appropriate mix of public and private support".[6]

My focus in this article is an issue that has rarely surfaced in these recent debates; that is the disparate impact of current Canadian pension policy on women compared to men.[7] Put simply, when one examines statistics on income security in retirement, women are disproportionately worse off financially than men, with over 72% of those over 65 living below the Low Income Cut Off (LICO), colloquially called the poverty line, being women.[8] My argument is that current Canadian pension policies are a major contributing factor to this income disparity. But the reasons they do are complex and require consideration of a variety of factors including the socio-economic realities of women's lives, the impact

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[5] For example, see Keith Ambachtsheer, *The Canada Supplementary Pension Plan (CSPP): Towards an Adequate, Affordable Pension for All Canadians* (C.D Howe Institute May 2008)(hereinafter referred to as the C.D. Howe Report); Jack Mintz, *Summary Report on Retirement Income Adequacy Research* (Research Working Group on Retirement Income Adequacy of Federal-Provincial-Territiorial Ministers of Finance, December 18, 2009) (hereinafter referred to as the Mintz Report); Report of the Standing Committee on the Status of Women (Chair Hedy Fry), *Pension Security for Women* (Ottawa, December 2009) (hereinafter referred to as the Fry Committee Report); and Monica Townson, *Options for Pension Reform: Expanding the Canada Pension Plan* (Canadian Centre for Policy Alternatives, April 2010) (hereinafter referred to as the Townson Report).

[6] *Ensuring the Ongoing Strength of Canada's Retirement Income System* (Department of Finance, March 24, 2010) at http://www.fin.gc.ca/activty/consult/retirement-eng.asp#background.

[7] There are two notable exceptions to this statement. First, the Fry Report, *supra* note 5, made a variety of recommendations designed to improve pension policies for women. Secondly, Monica Townson has consistently taken gender into account in her work. See for example, Monica Townson, *Independent Means: A Canadian Woman's Guide to Pensions and a Secure Financial Future* (1997, McMillan Canada), Monica Townson, *Reducing Poverty among Older Women: The Potential of Retirement Incomes Policies,* (Ottawa: Status of Women Canada, 2000), Monica Townson, *A Report Card on Women and Poverty* (April 2000) Canadian Centre for Policy Alternatives at http://www.policyalternatives.ca/documents/National_Office_Pubs/women_poverty.pdf and Monica Townson, *Pensions Under Attack: What's Behind the Push to Privatize Public Pensions* (Ottawa: Canadian Centre for Policy Alternatives, 2001).

[8] *Income in Canada, 2006,* Statistics Canada (2008) http://dsppsd.pwgsc.gc.ca/collection_2008/statcan/75-202-X/75-202-XIE2006000.pdf.

on women of using tax expenditures to encourage us to save for retirement and Canadian pension policies. The trend in Canada is to encourage individuals to save for their retirement through "private" pensions rather than bolstering the more public pensions such as the OAS, GIS and CPP. Before reviewing and critiquing Canadian pension policy and its impact on women, it is important to locate the debates in the current socio-economic realities of women's lives and the ongoing trend to place responsibility for the economic security of retired Canadians on the private sector.

Socio-Economic Realities of Women's Lives

The socio-economic realities of women's lives are complex and varied. Women tend to earn less than men and be less wealthy than men. For example, the latest figures show that women earn 71 cents for every dollar earned by men for full time full year work and 65 cents for every dollar earned by men for part time work.[9] Moreover, not all women are situated equally within these comparative figures. Women of colour, aboriginal women and women with disabilities earn less than other women.[10] Even though more women than ever are participating in the paid labour force, many of them are employed on a part time basis and indeed women have consistently formed approximately 70% of the part time labour force since the 1970s.[11] More women are living alone and fewer women are living in relationships with men.[12] Women are living longer than men and it has been estimated that they need 8 to 10% more financial resources than men to maintain their same standard of living in retirement.[13] As already mentioned, over 72% of those 65 or older living below the poverty line are women. It is also important to note that single elderly women are the poorest of the poor in Canada, with 80% of unattached

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[9] http://www40.statcan.gc.ca/l01/cst01/labor01b-eng.htm. There are, of course, exceptions to this general statement with aboriginal men, for example, earning less than many women.

[10] Deborah Stienstra, *Women and Restructuring in Canada* (Canadian Research Institute for the Advancement of Women, 2010) at 4.

[11] *Ibid*. at 3

[12] Statistics Canada, *Population by Marital Status and Sex, 2007* at http://www40.statcan.gc.ca/l01/cst01/famil01-eng.htm.

[13] Fry Report, *supra* note 5 at 7.

women over 65 living in poverty.[14] As I shall discuss, women's lower incomes compared to those of men are a major reason that current pension policies do not benefit them to the same extent as men. There are of course, some women who earn more than men, but overall women have lower incomes which in turn lead to lower amounts contributed to pension plans and lower pensions in retirement. While one might assume that women's economic insecurity in retirement might be due to past inequities in the pension system and that the situation would now be improving because more women are participating in the labour force and therefore may have access to workplace pension plans, such an assumption would be incorrect. Statistics show that while elderly men's income has been slowly increasing, that of women has decreased slightly.[15]

The Privatization Agenda

One of the cornerstones of neo-liberalism and indeed neo-conservatism is a preference for reliance on the private sector, whether it is the private market or private family, rather than the state, to provide for the welfare of citizens. As Lisa Philipps has said, "the drive towards privatization in Canada has at its heart one central claim: that private choice is better than public regulation as a mechanism for allocating resources and ordering social affairs".[16] I shall argue that Canadian pension policy is increasingly moving away from its public roots towards a system that places increasing emphasis on pensions provided by the private sector. These private pensions include workplace pension plans, known as Registered Pension Plans (RPPs), and personal pension plans, such as Registered Retirement Pension Plans (RRSPs). In the case of the RPP, it is the employer, not the state, that must establish the

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[14] *Ibid*. at 3.
[15] Figures for Income by Family Type in Canada for 2008 show that non earning elderly males saw an increase in their income from $22,000 to $24,200 for the period 2006 to 2008 while non earning elderly females saw a drop in their income from $21,300 to $20,900 during the same period, see Statistics Canada at http://www.statcan.gc.ca/bsolc/olc-cel/olc-cel?catno=75-202-x&lang=eng.
[16] Lisa Philipps, "Tax Law and Social Reproduction: The Gender of Fiscal Policy in an Age of Privatization" in Brenda Cossman and Judy Fudge eds., *Privatization, Law and the Challenge to Feminism* (University of Toronto Press, 2002) at 41.

plan and make contributions on behalf of the employee. It is the employer's choice whether to set up the plan or not. In the case of the RRSP it is up to private individuals to establish their own plan and choose to make contributions to it. Both these pensions are dependent on the private market with respect to the rate of return on the contributions and the generation of income by those contributions to provide an adequate pension. Even though, as I shall discuss, tax expenditures are used to encourage taxpayers to contribute to these plans, there is no state responsibility for ensuring that these pensions provide adequate funds for the members of the plan in their retirement. Furthermore, as I shall discuss, both these plans involve risks that are borne by the private individual, including for example, risk with respect to the funds in the plan.

CANADIAN PENSIONS

The Canadian pension system has been described as a pyramid.[17] At its base is the Old Age Security (OAS), a flat-rate monthly amount paid to those over 65, supplemented by the Guaranteed Income Supplement (GIS) for those who need it. The next level is the Canada Pension Plan (CPP) and the Québec Pension Plan (QPP), both funded by payroll deductions and intended to provide retirement income to those who have participated in the paid labour force. At the apex of the pyramid, are the two private pension plans, both heavily subsidised by the tax system, the RPP and the RRSP.

Public Pensions

OAS, GIS and the CPP are referred to as public pensions, in part because the OAS and GIS are universal and the CPP is a mandatory plan for those participating in the paid labour force.[18] For 2010 the

[17] Maureen Donnelly, "The Disparate Impact of Pension Reform on Women" (1993) 6 Canadian Journal of Women and the Law 419 at 419. It has also been described as consisting of "three pillars that balance public and private responsibility", Mintz Report, *supra* note 5 at 3.

[18] See C.D Howe Report at 2 and the Mintz Report at 4, *supra* note 5. Both pensions are also regulated by federal legislation.

maximum annual OAS benefit is $6,222 with an average benefit of $5,869.[19] The maximum GIS payment for a single person is $7,853 with an average payment of $5,357.[20] Both pensions are subject to a claw back with the OAS claw back starting when income reaches $66,733 and the GIS only being available to those with incomes less than $15,720. What is important to note is that those who rely solely on OAS and GIS in retirement receive a maximum amount of approximately $14,000 a year, an amount that is significantly below the Low Income Cut Off. The before tax LICO for an individual living in a large metropolitan area (a population of over 500,000) is $22,229 and the figure for a rural area (a population less than 30,000) is $15, 302.[21] Thus, those who rely solely on these pensions for their income security in retirement live in poverty and women constitute almost 60% of OAS recipients and 63% of GIS recipients.[22]

The C/QPP is a mandatory contributory pension plan that provides retirement income up to 25% of lifetime contributory earnings. For 2010 the maximum annual retirement benefit at age 65 is $11,210 while the average amount is $6,061.[23] While the CPP is viewed by some as a good plan for women, in part because it takes women's work patterns into account by allowing women with children under seven years of age to take time out of the labour force without a loss of benefits, it is not ideal. First, women who choose to work in the home and not in the paid labour force are not eligible to receive the pension in their own right.[24] Secondly, even though the numbers of men and women receiving the CPP are almost equal, women receive considerably less in amount than men, with an average monthly payment

[19] http://www.servicecanada.gc.ca/eng/isp/oas/oasrates.shtml.
[20] *Ibid*.
[21] http://www.statcan.gc.ca/pub/75f0002m/2010005/tbl/tbl02-eng.htm.
[22] See Fry Committee Report, *supra* note 5 at 13.
[23] http://www.servicecanada.gc.ca/eng/isp/pub/factsheets/rates.shtml.
[24] It should be noted that while these women can receive a survivor benefit on death of their spouse or CPP credit splitting on separation or divorce, there is no individual entitlement to the pension.

of $409 for women and $582 for men, a difference of almost $2,100 a year.[25] Indeed the Fry Committee estimates that by the year 2050 women will still only receive approximately 80% of the pension received by men.[26] The Fry Committee notes that the predominant reason for the lower payments is that women earn less than men.[27] While women do earn less than men overall,[28] there is a cap on the amount that one can contribute to CPP, which means that no contributions can be made once one's income reaches approximately $46,000. Therefore women's low earnings in comparison to men do not totally explain the discrepancy. Other factors such as work patterns that involve time out of the labour force to care for older children and, increasingly, elderly relatives, play a role. While there is a limited "dropout" provision that allows contributors to exclude up to 17% of months of low or nil income over their lifetime from the pension formula, this provision is of limited benefit to those women who assume extended caregiving responsibilities for family members, such as the elderly.[29]

The average amount received in Canada as OAS and CPP by an individual is approximately $16,000 with a maximum of approximately $19,000, amounts that leave the recipients with income below the LICO in a metropolitan area. Consequently, recourse to private pension plans and private savings to provide income security in retirement is essential in order to live above the poverty line. Yet, even though women receive less of the public pensions than men, as noted earlier, they rely on them more than men for their financial well being in retirement. A key question is, what then should the balance be between the public and private responsibility for the economic well being of elderly Canadians? Currently Canada relies more extensively than most OECD countries on private pensions and private savings than the

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[25] See the Fry Committee Report, *supra* note 5 at 17.
[26] *Ibid*.
[27] *Ibid*.
[28] *Supra* note 9.
[29] In response to this problem the Fry Committee recommended that the "government explore the implementation of a caregiver dropout for Canadians who reduce their labour force attachment to care for sick, disabled or elderly persons requiring care, comparable to the current child rearing dropout", *supra* note 5, Recommendation 4 at 35.

public arm of the pension system to provide retirement income for its citizens.[30] In Canada private pensions and other investments provide 41% of retirement incomes compared to 20% on average in the OECD countries.[31] Given women's reliance on public pensions and their lack of access to and lower pensions received from private pensions such as RPPs and RRSPs, Canada needs to bolster its public pillar of the pension system.

Private Pensions and the Tax System

Income tax law is one of the most important political tools that a government has at its disposal. Tax laws are used to direct economic and social behavior in a myriad of ways. Many of the most important measures used to achieve social policy goals are tax expenditures and these expenditures are the key incentive used to encourage Canadians to save for their retirement. Tax expenditures are defined as any deviation from the benchmark personal income tax structure. They include measures such as deductions in the computation of income, tax credits, exemptions from tax and deferral of tax payable. Each year the federal government publishes a list of the value of all tax expenditures.[32] Tax expenditures are the functional equivalent of direct government expenditures, with one main difference: instead of being delivered as a direct grant to an individual, tax expenditures are delivered by the tax system. The distinction is significant. While the impact of technical tax provisions tends to be evaluated by reference to criteria such as horizontal and vertical equity, neutrality and simplicity, different criteria are applied tax expenditures. As the Law Commission of Canada has said: "Could the objective be better served through the use of some other government policy instrument?".[33] To this question I would another, is

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[30] *Pensions at a Glance: Retirement-Income Systems in OECD Countries*, (OECD, 2009) at http://www.oecd.org/dataoecd/41/3/44008042.pdf.
[31] *Ibid.* at 1.
[32] See, *Tax Expenditures and Evaluations, 2009* (Ottawa, Department of Finance) http://www.fin.gc.ca/taxexp-depfisc/2009/taxexp09-eng.asp.
[33] Law Commission of Canada, *Beyond Conjugality: Recognizing and Supporting Close Personal and Adult Relationships* (Ottawa, 2001) at 65.

the measure fair or does it discriminate in an inappropriate manner against some taxpayers and in favour of others? In the pension context, tax expenditures are used to encourage employers to establish and contribute to pension plans and employees to make contributions to those plans. They are also used to encourage individuals to establish personal pension plans (RRSPs) and, in the case of those in spousal relationships, to set up a RRSP in the name of their spouse. As I discuss later in this article, women have unequal access to these expenditures compared to men for a variety or reasons.

Registered Pension Plans

The tax subsidization of RPPs is twofold in nature. First, employers and employees who contribute to a RPP are permitted, subject to limits as to amount, to deduct those contributions in the computation of their income.[34] For example, a taxpayer who pays tax at an average rate of 30% and contributes $10,000 to a RPP will save $3,000 in taxes owing in the year of contribution. Secondly, the income earned by the funds in the RPP is not taxable. These measures result in a deferral of tax because the contribution is made with pre-tax dollars and the resulting income is only taxed once it is removed from the plan or received as a pension. If that money had been invested in a non tax sheltered account, tax would have been payable on the income as it accumulated annually. The value of non taxation of income earned in a RPP results in a significant tax saving over the years. Furthermore, it is very likely that when the funds are withdrawn from the RPP as a pension, the individual will pay tax at a lower marginal effective tax rate than she or he would have paid tax had the income benn taxed as it accumulated. The reason is that one’s income in retirement is often less than it was at the time the contribution was made, resulting in a lower marginal effective tax rate on that income. For 2009 (latest figures available), the

[34] *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.), sections 147.2 and 149(1)(o.1) (hereinafter referred to as the ITA).

value of the deduction for contributions to private RPPs and the sheltering of income in the plans is estimated to be over $18 billion.[35]

Registered Retirement Savings Plans

RRSPs are subject to similar tax rules as RPPs with a deduction for contributions to the plan, subject to a limit on amount, and the sheltering of all income generated in the RRSP from tax. As with RPPs, there is a deferral of tax until the funds are removed from the plan with the advantages described above. An individual is also permitted to contribute to an RRSP in their spouse's name.[36] The contribution may not exceed the individual's own contribution limit, less any amount contributed to the individual's own plan. The advantage of contributing to a spousal plan, rather than one's own plan, is that the individual is providing future retirement income for their spouse and is also splitting income with that spouse. In other words, income that would have been taxed in the individual's hands on realization will be taxed in the hands of the spouse, who may well pay tax at a lower marginal effective tax rate than the individual by reason of their lower income. The general policy underlying spousal RRSPs is to permit individuals to provide retirement income for their spouses who are unable to contribute to a RPP or RRSP on their own behalf. The spousal RRSP is a gendered tax break in that it is used primarily by men to establish RRSPs for their female spouses.[37] For 2009, the value of the tax expenditure for contributions to RRSPs and the sheltering of income from tax is estimated to be $13 billion.

Other Tax Subsidies Related to Income Security in Retirement

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[35] *Supra*, note 32 at 17.

[36] *Supra*, note 34 at section 146. For the purposes of the ITA, spouse includes persons married to each other and common law partners living in a conjugal relationship for at least 12 months (section 248(1).

[37] There are, of course, exceptions to this statement, such as a lesbian with a high income contributing to a spousal RRSP for her partner who is taking time out of the paid labour force to raise their children.

In 2007 the federal government introduced rules that allow spouses to split pension income on retirement.[38] The value of this expenditure is estimated to be $730 million for the 2009 taxation year.[39] The benefit to the couple in which one spouse has a high income and the other little or no income is significant. Given the fact that women tend to earn less than men and have less capital and wealth than men, the couple that will typically benefit is a heterosexual couple with a female spouse who does not work outside the home and has not been able to contribute to a pension plan. The Department of Finance estimated that the tax saving to a couple in which one spouse has pension income of $100,000 and the other no income would be approximately $7,300.[40]

More recently in 2009, the federal government introduced the Tax Free Savings Account (TFSA).[41] While this measure is not limited to retirement savings, it will play a role in allowing individuals to save for their retirement in a tax effective manner. An individual is entitled to contribute up to $5,000 a year to a TFSA and the income earned by the contributions accumulates on a tax-free basis. Unlike RPPs and RRSPs, there is no deduction for the contribution to a TFSA. The sheltering from tax of all income earned by the plan means that to the extent a taxpayer has the discretionary funds to invest, she or he would use the shelter of the TFSA before investing in a non tax preferred plan. Furthermore, one can withdraw funds from a TFSA at any time without tax liability and if one makes a withdrawal, the withdrawn

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[38] Section 60.03 of the ITA permits the splitting of pension income. Given that the tax unit in Canada is the individual and we do not permit spouses to file joint returns, permitting the splitting of pension income is somewhat out of step with that policy. Indeed, I suggest that in this neo-conservative era with its focus on the family, the integrity of the individual as the tax unit is under siege and it is possible that the federal government will move towards permitting spouses to income split all their income. Such a measure would be especially regressive in its impact because it would favour those couples in which one spouse did not work outside the home over those couples in which each spouse has a relatively equal income. The CBC reported in 2006 that "Finance Minister James Flaherty has also confirmed that the Harper government is musing about extending income splitting to all couples — not just seniors. This would mark a major departure from current Canadian tax policy." See, http://www.cbc.ca/news/background/personalfinance/income-splitting.html.

[39] *Supra*, note 32.

[40] Frances Woolley, "Policy Forum: Liability Without Control-The Curious Case of Pension Income Splitting" (2007) Canadian Tax Journal 603.

[41] *Supra*, note 34, at section 207.01.

amount can be replaced in the TFSA in a future year. The federal government recognizes that a TFSA can be a retirement planning vehicle, stating "the TFSA complements existing registered savings plans like the Registered Retirement Savings Plans (RRSP)".[42] Unlike the RRSP, which is a tax deferred scheme, the TFSA is a tax prepaid scheme. That is, the while the RRSP contribution is deductible in the year it is made, there is no deduction for the TFSA contribution. Furthermore, because the TFSA is a tax prepaid scheme it benefits a taxpayer who expects their marginal effective tax rate to be higher when they withdraw the funds than it was when they made the contribution. There are no figures currently available detailing the gender breakdown in terms of who benefits from the tax break for TFSAs, although one can speculate that because women tend to have lower incomes than men, they may not have as much discretionary income to contribute.

THE GENDERED IMPACT OF CANADIAN PENSION POLICIES

Given that Canadians are spending over $31 billion on tax breaks for contributions to RPPs and RRSPs, it is vitally important that these tax subsidies are allocated in a fair and equitable manner. To put the mammoth size of the subsidy in context, it has been estimated that the amount spent on tax subsidies for private pension plans in 2010 will exceed the amount spent directly on OAS for the 2009-2010 fiscal year.[43] There are several problems with this state of affairs. First, as noted earlier, women rely more on the public pensions such as OAS for their economic security in retirement than men, and yet the government is devoting less money to this pillar of the pension system. Secondly, tax subsidies are only available to those who pay tax, so a significant number of Canadians, especially women with their lower

[42] See, Department of Finance, *Tax Free Savings Account* at http://www.tfsa.gc.ca/.

[43] See, the Townson report, *supra* note 5 at 1. Monica Townson notes that the net cost to the federal government of tax subsidies for RPPs and RRSPs is projected to be $29 billion in 2010. The net cost is the cost of lost tax revenues from the deduction for contributions to the plans and the sheltering of income in the plans from tax less tax revenues generated by taxing withdrawals from the plans. In contrast the cost of OAS benefits is estimated to be $27.6 billion.

incomes, are unable to access any of the $31 billion spent on the subsidies.[44] Thirdly, the tax subsidies for RPPs and RRSPs are worth more in terms of taxes saved to those with higher incomes than those with lower incomes. One reason is the nature of the tax subsidy for contributions to RPPs and RRSPs. A tax deduction is worth more in terms of taxes saved to a taxpayer paying tax at a higher marginal effective tax rate than to someone who pays tax at a lower marginal effective tax rate. For example, assume that Bob and Carol each contribute $10,000 to a RRSP. Bob has a higher income and pays tax at an average rate of 40% while Carol has a lower income and pays tax at an average rate of 20%. Bob will save $4,000 in taxes otherwise payable, while Carol will only save $2,000, even though they both contributed the same amount to the RRSP. Given that women tend to earn less than men they are receiving less of the tax subsidy.

RPPS

At a general level, the major problem for women has been lack of access to workplace pension plans. Only 38% of workers in Canada have a workplace pension plan, a figure that has dropped from 45% in 1992[45] and that decline is expected to continue.[46] For many women the nature of the work they perform, such as part time labour and non unionized work has, in the past, meant that they were excluded from these plans. While women's membership in these plans has been increasing over the years, it still lags slightly behind men. In 2005 52.5% of men and 47.5% of women belonged to workplace pension plans and in 2009 the figures were 50.9% of men and 49.1% of women.[47] While there has been some improvement for women in terms of access to these plans, we need to be cautious about its

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[44] While more women than men filed tax returns in 2008 (12,506,340 women compared to 11,661,270 men), the total number of taxable returns was 8,678,310 for men and only 7,797,640 for women. See, Canada Revenue Agency, *Income Statistics 2010 – 2008 Tax Year*, Interim Table 4-Universe data at http://www.cra-arc.gc.ca/gncy/stts/gb08/pst/ntrm/tbls-eng.html.
[45] See, the Townson Report, *supra* note 5 at 2.
[46] C.D. Howe Report at 5 and Fry Committee Report at 25, *supra* note 5.
[47] See, Statistics Canada, Registered Pension Plan (RPP) Members, by Area of Employment, Sector and Type of Plan (Canada) at http://www40.statcan.gc.ca/l01/cst01/famil120a-eng.htm.

significance. The Fry Committee has noted that even by the year 2022, only 33% of women will have contributed to a workplace pension plan for 15 years compared to 36% of men.[48]

A second aspect to this issue is the nature of the workplace pension plans that may be provided by employers. The two main types are Defined Benefit Plans (DBPs) and Defined Contribution Plans (DCPs). A DBP is a plan based on a formula that takes into account service and earnings and then provides a flat benefit based on these factors. The employee with a DBP receives a fixed and predictable pension based on the formula, regardless of the rate of return enjoyed by the investments in the plan. A DCP is a capital accumulation plan. Employer and employee contributions are put into a fund that provides a lump sum to be drawn out or converted into an annuity on retirement. Typically, the employee is given options within the plan about how the contributions are invested, although those options vary from plan to plan. The main difference between the two types of plans is related to who bears the risk with respect to the plan's investments and their rate of return.[49] In the case of the DBP it is the employer who bears that risk and in the case of the DCP it is the employee. The nature of the risk borne by an employee with a DCP is complex. First, unlike a DBP, there is no safety net for the individual if the value of the investments declines.[50] The employer has no responsibility to maintain adequate funds in the plan to meet future pension liabilities. Secondly, responsibility for the manner in which the funds in the DCP are invested while in the plan is partially borne by the employee. While the employer administers the plan and offers the employee a range of investment options with respect to the funds in the plan, it is the employee who chooses which of those options to use. Thirdly, once the employee retires, there are

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[48] Fry Committee Report, *supra* note 5 at 26.

[49] For an excellent analysis of the issue of risk and workplace pension plans, see Mary Condon, "Privatizing Pension Risk: Gender, Law and Financial Markets" in Brenda Cossman and Judy Fudge eds., *Privatization, Law and the Challenge to Feminism* (University of Toronto Press, 2002), *supra* note 16 at 128-165.

[50] While there are strict rules requiring DBPs to make up any shortfall in the plan, it is of course possible that a private employer providing a DBP could go bankrupt, thereby affecting the ability of employees to collect their full pension. Despite some high profile instances of this problem with Nortel being one example, the Dominion Bond Rating Service reviewed 70 DBPs after the 2008 GFC and concluded that most were solvent. See Mintz Report, *supra* note 5 at 24.

more decisions to be made about how to invest the pool of capital that is being used to provide retirement income. While the GFC has wreaked havoc with the value of private pension plans generally,[51] one can speculate that the relatively uniformed and unsophisticated investor will have suffered greater losses than the expert.[52] As the Fry Committee noted, "Witnesses suggested that making informed investment decisions is complicated. They have pointed out that, while Canadians in defined benefit plans are largely spared from making complex investment decisions about their savings, those who rely on private savings require much more sophisticated knowledge to make informed decisions and manage risk".[53]

The number of DBPs is declining in Canada, with new plans tending to be DCPs and employers converting current DBPs to DCPs. This change is often framed in neo-liberal privatization terms as being all about control and choice for the individual; that is one can control one's own pension funds and make choices about how those funds are invested.[54] The Fry Committee Report notes that DBP "coverage has declined from 43.5% in 1979 to 30.6% in 2006".[55] This change is particularly problematic for women. The main reason is that DBPs tend to be offered by public sector employers rather than those in the private sector. It has been estimated that only 20% of private sector workers have DBPs.[56] But the number of women working in the public sector has increased over the years going from 46% in 1992, to 56% in 2008.[57] Thus any decline in the number of DBPs in the public sector has a particularly adverse impact on women. The responsibility for the risk with respect to the funds in these plans will be

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[51] *Supra*, note 4.
[52] The Mintz Report suggests that individual investors tend to make mistakes and use poor investment strategies which can cost them in comparison to professional investors*, supra* note 5 at 18.
[53] Fry Committee Report, *supra* note 5 at 22.
[54] See, for example, Mary Condon, *supra* note 49 at 151.
[55] *Ibid.* at 25.
[56] C.D. Howe Report, *supra* note 5 at 6.
[57] Canadian Human Rights Commission, *Impact of the Employment Equity Act and the CHRC Employment Equity Program Over the Years* at http://www.chrc-ccdp.ca/publications/eeprogram_programmeee/page1-en.asp.

placed on women's shoulders, as well as the responsibility to become knowledgeable about what choices they should make about their investments.

RRSPs

RRSPs were introduced in March 1957 and intended to assist those without access to workplace pension plans to save for their retirement. On introduction the maximum contribution was the lesser of 10% of earned income or $2,500 less any pension adjustment. For 2010, the maximum contribution is the lesser of 18% of earned income and $22,000 less any pension adjustment.[58] As already mentioned, the projected cost to the federal government of the tax relief given by the deduction of contributions from income and the sheltering of income in the plans is $18 billion. As I shall demonstrate, women do not benefit to the same extent as men from this tax subsidy, with the result that they have less money in their RRSPs, a factor that leads to them living in greater poverty than men in their retirement years. As the Women and Taxation Working Group of the Ontario Fair Tax Commission noted, "[t]he current system of tax assisted savings for retirement results in systemic discrimination against women, as the benefits are disproportionately enjoyed by men".[59]

In order to benefit from the tax breaks associated with RRSPs, one must have funds with which to make a contribution. Given that women earn considerably less than men,[60] they tend to have less discretionary income to contribute to a RRSP. This fact is evident when one reviews the statistics on who contributes to a RRSP and how much they contribute. For example, in the 2008 taxation year (latest

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[58] *Supra* note 34, section 146(1). A taxpayer's pension adjustment (defined in the Regulations to the ITA) takes into account any contributions to a RPP with the result that the more one puts into a RPP, the less one can contribute to a RRSP.
[59] Ontario Fair Tax Commission, Women and Tax Working Group, *Women and Taxation* (1992, Ontario Fair Tax Commission) at 22.
[60] *Supra*, note 9.

figures available) 3,297,330 men and 2,869,820 women contributed to a RRSP.[61] While there is not a huge difference in the numbers of men and women contributing, there is cause for concern when one looks at the amount contributed by men and women. In that year men contributed $20,240,109 while women only contributed $12,676,281.[62] Not surprisingly those with higher incomes contributed considerably more that those with lower incomes. For example, taxpayers with incomes of more than $50,000 contributed on average about $7,500 each, while those with incomes of $20,000 to $25,000 only contributed approximately $1,800 each.[63] The lower amounts contributed by women mean that they are receiving considerably less of the $18 billion tax subsidy than men. There is another aspect to this issue. As discussed earlier, even if men and women contribute the same amount to an RRSP, overall women will receive less of the tax subsidy associated with the deduction for that contribution because they tend to have lower incomes and pay tax at a lower rate. As noted earlier the value of a tax deduction is tied to the rate at which one pays tax, meaning that those with higher incomes will receive more of the subsidy than those with lower incomes. If the tax break were to be in the form of a tax credit, rather than a deduction, it would be worth the same in value to those who contribute the same amount.

The gap between the number of women compared to men contributing to RRSPs has been declining over the years. In 1997, for example, 56% of men and 52% of women made contributions. By 2008 the overall number of contributors had declined, although the gap had narrowed to 51% of men and 50% of

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[61] Canada Revenue Agency, *Income Statistics 2010 – 2008 Tax Year*, Interim Table 4 at http://www.cra-arc.gc.ca/gncy/stts/gb08/pst/ntrm/tbls-eng.html.
[62] *Ibid,* Interim Table 2 at http://www.cra-arc.gc.ca/gncy/stts/gb08/pst/ntrm/pdf/table2-eng.pdf.
[63] These figures are especially interesting because given that slightly more men than women contribute to RPPs and they tend to have higher incomes, one might assume that men's RRSP room is reduced by those RPP contributions, thereby meaning that they have less opportunity to add funds to a RRSP.

women.[64] One consequence of this gap is that women have considerably less funds in their RRSPs than men. The result is that they are not benefitting to the same extent as men from the tax subsidy that allows income in the plan to accumulate on a tax free basis. The Fry Committee noted that "at the middle and lower earnings level over 90% of people have unused RRSP room".[65] Furthermore, the distribution of RRSP savings demonstrates this point with the top 20% of Canadians in terms of net worth having a median RRSP value of $111,100. The median for the other four quintiles is $35,000, $15,000, $6,000 and $0 respectively.[66]

The tax rules respecting RRSPs establish a hierarchy of taxpayers that is in inverse relation to their ability to provide financially for their retirement. At the top are those with the highest incomes (predominantly men) and below them in declining order, are those taxpayers with lower incomes. At the bottom are those to whom the deduction is worthless, either because they do not have funds to contribute to a RRSP or they have insufficient taxable income to benefit from the deduction at all. These tax rules simply reinforce the current economic inequality between rich and poor, which maps to a considerable extent onto the between men and women.

Spousal RRSPs

Neither RPPs nor RRSPs are likely to be of any benefit to women who work inside the home and do not participate in the paid labour force. These women do not have access to employment based pension plans and, with no income, are unlikely to contribute to a RRSP. The tax system recognizes this problem and attempts to partially redress it by including special rules that apply to spouses. As mentioned, an individual can contribute to a RRSP set up in their spouse's name and thereby split income with their

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[64] Statistics Canada, Participation in Private Retirement Savings Plans, 1997-2008 at http://www.statcan.gc.ca/pub/13f0026m/2010001/tbl/tbl002-eng.htm

[65] *Supra* note 5 at 24.

[66] C.D. Howe Institute, *supra* note 5 at 6-7.

spouse in retirement. While this measure appears to be laudable, it has its problems and indeed in the 1980s the Canadian Advisory Council on the Status of Women lobbied for an end to this system and for pensions for women in their own right.[67] While the spousal RRSP is a well intentioned measure, it remains a highly private and limited response to a public issue: women's lack of access to pension plans. Essentially the private family is encouraged to provide for its own economic security in retirement, albeit with a tax break to encourage it to do so. But many cannot take advantage of this opportunity. Low income taxpayers may not have the discretionary funds to contribute on their spouse's behalf. Additionally single women have no access to this expenditure. Given that 43% of single women over 65 live below the poverty line compared to 5% of women who have a spouse, it appears this subsidy is being misdirected.[68] By linking this tax expenditure to spousal status, the government is directing the benefit to a very limited group of people, a group that may not be the neediest. Furthermore, statistics show that fewer people than ever are living in a married or common law relationship.[69] As the Women and Taxation Working Group of the Ontario Fair Tax Commission stated “the concept of a couple as a life-long economic unit with joint income, wealth and expenses may no longer be appropriate given changing family structures, increasing divorce rates, and falling marriage rates”.[70]

In fact, the introduction of the pension splitting rules described above may lead to the demise of the spousal RRSP. As mentioned, the benefit of the spousal RRSP is that an individual can split income with their spouse by directing future pension income to them through the medium of the spousal RRSP. But the new pension splitting rules obviate the need to establish a spousal RRSP to accomplish this objective. Why would a taxpayer use their RRSP room to set up a RRSP for their spouse when the same

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[67] Dennis Guest, *The Emergence of Social Security in Canada*, 3rd. ed. (Vancouver, UBC Press 1997) at 197.
[68] Statistics Canada, *Analysing Family Income*, at http:www12.statcan.ca/English/census01/products/analytic/companion.inc/Canada.cfm#4.
[69] Statistics Canada, *Women in Canada: A Gender Based Statistical Report*, http://www.statcan.gc.ca/pub/89-503-x/2005001/h-fs-eng.htm.
[70] *Supra* note 59 at 22.

income splitting result can be obtained without giving up control of those funds by transferring them into a spousal RRSP ? Rather, all that is required to split pension income is the filing of a joint election by the taxpayer and their spouse in the year the pension is received.[71] Furthermore, should the relationship end prior to retirement, the taxpayer will not have transferred funds to a spousal RRSP that are the property of their spouse.

Pension Income Splitting

The pension income splitting rules allow spouses to jointly elect to split their pension income. The main advantage is that where one spouse has a higher income and therefore pays tax at a higher marginal rate than the other, the overall tax liability on the pension income will be less than it would otherwise have been. The rules allow up to 50% of the pension income to be taxed at the tax rate of the lower income spouse.[72] Generally, pension income splitting benefits men who are supporting their female spouses. These rules are unfair and inequitable for several reasons.[73] First, the split is purely fictional. No transfer of any of the pension income to the spouse is required. In contrast, in every other instance where the ITA permits income splitting there must be a transfer of the funds that are the subject of the income split.[74] Furthermore, while there may be an overall benefit to the couple, the recipient spouse's

[71] Jonathan Kesselman notes that there are some limited circumstances in which spousal RRSPs may be more beneficial than subsequent pension income splitting. These circumstances relate to spousal RRSPs' flexibility in terms of premature withdrawals and early retirement. My view, however, is that the opportunity for the higher earner spouse to maintain control of the funds by contributing them to (usually) his own RRSP rather than transferring them to the spouse would outweigh these possible advantages. See, Jonathan Kesselman, "Income Splitting and Joint Taxation of Spouses: What's Fair?" IRPP Choices, 2008 vol. 14 no.1 at 20.

[72] Kesselman notes that there are other scenarios in which a split would be advantageous which depend "on which spouse has more pension income, on the amount of each spouse's non pension income and on interaction with other provisions of the tax and benefit system", *ibid* at 20.

[73] For an excellent critique of the pension income splitting rules see, Frances Woolley, *supra* note 40.

[74] These provisions include rules relating to spousal RRSPs, registered education savings plans, employment of a spouse or child in the family business and the sharing of C/QPP income, *ibid* at 606. On this issue, see also, Lisa Philipps "Income Splitting and Fender Equality: The Case of Incentivizing Intra-Household Wealth Transfers" CLPE Research Paper 04/2010, vol. 6 no. 1 (2010). In this paper the author acknowledges the problem of permitting income splitting without any requirement that the funds be transferred while arguing that "the case can be made

marginal effective tax rate has increased from zero or a low rate to a higher rate, and she (usually) is responsible for paying tax on the income allocated to her, even though she has not received any of that income. Secondly, pension income splitting is regressive because it favours those with high incomes over those with lower incomes. Finally, given that single women over 65 live in considerably greater poverty than those with spouses, the tax subsidy is arguably being misdirected.

The pension income splitting rules are based on two troubling assumptions. The first is that the couple is the appropriate tax unit rather than the individual. The second assumption is that there is an economic mutuality in the spousal relationship, a mutuality that involves sharing and pooling of income. These assumptions are problematic.[75] Canada has always treated the individual as the tax unit in Canada, although there are numerous provisions that take spousal status into account. But, unlike the US system, for example, Canada does not allow spouses to file a joint tax return. As the Law Commission of Canada said "[t]he case for individual taxation rests upon the claim that a tax system based on the individual is a more appropriate policy instrument for achieving the government's objectives than one based on the family, that it is less likely to influence the relationships that individuals form, and that it is more likely to further values such as gender equality and individual autonomy".[76] With respect to the assumption that there is economic mutuality in all relationships, such an assumption is simply wrong. As Neil Brooks has stated "there is not anywhere near full sharing in many households, let alone sharing of control that would indicate both spouses value family assets".[77] Generally the earnings and assets of individuals in a relationship tend to be controlled by the spouse who has legal title to them. There are

for more liberal treatment of genuine intra-household transfers" in order to encourage a redistribution of resources in relationships and income splitting can be a tool to accomplish that goal.

[75] Claire Young, *What's Sex Got To Do With It? Tax and the "Family"* (Law Commission of Canada, 2000). See also, Law Commission of Canada, supra note 33 at 63-89.

[76] *Supra* note 33 at 67. Furthermore the Law Commission of Canada recommended that "the individual, rather than the conjugal couple or some other definition of the family unit, should remain the basis for the calculation of Canada's personal income tax", at 71.

[77] Neil Brooks, "The Irrelevance of Conjugal Relationships in Assessing Tax Liability" in Richard Krever and John Head eds. *Tax Units and the Tax Rate Scale* (Melbourne: Australian Tax Research Foundation, 1996) at 63.

other situations where one can speculate that income and capital is not shared or pooled in a relationship. For example, relationships in which there is a significant power differential, including those characterized by a pattern of control or abuse, are not likely to have much economic mutuality. Louise Dulude suggests that couples with relatively low and equal incomes tend to share more than other couples,[78] and of course pension income splitting is of no benefit to these couples at all.

OPTIONS FOR CHANGE

What can be done to redress some of the inequalities that I have discussed? Given that some of the inequities experienced by women relate to their limited access to tax subsidies for private pensions plans, one could change the tax rules. For example, one could deal with the inequitable distribution of the tax subsidy for contributing to RPPs and RRSPs by converting the tax break from a deduction in the computation of income to a tax credit.[79] The advantage of this change is that the amount of the tax credit would be worth the same to all taxpayers, regardless of their level of income and the rate at which they pay tax. One could even make the credit refundable, which would mean that even if an individual was not a taxpayer, they would still receive a tax subsidy. But this proposal has its problems. It does not assist those who do not have access to a workplace pension fund, or those who do not have the discretionary funds to contribute to a RRSP. It is also a very private response to a public problem, that is women's limited access to private pension plans and their subsequent poverty in retirement.

Before reviewing other proposals for change it is important to consider a key question; that is, what is the appropriate balance between public and private pensions in Canada? Does Canada rely too much on

[78] Louise Dulude "Taxation of the Spouses: A Comparison of Canadian, American, British, French and Swedish Law" (1985) 23 Osgoode Hall Law Review 67 at 89.
[79] This suggestion has been made by several commentators. See, for example, the Ontario Fair Tax Commission, *Fair Taxation in a Changing World* (Toronto: University of Toronto Press, 1993) at 333 and 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) at 50-51.

the private sector for the economic security of it's retired citizens? The OECD has noted that the "proportion of retirement incomes coming from private pensions and other financial assets in Canada is one of the highest among OECD countries".[80] As I have demonstrated in this article, private pensions do not work well for women. We need to move towards a more robust public pension system, one that takes the socio-economic realities of women's lives into account.

There has been considerable discussion recently in Canada about a variety of options for improving the pension system, including strengthening the CPP, adding a new Canada Supplementary Pension Plan and making changes to private pensions.[81] For example, the Mintz report concluded that that "overall, the Canadian retirement income system is performing well, providing Canadians with an adequate standard of living upon retirement. The evidence does strongly suggest that some Canadians do not have sufficient replacement income."[82] While Mintz not make specific recommendations for change, the report clearly has contributed to the desire of the federal government to work towards change in this area. The consultation process embarked on in March 2010 has concluded[83] although no recommendations have yet been released. A recent exchange of letters between the Canadian Minister of Finance, James Flaherty and the Ontario Minister of Finance, Dwight Duncan indicates that both of these governments see the issue of pension reform as one of high priority.[84] The question is, however, what might that reform look like and how can it best address the problems faced by women with respect to ensuring that they have adequate retirement income?

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[80] *Pensions at a Glance, 2009: Retirement Income Systems in OECD countries*, (2009, OECD) at http://www.oecd.org/document/49/0,3343,en_2649_34757_42992113_1_1_1_1,00.html#country_highlights.
[81] See the reports mentioned in footnote 5.
[82] *Supra* note 5 at 27.
[83] *Supra* note 6.
[84] See, the June 10th letter from Ontario's Finance Minister Dwight Duncan to the Honourable James Flaherty, Minister of Finance for Canada at http://www.scribd.com/doc/32867806/Duncan-s-letter-to-Flaherty and Mr. Flaherty's response at http://www.scribd.com/doc/32867604/Flaherty-s-letter-to-Duncan. This exchange, which talks about the importance of introducing federal and provincial proposals to reform Canada's pension system, took place a few days before the meeting of the Ministers of Finance and Treasurers on June 13th and 14th at Charlottetown.

My starting point is that because women rely to a much greater extent than men on the public pillars of the pension system and do not have as much invested in private pensions, the first requirement is that the public pensions provide an adequate retirement income. At the outset, one obvious change would be to increase the amount of the OAS and GIS payments so that at the very least they provide an income that is above the LICO. The Fry Committee recommended that the "GIS be raised to the after-tax low income cut off", although it appears in the context of the report that the committee means the increase should result in a combined OAS and GIS payment that is no less than the LICO.[85] Unfortunately there has been no indication that the federal government is contemplating such a change to the OAS and GIS, with most of the discussion about reform in the public sector focusing on the CPP.

There appears to be a consensus in the recent reports on pensions that the CPP is a good model for a pension plan. Monica Townson sees it "as secure, reliable, cost-effective, and well managed".[86] Viewed through the lens of gender, it is more universal than a RPP because it covers all workers, whether full time or part time. Unlike many RPPs it is portable when one changes jobs. As the Fry Committee has noted, it takes into account women's child care responsibilities by allowing a worker to exclude the years when their child is under the age of 7 from the calculation of the pension.[87] But the CPP can be improved. One glaring weakness is that it does not provide a pension to women whose work is not the subject of remuneration, such as women who work in an unpaid capacity in the family business and women who work in the home rather than the paid labour force. The assumption has been that these women are supported in their retirement years by their spouses through savings or tax preferred

[85] Fry Committee, Recommendation 2, *supra* note 5 at 14.
[86] Townson, *supra* note 5 at 3.
[87] Fry Committee, *supra* note 5 at 17. It should be noted that the Committee recommended that the "dropout" provision be extended to those who care for "sick, disabled or elderly persons requiring care, comparable to the current child rearing drop out", Recommendation 4 at 19.

investments, such as spousal RRSPs. Again we see a privatization of the economic security of these women, with the private family being assumed to be taking on that responsibility. Such an approach undermines the autonomy of women and assumes an economic mutuality in the relationship, which as I have discussed earlier in this article, is not always present. Over the years there has been considerable debate about extending the CPP to "homemakers" or spouses not working outside the home. As long ago as 1983 the Parliamentary Task Force on Pension Reform recommended that the CPP offer a "homemaker pension".[88] More recently the Ontario Minister of Finance held hearings on the future of the CPP and several presenters argued for an extension of the CPP to those not in the paid labour force, such as women working in the home.[89]

Various proposals to improve the CPP have been made and most of these focus on the amount of the pension. At the outset, it is important to note, however, that in order for any changes to be made to the CPP the consent of the federal government and at least 2/3 of the provinces with 2/3 of the population of Canada is required.[90] Currently, retirement benefits from CPP are designed to replace only 25% of a worker's average adjusted annual earnings. The Canadian Labour Congress has proposed that the CPP replacement rate be doubled. Specifically it proposes "to phase in a doubling of the proportion of average earnings replaced by CPP from 25% to 50% over seven to ten years to $1,635 per month, financed by a modest increase in worker and employer premiums which would be fair for lower paid workers".[91] The Fry Committee makes a similar proposal and recommends that the CPP replacement rate be increased from 25% to 50% "to maintain a decent income and an acceptable standard of living,

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[88] House of Commons, *Report of the Parliamentary Task Force on Pension Reform*, (1983, Queen's Printer).
[89] Ontario Ministry of Finance, *Ontario Report on Public Consultations on the Canada Pension Plan* at http://www.fin.gov.on.ca/en/publications/1996/cpp_.html.
[90] Section 114 of the *Canada Pension Plan Act*, R.S.C. 1985 c. C-8.
[91] Canadian Labour Congress, *Security, Adequacy, Fairness: Labour's Proposal for the Future of Canadian Pensions,* http://www.canadianlabour.ca/sites/default/files/pdfs/Pension-Policy-Paper-2009-EN.pdf at 4.

and that this modification come into force progressively over the next ten years".[92] Bernard Dussault prepared a proposal for the Federal Superannuates National Association that would also increase the retirement benefit replacement rate, but in a more spectacular fashion.[93] It would go up to 70% of earnings over a 47 year period. As Townson notes "[e]ffectively, this would mean the demise of workplace pension plans and private retirement savings through RRSPs because the CPP in conjunction with OAS would provide an adequate replacement rate for all".[94] Such an ambitious proposal is attractive because it would mean significantly larger pensions for those whose sole income in retirement is from public pensions, and that measure would benefit women in particular.

Another proposal is to add a new public plan, the Canada Supplementary Pension Plan (CSPP) to the current offerings. This proposal from the C.D. Howe Institute[95] is intended to assist those workers who have no access to RPPs. Its key features include automatic enrolment of all workers without a RPP (although it would also provide an opt out provision), limits on the amount that could be contributed at the same level as those for RRSPs, a target of 60% of post-work earnings replacement, and the option to transfer current RRSP savings to the CSPP.[96] A critique of this proposal focuses on the fact that, unlike the CPP, there is no guaranteed pension with the CSPP. "Retirement pensions would depend on the performance of the contributor's investments, and no particular pension would be guaranteed or indexed. In other words, contributors would be required to bear the full risk of retirement income

[92] Fry Committee, Recommendation 11, *supra* note 5 at 36.
[93] Townson, *supra* note 5 at 5.
[94] *Ibid*.
[95] C.D. Howe, *supra* note 5.
[96] *Ibid*. at 8-10. The Fry Committee also appears to have endorsed a plan of this nature. Recommendation 12 of the Fry Report, *supra* note 5, is that the "government introduce an optional supplementary Canada Pension Plan, conditional on provincial agreement, in order to help Canadians save more".

provision".[97]Furthermore, such a proposal would not benefit those workers who do not have the discretionary income to contribute to the plan.

As mentioned the federal government has been holding public consultations on the Canadian pension system. To date we have no word on any proposed changes, but recent developments have given some clues as to the thinking of the federal government on the issue. For example, the June 2010 exchange of letters between the Ontario Minister of Finance, Dwight Duncan, and the Canadian Minister of Finance, James Flaherty, indicates that at the federal level there is some appetite for improving the CPP, although at the same time it is clear that the role of the private sector will also be enhanced. While agreeing that "we should consider a modest phased-in, and fully funded enhancement to defined benefits under the Canada Pension Plan", Minister Flaherty also states that Ontario and the federal government "should work together toward pension innovation that would allow financial institutions and insurance companies to offer broad-based defined contribution pension arrangements to multiple employers, all employees, and to the self-employed".[98] Indeed after the June meeting of federal and provincial finance Ministers in Charlottetown Minister Flaherty said that rules to allow financial institutions to serve employers of all sizes could be in place as soon as the middle of 2011.[99] The pressure from the private sector, and especially the financial services industry, to expand the private pension offerings is considerable. The fees charged for management of these pension funds and mutual funds are considerable with huge profits to be made. In arguing for the CSPP rather than an expansion of the private sector, the C.D. Howe Institute noted that the "high fees being paid by investors in many retail products could seriously hamper the efforts of some 5.5 million Canadians with RRSP assets from

[97] Townson Report, *supra* note 5 at 3.
[98] *Supra*, note 84 at 1-2.
[99] See, http://www.thestar.com/business/article/823393--ministers-move-closer-to-pension-reform.

achieving their saving goals".[100] As for any changes to the CPP, indications are that the requirement that there be strong provincial support for change may delay reform with some provinces, most notably Alberta, not being in favour of any change of the nature suggested by Minister Flaherty.[101]

WHAT NEXT?

In this article I have identified several key problems respecting women's access to retirement income, problems that contribute greatly to their poverty in retirement. It is critical that these inequities be redressed. If not, elderly women will continue to live in poverty. I have argued that improving the public pension system would be an important first step towards removing the gender inequities embedded in current pension policies, despite the fact that in this neo-conservative era the pressure to look to the private sector to solve the problems is considerable. The Fry Committee report has made some important recommendations, but unfortunately it did not grapple directly with the issue of the balance between public and private responsibility. In addition to the recommendations referred to in this article, it also calls for a "gender based analysis of all policy proposals relating to women and pensions".[102] In particular it calls for a "consideration of the impact of unpaid caregiving work on the lifetime of women; the impact of elder-care responsibilities…. on the retirement options of women; and the fact that women have longer life expectancy than men".[103] While this research is important, the various recommendations of the Fry Committee Report have been undermined by the fact that all Conservative Party Members of Parliament on the Committee dissented from the report stating that "that the actions of the Conservative Government and the Minister of Finance clearly demonstrate that we are at the forefront on this issue of retirement income adequacy for Canadian seniors".[104] This statement flies in the face of the statistics on elderly women's poverty and the factors that contribute to it, factors that

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[100] C.D. Howe, *supra* note 5 at 8.
[101] *Ibid*.
[102] Fry Committee, *supra* note 5 at 30, recommendations 9 and 10.
[103] *Ibid*.
[104] *Ibid*. at 47.

cannot be dealt with using strategies that are based on a private responsibility for the economic security of the elderly. The research has been done, the reports have been written, the consultations have taken place and it is now time for women's poverty in retirement to be recognized as an inequity that must be redressed now.