

**From the Invisible Hand to the Invisible Woman:
The Politics of Neutrality in the Context of Social Tax
Expenditures**

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ABSTRACT

In law, neutrality is now a postulate and this is particularly true about Social Tax Expenditures (STEs) which are tax measures with a redistributive goal, similar to welfare benefits. Hence, taxation and the welfare state are closely connected insofar as STEs are part of the welfare system. But they are introduced within a context of apparent gender-neutrality. Tax law takes little account of gender in the implementation of tax policy. Moreover, the normative criteria for the analysis of tax regimes include concepts such as equity—which suggests that taxpayers in the same position should be treated the same way. We see the potential for a clash of interests between social policy and the founding principles of taxation. The risk is of being unable to account for gender in tax law.

My thesis therefore seeks to answer this research question: does the STEs and tax policy discourse relating to STEs contain gender assumptions on the role of women that could, in their subsequent implementation, affect women's relationship to the STEs? They may be written in gender-neutral terms, they may not consider gender in their implementation.

A purely positivistic approach would not highlight how the increasing importance of neutrality in the construction and implementation of law may hide important assumptions about women. Law is an institution and a discourse that has the potential of constructing identities and norms. What is conceived as a neutral or objective approach to law has often been criticized as mirroring the experience, values and reality of the majority. Therefore, law, as a discourse, can perpetuate values, according to an ideal imposed by the majority, neglecting those of minority groups. In a critical approach to this apparent neutrality, the study of the relationship between power and knowledge is necessary. A

critical approach from a gender perspective will highlight how women's identity can be constructed through the tax policy discourse.

At the theoretical level, the intimate relationship STEs share with welfare programmes requires that they be examined using a conceptual framework similar to that which is used to examine other benefits of the welfare state. First, I used this literature to organize the discourse analysis according to the three discursive periods regarding the welfare state. Secondly, the themes for the discourse analysis were also identified from the welfare state literature.

Empirically, I conducted a thematic discourse analysis of those STEs using budgetary papers, debates in the House of Commons, and other documents emanating from the government outlining the legislative intent. Results indicate that the discourse around STEs is limited to a conversation in terms of the technical aspect of the law which limits the potential for the discourse in terms of welfare provision. This thesis also reveal that the tax policy discourse in relation to STEs is not gender-neutral. In constructing STEs, various assumptions are made about women and their role in society.

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TABLE OF ABBREVIATIONS**Abbreviations in relation to the legislation**

ITA Income Tax Act

Abbreviations - others

CAP Canada Assistance Plan

CCED Child Care Expense Deduction

CCTB Canada Child Tax Benefit

CHST Canadian Health and Social Transfer

CTB Child Tax Benefit

GAAP Generally Accepted Accounting Principles

GST Goods and Services Tax

IFRS International Financial Reporting Principles

NCB National Child Benefit

OAS Old Age Security

OECD Organization for Economic Co-operation and Development

RRSP Registered Retirement Savings Plan

STEs	Social Tax Expenditures
TFSA	Tax-Free Savings Account
UCCB	Universal Child Care Benefit
WIS	Working Income Supplement

“(...) the Welfare State is not just a set of services, it is also a set of ideas about society, about the family, and – not least important – about women, who have a centrally important role within the family, as its linchpin”

Wilson, E. (1977 8:9), as quoted in O’Connor, J.S.,
“Understanding Women in Welfare States” (1996) 44(2) *Current Sociology* 1 – 12, p. 6.

“The only thing that hurts more than paying an income tax is not having to pay an income tax.”

Lord Thomas Dewar.

GENERAL INTRODUCTION

Tax law and the welfare state are often understood in opposing terms; that is, tax law is seen to pertain to the collection of state revenues, while the welfare state is seen to be concerned with the redistribution of these revenues. In reality, however, there is no such dichotomy, insofar as tax law is also increasingly used to redistribute wealth. Expenditures of this sort – through tax law – have been growing almost exponentially within the context of the liberal welfare state. Amongst these measures, some—like Social Tax Expenditures (STEs)—have a redistributive goal and are similar in nature to welfare benefits.¹ Some authors attribute the increasing use of tax measures for welfare purposes to the rise of neoliberal ideology within government. Neoliberalism favours market-driven social services and this, in turn, has resulted in the fiscalisation of welfare benefits, referred to as “tax expenditures.”²

Hence, taxation and the welfare state are closely connected insofar as STEs are part of the welfare system. Titmuss, one of the best-known authors on the welfare state, acknowledged this connection when he divided welfare provision into three categories.

His position could be summarized in the following manner:

¹ Stanley S. Surrey, *Pathways to Tax Reform – The Concept of Tax Expenditures* (Cambridge, Harvard University Press, 1973). Richard Morris Titmuss, *Essays on the Welfare State* (London, Unwin University Books, 1958). Adam Stebbing & Ben Spies-Butcher, “Universal Welfare by Claire F.L. Young,” *Tax and the Family: The Gendered Impact of Rules that Take Spousal Status into Account for Tax Purposes* in Harry N. Scheiber & Laurent Mayali, eds., *Japanese Family Law In Comparative Perspective* (Berkeley, Robbins Collection, 2009) at 317-332. Josée Bergeron, “Femmes, mères et travailleuses devant l’absence d’une politique nationale de garde des enfants” in Dominique Masson, ed., *Femmes et politiques: l’État en mutation* (Ottawa, Les Presses de l’Université d’Ottawa, 2005) 105 at 118-119. Julia S. O’Connor, Ann Shola Orloff & Sheila Shaver, *States, Markets, Families. Gender, Liberalism and Social Policy in Australia, Canada, Great Britain and the United States* (Cambridge, Cambridge University Press, 1999) 1. Patricia Marie Evans, “Divided Citizenship? Gender, Income Security, and heelfare State” in Patricia Marie Evans & Gerda R Wekerle, eds., *Women and the Canadian Welfare State: Challenges and Change* (Toronto, University of Toronto Press, 1997) 91 at 104.

He conceived of a social division of welfare (SDW) comprising three welfare systems delivered through different policy instruments: social welfare distributed by the social expenditure of the state, occupational welfare delivered to workers as benefits obtained through employment and *fiscal welfare received through tax expenditures and other elements of the tax code.*³ [my emphasis]

Welfare state researchers often focus on the social and occupational aspects of welfare. The literature has, however, tended to neglect the fiscal aspects of welfare (such as those relating to STEs).

STEs have been introduced within a context of apparent gender neutrality. Tax law takes little account of gender in the implementation of tax policy. Moreover, the normative criteria for the analysis of tax regimes include concepts such as neutrality and equity—which suggests that taxpayers in the same position should be treated the same way. There is a postulate of neutrality concerning tax law. Gender—or that which is associated with gender—tends not to be considered by those who make tax-related policy. In tax theory, taxpayers with the same gains in discretionary economic power should pay the same amount of tax. The discretionary economic power of a taxpayer is his or her income that is available to spend or save after meeting non-discretionary expenses, such as food, clothing, and medical expenses.⁴ The income, in tax law, is defined by Haig-Simons as the value of the goods and services consumed by a person in a year plus the change in

³ Stebbing & Spies-Butcher, *supra* note 1. Titmuss, *supra* note 1.

⁴ Canada, Royal Commission on Taxation, *Recommendations of the Royal Commission on Taxation* (Don Mills, CCH Canadian Limited, 1967) at 5.

value of his or her net wealth over that same year.⁵ All the technical provisions in tax legislation are determined based on how income is defined and theorized through this apparently neutral definition of Haig-Simons. In this context, income becomes the most important consideration when it comes to a constitutional challenge of a disposition in the tax law on the basis of discrimination. However, income has not yet been recognized as a personal characteristic according to the equality provision in the *Canadian Charter of Rights and Freedom*.⁶ This sets the bar high when a taxpayer wishes to challenge the law.

Tax expenditures are a contested instrument for the redistribution of wealth in welfare state systems. These measures are not subject to the same budgetary control as direct government spending and, as a result, are not subject to the same legislative scrutiny as other social welfare programmes.⁷ Tax expenditures are often criticized for benefiting higher income individuals, for not being well-targeted, and for excluding groups of people with lower incomes.⁸ In fact, in order for an individual to benefit from a non-refundable tax credit or tax deduction, he or she must have a sufficient level of income. Moreover, the total return on a tax deduction will be higher when the marginal rate of the

⁵ Neil Brooks, Jinyan Li & Lisa Philipps, “Tax Expenditure Analysis: State of the Art” in Lisa Philipps, Neil Brooks & Jinyan Li, eds, *Tax Expenditures: State of the Art* (Toronto, Canadian Tax Foundation, 2011) 1:1, at 1:7.

⁶ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (hereinafter “the Charter”).

⁷ Brooks, Li & Philipps, *supra* note 5 at 1:2.

⁸ Surrey, *supra* note 1, at 22. Christopher Heady, “Tax Expenditures: Definitional and Policy Issues” in Lisa Philipps, Neil Brooks & Jinyan Li, *Tax Expenditures: State of the Art* (Toronto, Canadian Tax Foundation, 2011) 2:1 at 2:6. Mimi Abramovitz & Sandra Morgen, *Taxes Are A Women’s Issue – Reframing the Debate*, (New York, Feminist Press at the City University of New York, 2006) at 55.

taxpayer is high. This is, for instance, the case with the childcare expenses deduction (CCED) under the *Income Tax Act* (“ITA”).⁹

I see the potential for a clash of interests between social policy and the founding principles of taxation. The risk is of being unable to account for gender in tax law, while at the same time maintaining the principle of neutrality. This difficulty was also evident during the constitutional challenges to STEs brought before the Supreme Court, which studied gender discrimination while keeping in mind the normative aspect of the tax law.¹⁰ Even for the Supreme Court, a tax law remains a tax law.

In law, neutrality is now a postulate and this is particularly true about STEs.¹¹ A purely positivistic approach would not highlight how the increasing importance of neutrality in the construction and implementation of law may hide important assumptions about women. Even the courts have a particular relationship to the ITA, not only because of its complexity, but also because of their deference to government spending policies. This deference does not only exist in constitutional challenges to tax law. Some authors have noted the resistance of the Supreme Court to intervene in constitutional challenges regarding social rights or positive action taken by the state.¹²

⁹ *Income Tax Act*, R.S.C. 1985, ch. 1 (5th suppl.) (the “ITA”), section 63.

¹⁰ *Symes v Canada*, [1993] 4 SCR 695 (QL) [*Symes*]; *Thibaudeau v Canada*, [1995] 2 SCR 627.

¹¹ Jean-François Gaudreault-Desbiens, “Identitarisation du droit et perspectivisme épistémologique. Quelques jalons pour une saisie juridique complexe de l’identitaire” (2000) 13 Can JL & Jur 33 at 33.

¹² Paul O’Connell, “The Death of Socio-Economic Rights” (2011) 74(4) Mod L Rev 532 at 536. Bruce Porter, “Claiming Adjudicative Space: Social Rights, Equality and Citizenship” in Margot

This purported neutrality can result in negative effects on women. If characteristics related to gender, such as, statistically lower incomes, women being responsible for many lone-parent families, and responsibility for care and unpaid work, are not considered in tax policy formulation and implementation, the provisions may not have the desired effect on the targeted group. They have the possibility to marginalize and can be an obstacle to gender equality. Several authors have noted the potential impact of tax law on women.¹³ According to Ruth Rose, taxation is a representation of the attitude of governments towards women's access to the labour market,¹⁴ and Philipps points out that tax law is a strong source for gendered norms.¹⁵ Despite this, the study of tax expenditures has rarely been explored by feminist scholars.

Law is an institution and a discourse that has the potential of constructing identities and norms. What is conceived as a neutral or objective approach to law has often been criticized as mirroring the experience, values and reality of a dominant group. Therefore, law, as a discourse, can perpetuate values, according to an ideal imposed by this dominant group, neglecting those of minority groups.¹⁶ My thesis therefore seeks to answer this question: does the STEs and tax policy discourse relating to STEs rely on

Young, ed., *Poverty: Rights, Social Citizenship, and Legal Activism* (Vancouver, UBC Press, 2007) 77.

¹³ Dominique Masson, "Introduction" in Dominique Masson, ed, *Femmes et politiques: l'État en mutation* (Ottawa, Les presses de l'Université d'Ottawa, 2005) 1 at 2.

¹⁴ Ruth Rose, "La fiscalité néolibérale a-t-elle un genre?" in Dominique Masson, ed, *Femmes et politiques: l'État en mutation* (Ottawa, Les presses de l'Université d'Ottawa, 2005) 23 at 24.

¹⁵ Lisa Philipps, "Tax Law and Social Reproduction: The Gender of Fiscal Policy in an Age of Privatization" in Brenda Cossman & Judy Fudge, eds, *Privatization, Law, and the Challenge to Feminism* (Toronto, University of Toronto Press, 2002) 41 at 83.

¹⁶ Martha L. Fineman, "Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship" (1990) 42 Fla L Rev 25. Gaudreault-Desbiens, *supra* note 11 at 33.

gendered assumptions with respect to the role of women that could, in their subsequent implementation, affect women's relationship to the STEs? My thesis seeks to question the assumption that tax law is neutral. It may be written in gender-neutral terms, it may not consider gender in its implementation, but because of the nature of STEs, it has the potential to adversely affect women. Before being enacted in the law itself, these assumptions can be carried through and by the discourse of legislative intent. As the right to the benefits or services provided by the welfare state is conditional on the political recognition of the actors, the identification of women's social (or fiscal) citizenship in tax policy will become a crucial issue.¹⁷

In a critical approach to this apparent neutrality, the study of the relationship between power and knowledge is necessary. Foucault's work is interested in the rules, systems and procedures which explain how power and knowledge (how truth is constructed) are gained through discourse.¹⁸ A critical approach from a gender perspective will highlight how women's identity can be constructed through the tax policy discourse. As Fineman puts it, it is necessary to challenge "the conceptual bases of the status quo by assessing the ways that power controls the production of values and standards against which specific results and rules are measured".¹⁹ STEs are "governmental preferences". Thus, by definition, they cannot and should not be neutral. Moreover, neutrality is often "tied to

¹⁷ Alexandra Z. Dobrowolsky, & Jane Jenson, "Shifting Representations of Citizenships: Canadian Politics of 'Women' and 'Children'" (2004) 11(2) *Social Politics* 154.

¹⁸ Nancy Fraser, *Unruly Practices: Power, Discourse, and Gender in Contemporary Social Theory* (Minneapolis, University of Minnesota Press, 1989) at 19-20.

¹⁹ Fineman, *supra* note 16 at 32.

current social norms and therefore [is] not so neutral”.²⁰ Indeed, neutrality is not always desirable and should, in some cases, be “set aside in pursuit of valid social goals”²¹—the enhancement of gender equality being one of them.²² Therefore, I wish to study the risks associated with introducing measures like STEs in a fiscal legal context that is characterized by an imperative of neutrality. I therefore propose to analyze the apparent gender neutrality of STEs.

I will answer this question by performing a thematic discourse analysis from a gender perspective allowing to understand how women’s reality may be constructed by the tax policy discourse, and how this could influence their relationship to STEs.²³ In order to uncover gender assumptions and their effects on women as they relate to tax policy, I use a theoretical approach that has an increased sensitivity to gender issues. The intimate relationship STEs share with welfare programmes requires that they be examined using a conceptual framework similar to that which is used to examine other benefits of the welfare state. STEs, according to Titmuss, must be studied in the wider perspective of the welfare state.

I note that this thesis is limited to the gender variable at large. I am very aware of the limitations that this methodological choice entails and I recognise that the experience of women is multiple and diverse. This approach gives little consideration to

²⁰ Louise Dulude, “Taxation of the Spouses: A Comparison of Canadian, American, British, French and Swedish Law” (1985) 23 Osgoode Hall LJ 67 at 94.

²¹ Dulude, *supra* note 20 at 88.

²² Dulude, *supra* note 20 at 88.

²³ Fineman, *supra* note 16 at 27.

intersectionality, that is to say, how many other personal characteristics (such as sexual orientation, age, race) can affect the relationship between women and STEs. However, like other authors, I believe that universalizing or essentializing approaches are not necessarily harmful.²⁴ They should, however, be used with caution. I chose, nonetheless, to use this method for many reasons. First, our welfare state analysis framework considers class as well as gender. This is one of the factors that is not often considered when feminists are studying intersectionality, and it is one of the personal characteristics that impacts the relationship women have to STEs. In addition, as little analysis has been done on the relationship between social tax expenditures and women, I believe that the first step is to analyze the role of women in the discourse, and whether women could be disadvantaged by this model of redistribution. I believe however that this is a first step and it must remain temporary. I am conscious that the welfare state will not affect every woman in the same way, and that there are other factors, such as race, class, education and marital status which will affect a woman's experience of the welfare state. This will also need to be studied further.

Chapter 1 will explain tax theory principles and define the concept of STEs and will also demonstrate how tax law and STEs are under a lot of pressure towards gender-neutrality. This issue of the relationship between STEs and the tax theory was not raised explicitly in the constitutional challenge brought to the Supreme Court by Elizabeth Symes but, it

²⁴ Rosaria Champagne, "Feminism, Essentialism, and Historical Context" (1995) 25 *Women's Studies* 95.

was latent in the subsequent judgment.²⁵ In fact, it could be seen as the most important obstacle she faced. Elizabeth Symes challenged the limitation imposed on the deduction of child care expenses in section 63 of the ITA. She wanted to deduct all of her nanny expenses from her business income, but at the time, the limit was between \$1,000 and \$2,000 depending on the taxation year under scrutiny. The majority of the Supreme Court concluded that she had not demonstrated that section 63 has an adverse effect on women. While she had shown that women bear a disproportionate social burden in relation to child custody, she had not established that women pay more in child care costs than men.²⁶ Given that she contested the child care expenses deduction by arguing she should be allowed to deduct it from her business income, she contested the technical structure of the ITA, which is based on the Haig-Simons definition of income. Therefore, the Supreme Court decision is not surprising. If there are no services “consumed”, or no evidence of disproportionate payment for those services on the part of women, then the law’s normative structure is not problematic. The Court’s conclusion regarding the necessity of a disproportionate payment was therefore foreseeable.

As the approach normally used by the courts in tax cases is solely in terms of the definition of income, and of the normative structure of the law, it is difficult to establish any discriminatory treatment. In terms of income, the Haig-Simons definition is based on income and non-discretionary spending. However, if the provisions are considered as transfers or social benefits, the examining approach needs to be different. Income and

²⁵ *Symes*, *supra* note 10.

²⁶ *Ibid.* at para 92.

expenses are no longer the only features observed, since the social context of the individuals affected by the provisions and their objectives would allow for a much broader evaluation.

The failure of Elizabeth Symes's and, more recently, of Suzanne Thibaudeau's constitutional challenge to the system of the inclusion and deduction of child support, is evidence of the difficulty associated with finding a flaw in the equality principle of a law that appears to be gender neutral.²⁷ It was argued in *Thibaudeau* that the measure was discriminatory because it meant that the spouse receiving alimony supported the tax burden on the amounts that were paid to meet the needs of the children. However, the majority of the Supreme Court of Canada decided that separated couples are statistically advantaged by the system because of the effect of the marginal tax rates. The tax rates of spouses paying alimony is generally higher than that of the spouses receiving the support, so as an entity, these separated couples paid less tax. For the Supreme Court, it is normal and logical that the person who has control over the funds be taxed on it.²⁸

Despite the failure of the constitutional challenges, the Parliament chose to amend the inclusion and deduction regimes and exclude support payments for children from the regime of inclusion and deduction.²⁹ The Parliament evidently considered the possible negative effects on women (besides the amendment did not cost the government anything, it even made way for budgetary savings). Although the Parliament has

²⁷ *Thibaudeau*, *supra* note 10 at 690.

²⁸ *Ibid.*

²⁹ See par. 56(1)b) and 60b) of the ITA.

subsequently considered the treatment of women as unfair, it was impossible for the Supreme Court to reach this conclusion by approaching the question in terms of the normative framework of the law.

Therefore this purported neutrality of tax law cannot be challenged using a positivistic approach of law or by maintaining the discourse in the tax theory realm.

That is what Chapter 2 seeks to do by introducing a gender-sensitive welfare state analysis that “is built on the recognition of gender and class and is linked to a more general critique of the dominant conception of citizenship that underpins welfare state research”.³⁰ Esping-Andersen is one of the most widely cited authors in welfare state research. He is known for his analytical model, popularized in *The Three Worlds of Welfare State* in which he developed a framework that classifies the welfare state into three categories: Social-Democratic, Liberal, and Conservative.³¹ He formulated this classification framework by studying the impact of the welfare state on three dimensions of social life: the decommodification of the worker, socioeconomic stratification, and the relationship between the market and the state.³²

To analyze the effects of STEs on women, a theoretical framework that integrates tax expenditures in the analysis of the welfare state, as well as the gender variable, is necessary. According to more conventional definitions, the welfare state is responsible

³⁰ Julia S. O’Connor, “Understanding Women in Welfare States” (1996) 44(2) *Current Sociology* 1 at 3.

³¹ Gøsta Esping-Andersen, *Les trois mondes de l’État-providence – Essai sur le capitalisme moderne* (Paris, Presses universitaires de France, 1999) at 32.

³² Esping-Andersen, *supra* note 31.

for ensuring a minimal level of well-being for its citizens.³³ I do not take for granted that state interventions create greater equality.³⁴ Thus, in what follows, I use a different definition of “welfare state”. Like O’Connor, Orloff and Shaver, I understand the workings of the welfare state as “interventions by the state in civil society to alter social and market forces.”³⁵ This definition of the welfare state is at odds with a trend in the literature, which tends to link it to a limited period of time, during which state intervention was more in keeping with a social democratic perspective. For my purposes, “welfare state” corresponds to the role the state plays in social citizenship.

Citizenship is defined by T.H. Marshall as “a developing institution” with changing rights and responsibilities.³⁶ Marshall proposes three levels of citizenship: the civil level, which includes individual freedom rights;³⁷ the political level, which is linked to the right to vote as well as to participation in the political sphere;³⁸ and the third level, which consists of social citizenship. This last level relates to the capacity for social, political and economic autonomy.³⁹ Indeed, Marshall defined social citizenship as a “whole range from the right to a modicum of economic welfare and security to the right to share to the

³³ Esping-Andersen, *supra* note 31.

³⁴ O’Connor, Orloff & Shaver, *supra* note 2 at 12.

³⁵ *Ibid.*

³⁶ Thomas Humphrey Marshall, “Citizenship and Social Class (1950)” in Thomas Humphrey Marshall & Tom Bottomore, *Citizenship and Social Class* (London, Pluto Classic, 1996) 3 at 18.

³⁷ Marshall, *supra* note 36 at 8.

³⁸ Marshall, *supra* note 36 at 8.

³⁹ Jane Jenson, “Politiques publiques et investissement social: quelles conséquences pour la citoyenneté des femmes?” (2011) HS2(3) Cahiers du Genre 21 at 28.

full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society”.⁴⁰

My analysis of STEs is done from a historical perspective and is organized according to the three discursive periods regarding the welfare state as identified by the literature. The analysis begins during the period when the welfare state was influenced by a social democratic approach. This period ended around the end of the 1970s and the beginning of the 1980s and gave way to the second period, which was influenced by neoliberalism. Finally, starting at the beginning of the 1990s, the welfare state was influenced by social investment strategy.

For each period, I use thematic discourse analysis to highlight the evolution of the role assigned to women in these policies. I use budgetary papers, debates in the House of Commons, and other documents emanating from the government outlining the legislative intent. Building on O'Connor, Orloff and Shaver's framework, I have identified themes that enabled the coding and analysis of these documents. They built on Esping-Andersen's model by approaching his relationship between state and market criteria and adding the family to the equation. They added a gender variable to the stratification aspect of Esping-Andersen's framework, and added a completely new dimension: the “social rights” dimension.⁴¹ This dimension is two-fold and requires that, when looking at

⁴⁰ Marshall, *supra* note 36 at 8. Also Patricia M. Evans & Gerda R. Wekerle, “The Shifting Terrain of Women's Welfare: Theory, Discourse and Activism” in Patricia M. Evans & Gerda R. Wekerle, eds, *Women and the Canadian Welfare State: Challenges and Change* (Toronto, University of Toronto Press, 1997) 3 at 10.

⁴¹ O'Connor, Orloff & Shaver, *supra* note 2 at 11.

the welfare state, the potential for the decommodification of workers is taken into consideration as well as the “capacity to form and maintain an autonomous household”. This should allow us to emphasize the impact STEs may have on women.

Chapter 3 presents the methodology for our thematic discourse analysis and the themes I used for coding and analyzing the data. I have identified STEs which may influence women’s experience of the welfare state. The analysis will start with the 1972 tax reform. This period also coincides with major changes in the role of women in Canadian society and their massive entry into the labour market.

Chapters 4, 5 and 6 present the results of my discourse analysis according to the periods identified above. Thus, Chapter 4 discusses the results of the analysis for the period influenced by social democracy. Chapter 5 presents the results of our analysis for the period influenced by a neoliberal approach, while Chapter 6 covers the period of social investment strategy.

This thesis will contribute in several ways to tax research because, although there is a good understanding of occupational and social welfare, fiscal welfare is still misunderstood. This thesis should thus enhance the understanding of that aspect of the welfare state by connecting welfare state research with the research on tax expenditures. It should also demonstrate how the clash between welfare benefits and tax theory has influenced the construction of STEs and how women are represented in the tax policy discourse. This thesis’ contribution goes further in examining how fiscal welfare affects women’s experience of the welfare state. In order to do this, I will show that the

framework proposed by O'Connor, Orloff and Shaver to study the welfare state is also appropriate for the study of tax expenditures.

PART I: THEORETICAL FRAMEWORK

In tax theory, there are three criteria for the analysis of tax regimes: equity, neutrality, and simplicity. As I will demonstrate in Chapter 1, these criteria, joined to the definition of income, provide an imperative for neutrality in tax law. But, tax theory is not the only incentive for neutrality. Neoliberalism has also exerted some pressure towards the neutrality of laws in general. Tax law did not escape that trend and is in appearance gender-neutral, in the sense that everyone is treated the same and therefore gender is not considered in tax policy implementation. The taxpayer is the universal taxpayer and discretionary economic power the most important factor influencing taxation.

STEs are increasingly used in order to redistribute state revenue to more vulnerable groups. Thus, there is a risk of introducing welfare measures, such as STEs, into tax law which is so rigidly neutral. This neutrality may actually be the representation of values, experiences, and identities of the majority group and risk removing the realities of minority groups. This neutrality is rarely questioned. Despite the fact that tax law is apparently neutral, they are a strong source for gendered norms.⁴² They have the potential to affect the relationship that women have with the welfare state. In the first chapter of the thesis, I propose questioning the apparent neutrality of STEs and propose a critical examination of tax policy discourse.

In order to conduct discourse analysis that is aware of the position of women, I must identify a theoretical approach that will allow a discourse analysis from a gender

⁴² Philipps, *supra* note 15 at 41.

perspective. The understanding of this aspect of the welfare state will be enhanced by connecting welfare state literature to tax expenditures theory. A gendered approach to the welfare theory will be necessary. In Chapter 2, as I want to conduct a historical discourse analysis of the role attributed to women in the welfare state discourse in Canada, I will examine the literature on the welfare state. Conducting discourse analysis will highlight the possible assumptions about women in tax policy. As the naming is important in assessing who are important actors in tax policy, it is an important step in assessing the role of women. Therefore in the first section of Chapter 2, I will examine the literature regarding the three different periods in the welfare state discourse: (1) the social-democratic or Keynesian welfare state, (2) the neoliberal approach, and (3) the social investment approach.⁴³

The second part of Chapter 2 will address a typology for the study of welfare state that will be useful in providing the themes for our discourse analysis. I propose to study the literature on the welfare state, starting with Esping-Andersen's work. Using parameters such as the potential for decommodification, stratification, and the relationship between the state and the market, he has classified the welfare state into three categories: liberal, conservative, and social-democrat. According to this typology, Canada, the United States, Britain, and Australia, are liberal welfare states. Characteristics of these states include the reliance on the market and the fiscalization of social welfare provisions, by using social tax expenditures. I will, however, retain the work of O'Connor, Orloff and Shaver, who

⁴³ Jenson (2011), *supra* note 39. Jane Jenson, "Redesigning Citizenship Regimes after Neoliberalism. Moving Towards Social Investment" in Nathalie Morel, Bruno Palier & Joakim Palme, eds, *What Future for Social Investment?* (Stockholm, Institute for Futures Studies, 2009) 27.

have introduced a gender perspective to Esping-Andersen's framework.⁴⁴ These authors focus on three dimensions: (1) the state, market, and family relations (or the social organization of income and services), (2) the stratification effect of the welfare state and (3) the social citizenship aspect. Their framework will serve as a tool to analyze the role of women in the tax policy discourse. It will also be mobilized to study the effects these tax policies have on women.

⁴⁴ O'Connor, Orloff & Shaver, *supra* note 2 at 11.

CHAPTER 1 SOCIAL TAX EXPENDITURES IN A NEUTRAL ENVIRONMENT: A DANGEROUS COMBINATION?

Tax law is an important revenue collection instrument for states. For the 2013-2014 budget year, state revenue deriving from personal income taxes in Canada is budgeted to amount to 131.5 billion dollars, which is almost half of all the revenue of the federal government.⁴⁵ Adding corporate income tax to this (34.6 billion dollars) and the other income taxes, 65% of the state's revenues are comprised of types of income tax.⁴⁶ Maybe because they play such a major role in income collection, it is often forgotten that income tax law also plays other important roles. It is an instrument for reallocating and redistributing resources, for stabilizing the economy, and encouraging economic growth.⁴⁷ Our tax system is increasingly used to overcome deficiencies in the market economy (giving incentives to certain industries), redistributing wealth (some tax credits and deductions), reducing inequities, and also to impose additional costs so as to fulfill a function of regulation and market stabilization (taxes on cigarettes).⁴⁸ These were recognized by the Royal Commission on Taxation (the Carter Commission), before the 1972 tax reform, as the important objectives of our tax system: fairness, contribution to growth and stability of the economy, protection of rights and liberties, full employment

⁴⁵ Canada, Department of Finances, Budget 2013, *Economic Action Plan 2013: Jobs, Growth and Economic Prosperity* (March 21, 2013), Table 4.2.5 at 289.

⁴⁶ *Ibid.*

⁴⁷ Neil Brooks, "The Changing Structure of the Canadian Tax System: Accommodating the Rich" (1993) 31 *Osgoode Hall LJ* 137 at 141.

⁴⁸ 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 5. Also, Brooks, *Ibid.* Åsa Gunnarsson, "Challenging the Benchmarks in Tax Law Theories and Policies from a Gender Perspective – the Swedish Case" in Kim Brooks, Åsa Gunnarsson, Lisa Philipps & Maria Wersig, eds, *Challenging Gender Inequality in Tax Policy Making – Comparative Perspectives* (Portland, Hart Publishing, 2011) 75 at 80.

without inflation, and a strong federation.⁴⁹ Tax law is also an instrument for delivering benefits with similar objectives to those of welfare programmes – the social tax expenditures- such as the family alimony.⁵⁰

When they play either of these roles, the provisions of the Act are defined as being tax expenditures. The Government of Canada, for example, acknowledges the existence of these measures and publishes an evaluation of their cost, every year. They define the roles of these measures in these terms:

The tax system can also be used directly to achieve public policy objectives through the application of special measures such as low tax rates, exemptions, deductions, deferrals and credits. These measures are often described as “tax expenditures” because they achieve policy objectives at the cost of lower tax revenue.⁵¹

This thesis is interested in the tax expenditures that are similar in nature to welfare benefits- I will refer to them as being Social Tax Expenditures (STEs).

It can be problematic to introduce social tax expenditures into a law so strongly influenced by the imperatives of neutrality, because they cannot be neutral in order to meet their objectives. When the literature studies tax, it usually focuses on the perception of resources rather than on the analysis of the redistribution of income received.

⁴⁹ Canada, Royal Commission on Taxation, *supra* note 4 at 4.

⁵⁰ Young, *supra* note 48 at 5.

⁵¹ Canada, Department of Finance, *Tax Expenditures and Evaluations 2012*, Part 1— Tax Expenditures: Estimates and Projections: <http://www.fin.gc.ca/taxexp-depfisc/2012/taxexp1201-eng.asp#toc346014048>

In this chapter, the concepts of tax expenditures and social tax expenditures will be defined. Tax expenditures are defined in opposing terms to the more technical parts (or the normative structure) of the ITA. Thus, the characteristics of the normative structure of the ITA needs to be defined first to identify the provisions which could qualify as tax expenditures. Then, I will observe how tax law is influenced towards greater neutrality first, because of the theoretical framework of tax law analysis, but also, because neoliberalism forced a trend of neutrality into legislation, particularly legislation playing a role in the Canadian economy. This neutrality is characterized in tax law as treating everyone the same and disregarding personal characteristics and experience, such as gender. This neutrality is established as a postulate in tax law, which I wish to reexamine and highlight that treating everyone the same may impact certain groups in a different and unfavourable way. I will refer to this neutrality as “apparent neutrality” or “apparent gender-neutrality” because on the face of it, the provisions do not make a distinction between men and women, but could have differing effects on these two groups.

Finally, as tax law may be the source of gendered norms, I will suggest a theoretical approach to study the tax policy discourse so as to highlight the possible assumptions contained in tax legislation about women, and how they may affect the relationship they have to STEs.

1.1 Tax Expenditures and the Normative Structure of the ITA

Tax law is an instrument of public policy when granting certain exemptions, deductions or tax credits. These provisions – the tax expenditures – are social or economic instruments of intervention, or they are of the nature of social welfare provision.

According to the OECD, a tax expenditure is a shortfall for the state while, for the taxpayer, it usually represents a reduction in tax.⁵² However, a tax expenditure means more than a loss for the state and a reduction in tax payable. Surrey defined that concept as provisions that depart from the normative structure (or technical structure) of the tax system:

These provisions, often called tax incentives or tax subsidies, are departures from the normal tax structure and are designed to favor a particular industry, activity, or class of persons. They take many forms, such as permanent exclusions from income, deductions, deferrals of tax liability, credits against tax, or special rates. Whatever their form, these departures from the normative tax structure represent government spending for favored activities or groups, effected through the tax system rather than through direct grants, loans, or other forms of government assistance.⁵³

Tax expenditures are a powerful instrument of public policy used to implement government's preferences.⁵⁴ Few scholars in Canada have noted the distinction between tax expenditures and the technical structure of tax law, and few have identified a framework in order to study tax expenditures.⁵⁵ The first step of my analysis will be to define what type of provisions qualify as tax expenditures. To do this, the normative structure of tax laws needs to be identified. Then, the provisions that are deviations from this structure should be considered as tax expenditures, by their nature. From this group

⁵² OECD, *Tax Expenditures in OECD Countries* (2010) at 12.

⁵³ Stanley S. Surrey & Paul R. McDaniel, *Tax Expenditures* (Cambridge, Harvard University Press, 1985) at 3. Also Surrey, *supra* note 1.

⁵⁴ Susan Boyd & Claire F.L. Young, "Feminism, Law, and Public Policy: Family Feuds and Taxing Times" (2004) 42 *Osgoode Hall. LJ* 545 at 554.

⁵⁵ *Ibid.* at 554.

of tax expenditures it will be necessary to identify those that qualify as social tax expenditures.

In Canada, an individual's income is calculated by following three important steps. First, a taxpayer's need to calculate his net income. The net income of a taxpayer is the income from all sources, including employment income, business and property income, capital gains, and all other sources of income.⁵⁶ Each source of income is calculated individually and is reduced by making all eligible deductions.⁵⁷ A deduction represents an expense that a taxpayer is allowed to deduct against one of his sources of income. There are also general deductions that are not related to any one source of income, for example, the Child Care Expenses Deduction⁵⁸ and the deduction for moving fees.⁵⁹ As the tax rates will be applied later in the process, the return on the deduction is affected by the marginal tax rate – the rate of tax payable on the last dollar earned.

The second step in assessing income is the calculation of taxable income. The taxable income of an individual is his net income after the removal of other deductions, such as the amounts received from social assistance programmes (which were previously included as other sources of income).⁶⁰ Therefore, when I refer to “deductions”, I refer to amounts that are subtracted from the net, or from the taxable income of a taxpayer.

⁵⁶ Section 2 and 3 of the ITA.

⁵⁷ Section 4 of the ITA

⁵⁸ Section 63 of the ITA

⁵⁹ Section 62 of the ITA.

⁶⁰ Sections 110 and 111 of the ITA

The third step is the calculation of the tax payable. It implies multiplying the taxable income of the individual by the income tax rates. There are actually four rates in the ITA.

The rates for 2013 are as follows:

- 15% on the first \$43,561 of taxable income, +
- 22% on the next \$43,562 of taxable income (on the portion of taxable income over \$43,561 up to \$87,123), +
- 26% on the next \$47,931 of taxable income (on the portion of taxable income over \$87,123 up to \$135,054), +
- 29% of taxable income over \$135,054.⁶¹

Once the taxable income is multiplied by the income tax rates (they are called “tax brackets”), the “tax credits” are removed to calculate a new level of tax payable. Tax credits are amounts that reduce the income tax payable (and not a reduction of the income which would be classified as a deduction). There are several tax credits, including personal exemptions. Tax credits are usually an amount prescribed by the law multiplied by the lowest rate of 15 %. For example, workers are allowed an employment credit of \$1,117.⁶² This means the taxpayer can deduct \$1,117 multiplied by 15% from his tax payable. This credit is not reimbursable. Therefore, if the taxpayer has less tax payable than the amount of the credit, he cannot claim the exceeding part of the credit. It is simply lost. A refundable tax credit (such as the refundable medical expenses credit⁶³) is repaid to the taxpayer even if he has no tax payable.

⁶¹ Subs. 117(2) of the ITA and for the current version of the rates : <http://www.cra-arc.gc.ca/tx/ndvdl/fq/txrts-eng.html>

⁶² Subs. 118(10) of the ITA.

⁶³ Section 118.3 of the ITA.

The basic personal exemption (which appears in the ITA in the form of a tax credit) is a general exemption of the first \$11,038.⁶⁴ It is a tax credit so it is multiplied by 15% and therefore exempts the tax payable on the first \$11,038. A reference to an exemption means that a particular amount of income is excluded (or exempt) from taxation.

The basis of the normative or technical tax structure comes from Haig-Simons' definition of income. His definition is quite basic. For him, income is "the sum of the market value of the goods and services that a person consumes over the course of a year and the change in value of that person's net wealth over the same period".⁶⁵ In summary, he means that income includes all market consumption by the individual (all his expenses) in the year, plus the net change in his or her wealth in the year (the net change in his assets and liabilities during the year).

Surrey thought the technical structure of tax law includes two types of provision. The first type of provision relates to the tax base, the calculation of net income, and the timing of taxation. These are matters governed by principles generally consistent throughout the tax regimes of industrialized countries. This consensus will not necessarily exist in the second category of provisions because it contains a discretionary aspect, which depends on various factors and tax policies. The personal income tax exemption (in Canada the first \$11,038 of income earned is not taxable⁶⁶) and the progressivity of tax rates fall into

⁶⁴ In 2013.

⁶⁵ Brooks, Li & Philipps, *supra* note 5 at 1:2.

⁶⁶ In 2013

this second category of the normative provisions.⁶⁷ However, these provisions are not part of tax expenditures because they are necessary for the functioning of the income tax regime.

The definition of the normative structure of tax law is not an exact science and controversy exists over what precisely should be included in the normative framework.⁶⁸

The OECD points to the difficulty in reaching an agreement on a common definition of tax expenditures across different countries⁶⁹ as there is a significant subjective component to the normative structure of tax systems.⁷⁰ In a Canadian context, Séguin and Gurr provided this attempt at a comprehensive definition of the normative structure:

The benchmark for the personal and corporate income tax systems includes the existing tax rates and brackets, the unit of taxation, the time frame of taxation, the treatment of inflation in calculating income, and those measures designed to reduce or eliminate double taxation.

The definition of income is crucial to determining what is a tax expenditure. Tax provisions that provide for the deduction of current expenses incurred to earn income are considered to be part of the benchmark system and, therefore, are not considered tax expenditures.⁷¹

⁶⁷ Surrey, *supra* note 1 at 17.

⁶⁸ Heady, *supra* note 8 at 2:3. See also Daniel Shaviro, “Rethinking Tax Expenditures and Fiscal Language” (NYU Law School, Public Law Research Paper No. 72; and NYU, Ctr for Law and Business Research Paper No. 03-20, September 2003), available at SSRN: <http://ssrn.com/abstract=444281> or <http://dx.doi.org/10.2139/ssrn.444281> at 19 of the electronic edition. Young, *supra* note 48 at 9.

⁶⁹ OECD, *supra* note 52 at 17.

⁷⁰ Marc Séguin & Simon Gurr, “Federal Tax Expenditures in Canada” in Hana Polackova Bixi, Christian Valenduc & Zicheng Li Swift, *Tax Expenditures - Shedding Light on Government Spending through the Tax System*, (Washington, World Bank, 2004) 97 at 100.

⁷¹ Séguin & Gurr, *ibid.* at 99.

Every year, the Government of Canada produces an annual report on tax expenditures, which tax scholars can rely on to get information about government spending delivered through tax reductions. As the government wishes to disclose as much information as possible, Séguin and Gurr guard against inclusions on the list of expenses that are not necessarily “tax expenditures” according to Surrey’s definition.⁷² Thus, not all expenses appearing in that report will necessarily constitute a deviation from the normative structure. It is therefore up to the readers of these reports to decide on this issue. It is essential before starting tax law analysis to identify if a provision is part of the technical structure of the law, or if, on the contrary, it is a tax expenditure. Because the two categories of provision play a different role, the criteria for their analysis should also differ. The normative portion of the law concerns revenue raising, which is usually constructed around the taxpayer’s ability to pay tax. A tax expenditure, however, plays a role similar to a direct subsidy from the government. Surrey illustrates this by saying that a tax expenditure could be withdrawn from tax law and awarded in the form of direct assistance, without affecting the tax system.⁷³

The structure of rates and surtaxes are part of the technical structure of the law, even though there is no consensus on a rate structure *per se*. The personal exemption is considered as a 0% tax rate and is part of the normative structure. Therefore, when a country adopts a tax rate structure, any deviation from it will be considered a tax

⁷² Séguin & Gurr, *supra* note 70 at 97.

⁷³ Surrey, *supra* note 1 at 6.

expenditure.⁷⁴ The Haig-Simons definition does not conclude what tax unit should be used, but since Canada has opted for an individual tax unit, provisions departing from this principle should be qualified as tax expenditures.⁷⁵ In this last category, dispositions considering dependents or using family income in benefit assessment will be tax expenditures. This is the case for the Canadian Child Tax Benefit,⁷⁶ and for certain other credits such as the GST Credit.⁷⁷ The reference period is the taxation year and the calculation of income follows normally accepted accounting standards, therefore dispositions departing from these principles should be qualified as tax expenditures.⁷⁸

The use of tax expenditures as spending programmes has been overly criticized, for example, Stanley Surrey argues these dispositions should not have been included in tax legislation. He criticizes the effect of tax deductions that create an upside-down subsidy. Deductions reduce the net income (or taxable income) of a taxpayer, and therefore, the value of the “rebate” from that deduction depends on the marginal rate of the taxpayer. A deduction for a taxpayer in the top federal tax bracket is worth 29% of the expense, while for someone in the lowest tax bracket, the maximum rebate will be 15 %. If the taxpayer has a very low income, he may not even benefit from the deduction as no income tax

⁷⁴ Paul R. McDaniel, “The Staff of the Joint Committee on Taxation Revision of Tax Expenditure Classification Methodology: What Is To Be Made of a Change That Makes No Changes?” in Lisa Philipps, Neil Brooks, & Jinyan Li, *Tax Expenditures: State of the Art* (Toronto, Canadian Tax Foundation, 2011) 3:1 at 3:3.

⁷⁵ McDaniel, *ibid.* at 3:3.

⁷⁶ Section 122.6 of the ITA

⁷⁷ Section 122.7 of the ITA

⁷⁸ In Canada, either the Generally Accepted Accounting Principles (GAAP) or the International Financial Reporting Standards (IFRS). McDaniel, *supra* note 74 at 3:3. Séguin & Gurr, *supra* note 70 at 100. Young, *supra* note 48 at 9.

would be payable anyway. The upside-down effect comes from the fact that the richest individuals derive larger benefits from a deduction than the poorest.⁷⁹ This finding has led many authors to question whether tax deductions are really the best way to deliver social welfare benefits.⁸⁰ For example, the child care expenses deduction is taken from the taxpayer's income. The amount of the deduction is limited to \$7,000 for a child under 7 years and if the taxpayer is subject to a marginal tax rate of 29%, he will get a return of \$2,030 on this deduction. This corresponds to the tax he will save because of this deduction. If the taxpayer's marginal rate was lower, for example 15%, the tax savings would instead be \$1,050.

This upside-down effect was one of the main reasons the then Minister of Finance, Michael Wilson, converted most of the personal exemptions (deductions) into non-refundable tax credits in 1988.⁸¹ A tax credit is a deduction from tax payable as opposed to a deduction from income. The income is the aggregate of all taxable gains by a taxpayer in a year. In order to calculate the income tax payable, one multiplies the taxable income by the different applicable tax rates. Tax credits are deducted from this amount of tax payable. They are deducted after the application of the tax rates and are usually calculated using the basic rate of 15%. For example, the child tax credit amount is

⁷⁹ Surrey, *supra* note 1 at 22. Heady, *supra* note 8 at 2:6. Abramovitz & Morgen, *supra* note 8 at 55.

⁸⁰ Surrey, *supra* note 1 at 22.

⁸¹ Thaddeus Hwong, "The Distributional Effects of Making Personal Income Tax Credits Refundable" in Lisa Philipps, Neil Brooks & Jinyan Li, eds, *Tax Expenditures: State of the Art* (Toronto, Canadian Tax Foundation, 2011) 5:1 at 5:1-5:2. Canada, Department of Finance, *White Paper on Tax Reform* (Ottawa, Queen's Printer, 1987).

\$2,234.⁸² This means that all taxpayers who are eligible to claim that credit will be able to deduct from their tax payable an amount of \$335. This tax credit is non-refundable, meaning that if a taxpayer had to pay less than \$335 before that tax credit, the difference will not be reimbursed. The tax rebate on such a credit is no longer linked to the marginal tax rate. Currently, almost all federal tax credits for individuals are calculated at a uniform rate of 15% of the amount of the credit, which is set by law.

However, the use of tax credits also comes with limitations: to benefit from a tax credit a taxpayer must have enough tax liability, because if not, the taxpayer will simply lose a non-refundable tax credit. Again, this mechanism has been criticized because it does not target lower-income groups, while tax policy regarding these credits is often aimed at them.⁸³ Refundable tax credits are already a more effective instrument. A refundable tax credit is paid to the taxpayer even if the credit is higher than his payable income tax, which reaches all taxpayers, even if they have no tax payable, under the condition that they file an income tax return.⁸⁴

Tax expenditures also complicate the tax law and make it less transparent.⁸⁵ Brooks, Li and Philipps add that: “it has proved difficult, if not impossible, to incorporate tax expenditures directly into government spending accounts and into the annual budgetary review of government programs, so that they can be subject to the same scrutiny, control,

⁸² In 2013

⁸³ Hwong, *supra* note 81 at 5:2. Abramovitz & Morgen, *supra* note 8 at 57.

⁸⁴ Hwong, *ibid.* at 5:2.

⁸⁵ Brooks, Li & Philipps, *supra* note 5 at 10.

and political accountability as direct spending programs”.⁸⁶ The OECD and the World Bank have also found it necessary to examine this type of expenditure and the means chosen for its disclosure by States.⁸⁷ The OECD also expressed two general concerns regarding the use of tax expenditures: they “may have ill effects on both budget and tax policy, and that both political and policy-making considerations may make tax expenditures easier to enact, and less likely to undergo rigorous review and repeal, than equivalent and more straightforward spending programmes”.⁸⁸ This means that they are less likely to be included in the public debate, and less likely to be reviewed and studied. The analysis of these provisions is important work in the field of tax policy, and a discourse analysis of the tax policy surrounding STEs should highlight how they are discussed and if they carry assumptions about women.

These dispositions do not only escape government scrutiny as tax scholars and feminists also rarely examine them. But, the objectives of tax policy can only be achieved insofar as the question of gender is considered.⁸⁹ The Canadian tax system is apparently “neutral” on the issue of gender. The taxpayer is the universal taxpayer and gender is generally exempt from tax legislation. Each taxpayer receives exactly the same treatment without distinction. However, such a regime does not consider issues related to the

⁸⁶ Brooks, Li & Philipps, *ibid.* at 1:7.

⁸⁷ OECD, *supra* note 52 at 13 and 15.

⁸⁸ OECD, *ibid.* at 14.

⁸⁹ Kim Brooks, Åsa Gunnarsson, Lisa Philipps & Maria Wersig, “Introduction” in Kim Brooks, Åsa Gunnarsson, Lisa Philipps & Maria Wersig, eds., *Challenging Gender Inequality in Tax Policy Making – Comparative Perspectives* (Oxford and Portland, Hart Publishing, 2011) 1 at 2.

situation of women, such as, lower income or higher domestic responsibilities. As Lahey states:

The unrelenting focus on gender-neutral categories like ‘the poor’ or ‘single parents’ or ‘children living in poverty’ has made it seem as if women, whether contained in the couple, in the social assistance system or in parenting, do not matter unless they and their containers are ‘poor’ and serve worthy purposes.⁹⁰

Therefore, the tax regime has been criticized for its measures reinforcing the economic vulnerability and dependence of women.⁹¹

Despite the criticisms, the federal and provincial governments in Canada (as in many other liberal states) introduce more tax expenditures every year.⁹² An estimate of these tax expenditures is published by the Finance ministers of Canada and Quebec. This type of "off budget" spending is increasing in value and type. An indication of this growing use of tax expenditures in personal taxation is the fact that they represented \$13.5 billion distributed between 150 tax measures in the province of Quebec in 2011. When considering only personal income tax in our analysis, tax expenditures amount to 42% of

⁹⁰ Kathleen Lahey, “The ‘Capture’ of Women in Law and Fiscal Policy: the Tax/Benefit Unit, Gender Equality and Feminist Ontologies” in in Kim Brooks, Åsa Gunnarsson, Lisa Philipps & Maria Wersig, eds., *Challenging Gender Inequality in Tax Policy Making – Comparative Perspectives* (Oxford and Portland, Hart Publishing, 2011) 11 at 29-30.

⁹¹ Lahey, *ibid.* at 28.

⁹² Brooks, Li & Philipps, *supra* note 5 at 1:7.

personal income tax levied in this province. The increase in spending since 2005 is about 2.8% per year.⁹³

1.2 Social Tax Expenditures

I wish to concentrate on the integration of welfare measures in the context of tax law neutrality. My interest will therefore be in tax expenditures that are of a similar nature to social welfare benefits. These provisions of the tax law have been theorized and defined as Social Tax Expenditures (STEs). Some tax expenditures have a redistributive goal, which can be compared to social welfare programmes.⁹⁴ Titmuss thought there should be no discrimination against the instrument chosen to provide welfare. For him, three mechanisms are used to distribute welfare benefits: social welfare consisting of government spending, occupational welfare, which includes the benefits and protection received because of an attachment to the labour market, and fiscal welfare, which for the purpose of my thesis is defined as social tax expenditures.⁹⁵

Social tax expenditures need to be integrated into the welfare state analysis instead of looking at them using the tax theory criteria.⁹⁶ This distinction is often neglected by tax scholars and by welfare state studies. I will build on Titmuss⁹⁷ and Heady's work

⁹³ Gouvernement du Québec, Ministère des Finances, *Dépenses fiscales – édition 2010*, Bibliothèque et Archives nationales du Québec, février 2011 at III.

⁹⁴ Surrey, *supra* note 1.

⁹⁵ Stebbing & Spies-Butcher, *supra* note 1 at 4.

⁹⁶ Titmuss, *supra* note 1. See also the summary by Stebbing & Spies-Butcher, *ibid.* at 4.

⁹⁷ Titmuss, *ibid.* Also, Stebbing & Spies-Butcher, *ibid.* at 4.

identifying “fiscal welfare measures” or Social Tax Expenditures,⁹⁸ which represent the tax expenditures created for the same purpose as social welfare benefits. Heady has identified four tax expenditure categories: technical tax expenditures, tax expenditures that have the same purpose as social benefits, preferential tax treatments of social benefits, and tax expenditures that are designed to modify behaviour.⁹⁹ According to him, technical tax expenditures exist to improve the efficiency of tax administration. Heady cites as an example the inclusion of capital gains into income only at the time of disposition of the property.¹⁰⁰ The “preferential tax treatment of social benefits” refers to the non-inclusion of social benefits in income (or the inclusion in net income and the deduction from taxable income). In Canada, this is the case for social assistance benefits.¹⁰¹ The “tax expenditures that are designed to modify behaviour” are concepts similar to tax incentives.¹⁰² Like other authors, he also recognizes that there is a category of tax expenditures that he called “tax expenditures that have the same purpose as social benefits”.¹⁰³ They are defined as deductions, exemptions or tax credits that could be withdrawn from tax law and replaced by a direct expenditure program. I will refer to these social welfare measures in tax law as Social Tax Expenditures (STEs).

⁹⁸ Toder introduced the expression “Social Tax Expenditures” that we will use in our thesis in an unpublished article that we could not access dated 1999: Eric J. Toder, “Tax Incentives for Social Policy: the Only Game in Town?” The Burns Academy of Leadership, University of Maryland Paper No. 5, College Park, Maryland, 1999. See also Stebbing & Spies-Butcher, *supra* note 1 at 4.

⁹⁹ Heady, *supra* note 8 at 2:13-14.

¹⁰⁰ Heady, *ibid.* at 2:13-14.

¹⁰¹ Heady, *ibid.* at 2:13-14.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*, at 2:10.

Canada, and other liberal welfare states, according to Esping-Andersen's typology, use STEs more than other types of welfare states.¹⁰⁴ Howard's "tax breaks for social purposes" corresponded to 3.2% of Canadian Gross Domestic Product in 2005.¹⁰⁵ It was almost as high in the United States (3.1%), Australia (2.6%) and somewhat lower in Ireland (2.1%).¹⁰⁶ This increased use of STEs is compatible with the pressures exerted by neoliberal ideology.¹⁰⁷ This shared phenomenon of liberal welfare states needs to be examined in closer detail for many reasons. The internal mechanism of accountability is less stringent on tax expenditures, as explained in this excerpt about the Australian context:

STE's also lower political resistance by reducing public accountability. Tax expenditures circumvent many of the oversight arrangements that social expenditure programmes are routinely subjected to in the legislative process [...]. Unlike social expenditure programmes, tax expenditures are not identified by all Commonwealth agencies, not estimated according to independent standards or subjected to annual audits. Tax expenditures are also infrequently accounted for in the Budget, with many escaping regular review. Moreover, the TES [the Tax Expenditures Statements which is the Australian equivalent to the Tax Expenditures report in Canada], the principal data source, does not amount to a comprehensive review and requires no vote when tabled in parliament (Wanna, 2003:3).¹⁰⁸

¹⁰⁴ Germany, which is characterized as a Conservative state, is an exception to that principle using tax expenditures as much as and more than some of the liberal welfare states. See Christopher Howard "The Politics of Tax Expenditures in Wealthy Democracies" in Lisa Philipps, Neil Brooks & Jinyan Li, *Tax Expenditures: State of the Art* (Toronto, Canadian Tax Foundation, 2011) 7:1 at 7:5.

¹⁰⁵ At a factor cost: Howard, *ibid.* at 7:5.

¹⁰⁶ Howard, *ibid.*

¹⁰⁷ Stebbing & Spies-Butcher, *supra* note 1 at 11 and 18.

¹⁰⁸ Stebbing & Spies-Butcher, *supra* note 1 at 10.

Secondly, these redistribution provisions necessarily affect women. Tax expenditures are often criticised for not meeting their tax policy goals, for not being well targeted, and for being more beneficial to higher income taxpayers. In 2008, women earned 64.5% of the average annual earnings of men.¹⁰⁹ Women earned an average of \$30,200 compared to \$46,900 for men.¹¹⁰ Since more women are in the lower income brackets, they may benefit less from social welfare provisions included in income tax legislation.

1.3 The Pressures Towards Neutrality in Tax Law: Tax Theory and Neoliberalism

There is a lot of pressure for tax law to be neutral. One source of this pressure comes from tax theory and the criteria that are used to analyze tax systems. These criteria tend to consider income or economic power as being the main determinant of how tax law will apply to individuals. Neoliberalism has also influenced the legal system to becoming more apparently neutral.

In tax theory, there are three criteria for assessing whether a provision is consistent with the basic principles of tax regimes: (1) the horizontal and vertical equity, (2) neutrality, and (3) simplicity.¹¹¹ They are used to study the normative framework of the law, that is, the technical provisions of the law used for the calculation of the income of a taxpayer.

¹⁰⁹ Cara Williams, “Economic Well-Being” in Statistics Canada, *Women in Canada : A Gender-Based Statistical Report*, (Ottawa, Minister of Industry, 2010) at 13, Table 7).

¹¹⁰ *Ibid.*

¹¹¹ Young, *supra* note 48 at 5-6.

The normative (or technical) structure of tax law must be based on the ability of taxpayers to pay, that is to say, their ability to contribute to tax.¹¹² According to the Royal Commission on Taxation, the capacity to contribute to tax is calculated on the discretionary economic power of the taxpayers:

We believe that horizontal equity is achieved when individuals and families with the same gains in discretionary economic power pay the same amount of tax. By economic power we mean the power to command goods and services for personal use. By discretionary economic power we mean the the [sic] residual power to command goods and services for personal use after providing the ‘necessities’ of life and after meeting family obligations and responsibilities. To be more concrete, some part of each family’s income must be spent to provide food, clothing, medical expenses and other ‘necessities’. The change in the discretionary economic power of the family is the income the family has available to spend or save after meeting these non-discretionary expenses.¹¹³

The contribution to tax according to the individual’s capacity to pay is also the premise underlying the equity test. Thus, taxpayers in similar (economic) circumstances should receive the same tax treatment.¹¹⁴ This corresponds to horizontal equity. Vertical equity is the counterpart to this and provides for the different, but appropriate treatment of people in different situations.¹¹⁵ Thus, the higher their income, the more tax a person should pay. However, it is not always easy to determine which individuals are in similar situations or if they have the same discretionary economic power, since income should not be the sole

¹¹² *Ibid.*; See also: Canada, Royal Commission on Taxation, *supra* note 4 at 5.

¹¹³ Canada, Royal Commission on Taxation, *supra* note 4 at 5.

¹¹⁴ Young, *supra* note 48 at 5-6.

¹¹⁵ *Ibid.*

criterion of analysis, and because the concept of “basic necessities” is a changing and unstable concept.¹¹⁶ As Gunnarson puts it:

The traditional view of fairness in taxation does not consider remedies for the gender-structured division of labour, which is characterized by women doing the majority of household and care work, working part-time, working for lower salaries and having greater responsibility for maintenance support for children and other dependent in the household.¹¹⁷

So equity, in taxation, speaks of the economic capacity –the income– only. For a tax system to be fair –or for the equity criterion to be met– the discretionary income of the person is the only data that is looked at. Even this criterion leaves room for more gendered consideration, such as, the division of labour, care, and structural discrimination in the labour market.

According to tax theory, the tax system should also be neutral. It should not affect the social and economic choices of taxpayers,¹¹⁸ which means they should be “universal” and apply to the “universal citizen”. Fiscal policy decisions have, throughout the history of the ITA, encouraged and promoted different behaviour, such as the advantageous arrangements to encourage savings (Registered Retirement Savings Plan, the Tax-Free Savings Account) or provisions that treated married couples differently to common law spouses. Similarly, the government encourages active businesses and those involved in

¹¹⁶ Brooks, *supra* note 47 at 181.

¹¹⁷ Gunnarsson, *supra* note 48 at 81.

¹¹⁸ Young, *supra* note 48 at 6.

research and development. Accordingly, tax neutrality has been the subject of numerous criticisms.¹¹⁹

[...] the neutrality criterion is far less than absolute. Some non-neutral aspects of the tax system do not seem to bother anyone. For instance, while many suggest that a higher tax following marriage may discourage people from getting married, nobody has protested the other side of the equation – that favourable treatment of married couples might discourage people from seeking a divorce. Such selectivity in identifying the possible negative consequences of non-neutrality indicates that this criterion is closely tied to current social norms.¹²⁰

Neutrality may not always be desirable and should be “set aside in pursuit of valid social goals”,¹²¹ enhancement of gender equality being one of these.¹²² However, the ITA is known for its apparent gender-neutrality, in the sense that it does not consider gender in the implementation of tax policy. This law applies to all, in the same manner.

Finally, the last of the criterion in tax theory is the simplicity of the tax regime and its administration so that taxpayers are able to make informed choices. They are therefore better able to make decisions regarding their possible tax burden resulting from their life choices.

The neoliberal approach has also influenced the construction of tax policies and the evolution of the welfare state. This economic perspective advocates the use of the market for achieving equality of opportunity. The liberal approach sees the state as a neutral

¹¹⁹ Dulude, *supra* note 20 at 94.

¹²⁰ *Ibid.*

¹²¹ *Ibid.* at 88.

¹²² *Ibid.*

political instrument.¹²³ This neutrality can be observed in the public policy discourse and leaves no place for gender differentiation in public policies.¹²⁴ The legislative context is steeped in “universal and egalitarian formulations” that make gender invisible.¹²⁵ As stated by Dandurand, Jenson and Junter talking about the neoliberal period: “the time was therefore to neutrality and to an ‘equal’ treatment for all citizens.”¹²⁶ Neutrality is conceived, in neoliberal terms, as treating everyone the same. It is this neutrality, which does not acknowledge that impacts on different genders may result from policy implementation, that I wish to challenge.

STEs should be examined in the context of the welfare state, and researchers have shown that this supposedly neutral context in welfare provision is a source of inequality and injustice, and even if they are designed to be neutral in appearance, they are gendered.¹²⁷ These researchers have questioned the neutrality of public policy and “contributed to disassemble, rigorously, the mechanisms of production and reproduction of the sexual division of social relations and their incorporation into public policy”.¹²⁸ As Lessard argues, “neutrality” is often a biased concept: “this notion of neutrality is mythic in the

¹²³ Hester Lessard, “Creation Stories: Social Rights and Canada’s Constitution” in Patricia M. Evans & Gerda R. Werkele, eds, *Women and the Canadian Welfare State* (Toronto, University of Toronto Press, 1997) at 82.

¹²⁴ Renée B. Dandurand, Jane Jenson & Annie Junter, “Les politiques publiques ont-elles un genre?” (2002) 47 *Lien social et Politiques* 5 at 6.

¹²⁵ *Ibid.*

¹²⁶ *Ibid* at 6.

¹²⁷ *Ibid.* at 6. Ann Shola Orloff, “Gender in the Welfare State” (1996) 22 *Annual Review of Sociology* 51 at 53.

¹²⁸ Dandurand, Jenson & Junter, *supra* note 124 at 6 (my translation). See also: Orloff, *ibid.* at 53.

sense that what is often deferred to are the pursuits and preferences of the most powerful and privileged interests within society”.¹²⁹

The increasing importance of neutrality in law has been observed by several authors, including Laufer-Ukeles who states the following:

Gender neutrality continues to dominate the legal arena. Recognition of difference is deemed suspect based on the fear of reinforcing problematic and hierarchal stereotypes, thereby undermining headway in women’s equality. Moreover, the normative appreciation in our legal system for sameness of treatment as a proxy for equality makes recognizing difference unpalatable. Though essentially valid, these concerns have become overwrought, and are used to justify avoiding the recognition of gender difference even when such recognition is essential to alleviating hardships that women face. Ignoring difference ignores those particular attributes of biological and gender role difference that are valuable to society, such as caretaking.¹³⁰

As the right to benefits or services provided by the welfare state is conditional on the political recognition of the actors, the identification of women’s social (or fiscal) citizenship in tax policy will become a crucial issue.¹³¹ It is therefore not surprising that several authors have noted the potential impact of tax law on women.¹³² The two important constitutional challenges to come before the Supreme Court of Canada regarding tax law are an appropriate illustration of how the apparent neutrality of tax law

¹²⁹ Lessard, *supra* note 123 at 82.

¹³⁰ Pamela Laufer-Ukeles, “Selective Recognition of Gender Difference in the Law: Revaluating the Caretaker Role” (2008) 31 Harv J L & Gender 1 at 4. See also: Fineman, *supra* note 16; Gaudreault-Desbiens, *supra* note 11 at 33..

¹³¹ Dobrowolsky & Jenson, *supra* note 17.

¹³² Masson, *supra* note 13 at 2; Rose, *supra* note 14; Philipps, *supra* note 15.

may impact women.¹³³ In the two legal challenges, the taxpayers tried to demonstrate that the ITA is not gender neutral and that it can disadvantage women. This apparent neutrality of tax law, as I will examine in the next section, even influenced the interpretation of the tax provisions.

1.4 The “Neutral” Context of Social Tax Expenditures, the Neutrality of Laws and the Objectivation of the Subjects of Laws

The law has made neutrality and objectivity a postulate.¹³⁴ What many refer to as legal neutrality is actually a reflection of society's dominant values and realities, which can be detrimental to minority groups. The law is a mirror of the dominant culture.¹³⁵ The law, both in the implementation process and in the interpretation is a discourse that constructs the reality of minority groups while perpetuating underlying dominant relationships.¹³⁶ The neutrality context in which STEs are introduced necessarily entails that the particular situation of certain groups will not be considered in the implementation of these policies. The rigid context of the ITA makes it difficult to recognize possible adverse effects because it is focused on income without considering any other personal characteristics of individuals, or even that their level of income could be linked to those characteristics.

Thus, I privilege a critical approach to this neutrality, highlighting how power can influence the construction of knowledge.¹³⁷ The exercise of power can influence the discourse on minority identities and construct their identities and experiences by

¹³³ Symes, *supra* note 10; Thibaudeau, *supra* note 10.

¹³⁴ Gaudreault-Desbiens, *supra* note 11 at 33.

¹³⁵ Fineman, *supra* note 16 at 33. Gaudreault-Desbiens, *ibid.*

¹³⁶ Gaudreault-Desbiens, *ibid.* at 33 and foll.

¹³⁷ Gaudreault-Desbiens, *ibid.* at par. 54 (QL).

reflecting the dominant values. This was also the approach advocated by Foucault. Foucault argued discourse is in fact a succession of discursive regimes within which the actors, objects, and affirmations are the source of power and knowledge. These standards are constantly evolving and the emerging discourse is therefore constructed on this genealogy of ideas and produced by different practices and institutions. Foucault's work examines the rules, systems, and procedures which explain how power and knowledge (how truth is constructed) are gained through discourse.¹³⁸ For Foucault, discursive practices "make it almost impossible to think outside of them."¹³⁹

Since I wish to question the notion of neutrality in tax policy because of its possible impact on women, I propose an approach that will highlight how female reality can be constructed through the tax policy discourse. The bias in STEs' supposed neutrality arises in the implementation discourse of these provisions. First and foremost, this supposed neutrality needs to be questioned in the context of the implementation and creation of the discourse. As law is a normative institution; assumptions about women may exist within the discourse and therefore impact them when the law is implemented or interpreted. It can create identities and influence them. I agree with Fineman that I must look at the values perpetuated by the discourse and how it can construct the female identity. As Fineman puts it:

From this perspective, feminism is a political theory concerned with issues of power. It challenges the conceptual bases of the status quo by

¹³⁸ Fraser, *supra* note 18 at 19-20.

¹³⁹ Derek Hook, "Discourse, Knowledge, Materiality, History: Foucault and Discourse Analysis" (2001) 11(4) *Theory and Psychology* 521 at 522.

assessing the ways that power controls the production of values and standards against which specific results and rules are measured. Law represents both a discourse and a process of power. Norms created by and enshrined in law are manifestations of power relationships. These norms are applied coercively and are justified in part by the perception that they are ‘neutral’ and ‘objective’. Appreciating this phenomenon, many feminist scholars have focused their attention on the legislative and political process rather than on the judiciary. The recognition that law is power also has led many feminists to concentrate on social and cultural perceptions and manifestations of law and legality rather than to focus narrowly on formal legal doctrinal development.¹⁴⁰

The failure of the constitutional challenges to certain tax provisions is evidence that the questioning of the neutrality of STEs should not only be interested in the legal interpretation.¹⁴¹ In the two cases brought before the Supreme Court of Canada, taxpayers tried to demonstrate that differential treatment and discrimination was present and caused by a lack of consideration for their personal characteristics, linked to their gender. In both of these cases, the majority of the Court found that there was no differential treatment based on gender. In each decision, the two female judges dissented and found the law to be discriminatory against women.

In *Symes c. Canada*¹⁴², Elizabeth Symes, a lawyer and partner in a Toronto firm deducted the wages paid to her nanny from her business income. The deduction was denied by Revenue Canada, which considered that the expenses were not incurred for the purpose of earning business income. It concluded instead that the expense qualified for the CCED, which is subject to an annual limit, in accordance with section 63 of the ITA. Ms. Symes judged the inability to entirely deduct her child care expenses (that is to say

¹⁴⁰ Fineman, *supra* note 16 at 32.

¹⁴¹ *Ibid.* at 30-31.

¹⁴² *Symes*, *supra* note 10.

provisions of the normative structure of the law) constituted an offense under section 15 of the *Charter* because it discriminated against women who assume greater responsibility for child care.

Justice Iacobucci, writing for the majority, did not find it necessary to conclude on the qualification of the child care expenses as a business expense or as a personal expense. According to him, the CCED is a comprehensive legislative response by which Parliament has dissociated this type of expense from the normative tax system (sections 9 and 18 of the ITA). Section 63 is a code in itself and the Court decided not to conclude whether it is part of the normative structure, or if it is a tax expenditure in the nature of a welfare provision. He however mentioned that qualifying the deduction as a tax expenditure is irrelevant to the analysis of a section 15 challenge, though it may be useful in the context of a justification under section 1 of the *Charter*.

The majority of the Court concluded that the appellant had not demonstrated that section 63 of the ITA creates an adverse impact against women. The appellant demonstrated that women disproportionately bear the social burden related to child custody, but did not establish that women pay more towards the cost of child care than men.¹⁴³ As this argument was presented in the context of the normative structure of the law, this conclusion was not a surprise. Faye Woodman describes the effect of a challenge based on the normative aspect of the tax structure:

¹⁴³ *Symes, supra* note 10 at para 92 (QL).

On the other hand, a Symes challenge would be perceived as an attack on a basic characteristic of the normative tax system. The result would not be preordained because sections 9 and 18 [of the ITA] are so fundamental. Indeed because they are, the Court might think it even more necessary to examine them in light of the Charter. The Court would, however, understand that it was venturing into difficult and unmapped territory.¹⁴⁴

All the technical dispositions of tax legislation are covered in the Haig-Simons definition of income, which I discussed earlier when defining the normative structure of the law. If there is no consumption, or no evidence of disproportionate consumption of this type of expense by women, then the normative structure is not problematic. The Court's conclusion on the necessity of a disproportionate payment for Ms. Symes to make her case was therefore foreseeable.

The Court however concluded that child care costs were necessary for Ms. Symes to conduct her business, even if it could not conclude that it was a business expense. The Court's conclusion of the unique nature of these expenses was outlined in the following statement:

However, in general terms, I am of the view that child care expenses are unique: expenditures for child care can represent a significant percentage of taxpayer income, such expenditures are generally linked to the taxpayer's ability to gain or produce income, yet such expenditures are also made in order to make a taxpayer available to the business, and the expenditures are incurred as part of the development of another human life. It can be difficult to weigh the personal and business elements at play.¹⁴⁵

¹⁴⁴ Faye J. Woodman, "A Child Care Expense Deduction, Tax Reform and the Charter: Some Modest Proposals" (1990) 8 Can J Fam L 371 at 387.

¹⁴⁵ *Symes*, *supra* note 1026 at para 80 (QL).

The majority of the Court also noted the social benefits of having children and that the responsibility should not only be assumed by women, but should be shared by society. Justice Iacobucci wrote that in other circumstances, it could be possible to establish that section 63 of the ITA creates a distinction based on sex. But he seemed troubled by the appellant's strategy. He wrote:

Instead of focusing upon the manner in which s. 63 of the Act operates as a child care system, the present appeal focused only upon the propriety of an instrumental result. This Court was invited to use the Charter to rectify a disadvantage allegedly suffered by businesswomen vis à vis businessmen, and, in the process, this Court was invited to ignore the effect of allowing a complete deduction on the rest of the system. At the s. 1 stage of Charter analysis, however, such an instrumental approach is inappropriate. In order to examine properly the validity of legislative objectives in a case such as the present one, it is important to consider both the operation of the Act as a whole, and the operation of other government systems relating to child care.

Justice Iacobucci is not the only one to have remained puzzled by the strategy of Ms. Symes. Another is Claire Young, whose opinion is the following:

The appellant claimed a deduction for child care expenses in the computation of her business income, a deduction which, had she been successful, would not have been available to the vast majority of women. Women form less than 25 percent of the self-employed in Canada. If the Act is used to subsidize child care for the self-employed, the result is merely more privilege for the already privileged. [...] As men form 75 percent of the self-employed, it is also likely that the male partner would be the only one able to take advantage of this deduction. Obviously, this result would have been inconsistent with the policy underlying the current section 63 deduction of child care expenses, which is to reduce the disincentive for women to participate in the paid labour force.¹⁴⁶

¹⁴⁶ Claire F.L. Young, "Child Care – A Taxing Issue?" (1993-94) 39 McGill LJ 539 at 557.

It is a challenge to contest the normative structure of the ITA, as income is the main characteristic considered by tax law concerning differential treatment. Though Justice Iacobucci does not frame the debate as one between the normative structure and the tax expenditures aspect of tax law, this could have answered some of the concerns he shared in the judgment of the majority.

I agree with Faye Woodman that, in addressing the normative aspect of the Canadian tax system, Ms. Symes had a big hill to climb because it was first necessary to establish that the expense was a business expense, and then, that women were disadvantaged under the current regime by having to take on the monetary cost of such expenses more so than men. Would the interpretation of the Court have been different if she had approached her constitutional challenge by contesting the validity of the CCED in tax expenditure terms? As noted by Woodman, approaching the issue using the analytical criteria of tax expenditures would have changed the perspective by comparing the regime of section 63 with a direct subsidy. She adds: “[t]ax expenditures analysis does not solve the problems inherent in Charter challenges to the income tax system. It does, however, make it clearer what the argument is about”.¹⁴⁷ In fact, if compared to a direct subsidy, the analysis would have to change. Treating the CCED as a tax expenditure introduced to limit the disincentive for women to enter the labour market, the argument would be that a direct subsidy that is more beneficial for higher income individuals is certainly not well-targeted. The outcome would not so much be linked to who “pays”, as it was the case in *Symes*, but on who bears the responsibility of child care.

¹⁴⁷ Woodman, *supra* note 144 at 386.

This huge reluctance to look at the effects of tax law was confirmed a few years later when the Supreme Court of Canada rendered a new decision regarding the alleged discrimination of other provisions of the ITA. Suzanne Thibaudeau challenged the constitutionality of the inclusion/deduction system of alimony. In the *Thibaudeau* case, the focus was still on the economic outcome. At the time, under the ITA the spouse paying the alimony could deduct that amount from his income, while the spouse receiving the child support payments had to include it in her income.¹⁴⁸ It was argued that the measure was discriminatory because the spouse receiving the alimony supported the tax burden on the amounts that were paid to meet the needs of the children.

At the outset, Justice Gonthier one of the majority judges, wrote that the ITA is subject to the *Charter*, but warned us that the ITA is not a law like others, and that it should be considered for the purpose of the discrimination test in the *Charter*:

I would add, however, that though it may not be relevant to determining whether the *Charter* applies to the ITA, the special nature of the latter is nonetheless a significant factor that must be taken into account in defining the scope of the right relied on, which here as we know is the right to the ‘equal benefit of the law’¹⁴⁹.

Justice Gonthier emphasizes that not all distinctions result in discrimination and that this is particularly relevant for tax law, because the essence of the ITA is to make distinctions.¹⁵⁰ The ITA has to “generate revenue for the government while equitably

¹⁴⁸ Subsection 56b) and 60b) of the ITA as they read before 1997.

¹⁴⁹ *Thibaudeau*, *supra* note 10 at 675-676.

¹⁵⁰ *Ibid.* at 675.

reconciling a range of necessarily divergent interests”.¹⁵¹ What constitutes the “special nature” of the ITA is not clear from the judgment, but it appears that the revenue perception aspect plays an important role. This also leads to a deference to decisions in matters of government spending.

For the judge, the principles of tax theories should not be confused with the principles of equality:

That being the case, one should not confuse the concept of fiscal equity, which is concerned with the best distribution of the tax burden in light of the need for revenue, the taxpayers’ ability to pay and the economic and social policies of the government with the concept of the right to equality, which as I shall explain in detail later means that a member of a group shall not be disadvantaged on account of an irrelevant personal characteristic shared by that group.¹⁵²

For Justice Gonthier, it meant that “the right to the equal benefit of the law cannot mean that each taxpayer has an equal right to receive the same amounts, deductions or benefits, but merely a right to be equally governed by the law.”¹⁵³

The judge concluded that the system of inclusion/deduction was not a source of prejudice for separated couples as they are statistically advantaged by it. Because the marginal rates applicable to the spouse paying the alimony is usually higher than the one applicable to the spouse receiving the support, therefore, taken as a single entity these separated couples paid less tax. Although the judge recognized that the taxation unit in Canada is

¹⁵¹ *Ibid.* at 676.

¹⁵² *Ibid.* at 680.

¹⁵³ *Ibid.* at 676.

the individual, this is not considered in *Thibaudeau*. The separated couple was considered an indivisible unit. In addition, the judge noted that it is normal and logical that the person who has the power to dispose of the funds be taxed on it.¹⁵⁴ The debate for Justice Gonthier is one of the distribution of tax payable within the couple, which is considered a private matter. It is possible that some separated couples do not benefit from the inclusion/deduction system, particularly if the spouse receiving the alimony earns more income than the one paying it. The Court stated that the level of income was not a personal characteristic.¹⁵⁵

As these decisions demonstrate, the courts approach constitutional challenges to tax law with significant deference to the state's tax policy. As Boyd and Young note, the courts regard these laws as extremely complex.¹⁵⁶ Tribunals are also aware of the important budgetary implications their decisions can have. The other question that arises in constitutional challenges to tax law is to identify the moment when distinctions become, or at least, should be considered discriminatory.¹⁵⁷ Unfortunately, the courts have shed little light on this issue, but our reading of the Supreme Court's decisions leads us to

¹⁵⁴ *Ibid.* at 690.

¹⁵⁵ *Ibid.* at 687.

¹⁵⁶ Boyd & Young, *supra* note 50 at 578.

¹⁵⁷ Ulrike Spangenberg, "Indirect Discrimination in Tax Law: The Case of Tax Deductions for Contributions to Employer-Provided Pension Plans in Germany" in Kim Brooks, Åsa Gunnarsson, Lisa Philipps & Mary Wersig, eds, *Challenging Gender Inequality in Tax Policy Making – Comparative Perspectives* (Portland, Hart Publishing, 2011) 255 at 255.

believe that the threshold for qualifying a distinction in tax law as being discriminatory is high.¹⁵⁸

The postulate of neutrality governing tax law is not a stranger to this conclusion. For a constitutional challenge under section 15 to be successful, it must be established that the law creates a distinction based on an enumerated or analogous ground, and that the distinction creates a disadvantage by perpetuating prejudice or stereotyping.¹⁵⁹ The majority explains the idea of prejudice or stereotype:

While the promotion or the perpetuation of prejudice, on the one hand, and false stereotyping, on the other, are useful guides, what constitutes discrimination requires a contextual analysis, taking into account matters such as pre-existing disadvantage of the claimant group, the degree of correspondence between the differential treatment and the claimant group's reality, the ameliorative impact or purpose of the law, and the nature of the interests affected: *Withler*, at para. 38; *Kapp*, at para. 19.¹⁶⁰

This part of the test seems to be difficult to uphold when, as is often the case in constitutional disputes involving tax, the alleged discrimination stems from a difference in the effects of the law. In these cases, the law is apparently neutral and does not explicitly assign a role to a particular group. The difference in effect is primarily due to the ignorance of the various characteristics of certain groups that can affect their

¹⁵⁸ See for example, Justice Lamer's comment in *Schachter v Canada*, [1992] 2 SCR 679 at 695. Justice Lamer was unhappy about the parties' agreement that there was a violation to s. 15 of the *Charter*. The law under issue was *Unemployment Insurance Act, 1971* that did not allow for the same kind of benefits for fathers of a natural child versus fathers of an adoptive child.

¹⁵⁹ *Quebec (Attorney General) v A*, 2013 SCC 5 at para 324 (Abella J.) and para 418 (McLaughlin CJ); *R. v Kapp*, [2008] 2 RCS 483 at para 17; *Withler v Canada (Attorney General)*, 2011 SCC 12 at par. 30.

¹⁶⁰ *Quebec (Attorney General) v. A.*, *ibid.* at para 418 (McLaughlin J.).

relationship to STEs when drafting the legislation. Most of the distinctions in income tax legislation are based on differences in annual income. It is therefore very difficult to establish a regime as being discriminatory within the meaning given by the Supreme Court:

To constitute discrimination, the impugned law must have the purpose or effect “of perpetuating or promoting the view that the individual is less capable or worthy of recognition or value as a human being or as a member of Canadian society, equally deserving of concern, respect, and consideration”: *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, at para. 88; see also *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, at p. 171.¹⁶¹

Suppose a taxpayer passes the test of section 15, the law could then be justified by Section 1 of the Charter. At that second stage of the analysis,

[t]he state bears the burden of establishing justification on a balance of probabilities. The state must demonstrate (1) a sufficiently important objective to justify an infringement of a *Charter* right, (2) a rational connection between that objective and the means chosen by the state, (3) that the means are minimally impairing of the right at issue, and (4) that the measure’s effects on the *Charter*-protected right are proportionate to the state objective: *R. v. Oakes*, [1986] 1 S.C.R. 103.¹⁶²

Tax law has been described as complex law, and the courts have confirmed the deference they must demonstrate to Parliament in matters of public spending at this stage of the analysis.

Several authors have found that in terms of socio-economic rights, the courts (and the Supreme Court in recent years) will give value to these types of right insofar as they do

¹⁶¹ *Quebec (Attorney General) v. A.*, *ibid.* at para 417 (Abella J.).

¹⁶² *Quebec (Attorney General) v. A.*, *ibid.* at para 434.

not require a positive action on the part of the state. Some authors attribute this reaction to the integration of neoliberal principles into the courts.¹⁶³ Paul O'Connell notes in the following way the impact of neoliberalism:

In the contemporary era such distortions take the form of recasting socio-economic rights into the 'market friendly', consumerist norms and, among other things, the reduction of entrenched socio-economic rights to formal, procedural guarantees, rather than substantive material entitlements.¹⁶⁴

The recent Supreme Court decisions point in this direction. If the state does not intervene, then, under section 15, the courts cannot intervene to blame it for not doing so.¹⁶⁵ In recent years, the Supreme Court has declined to intervene in challenges involving positive action from the state, instead it seems more comfortable when disputes involve negative rights.¹⁶⁶

Without discounting the idea of constitutional challenge, which is a necessary tool for questioning laws and their alleged neutrality, I propose to challenge the postulate of neutrality behind STEs by exploring the tax policy discourse. An examination of the discourse may establish that STEs carry assumptions about women, that may assign them a role that is not necessarily in line with the true characteristics of this group. Not only could this help understand how tax law can influence the way in which women are

¹⁶³ O'Connell, *supra* note 12 at 536

¹⁶⁴ *Ibid.* at 533.

¹⁶⁵ *Auton (Guardian ad litem of) v British Columbia (Attorney General)*, 2004 SCC 78.

¹⁶⁶ O'Connell, *supra* note 12 at 543. See also *Gosselin v. Quebec (Attorney General)*, 2002 SCC 84; *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35; *Vriend v Alberta*, [1998] 1 SCR 493.

perceived or constructed, such analysis could also help establish the prejudice and stereotyping behind STEs in future constitutional challenges.

Studying the discourse and the role it assigns to women will help underline assumptions about gender in STEs:

If we treat the opposition between male and women as problematic rather than known, as something contextually defined, repeatedly constructed then we must constantly ask not only what is at stake in proclamations or debates that invoke gender to explain or justify their positions but also how implicit understandings of gender are being invoked and reinscribed. What is the relationship between laws about women and the power of the state? [...]¹⁶⁷

Thus, according to Dobrowolsky and Jenson, the presence or absence of certain actors in the political discourse (what they call the “naming”) will affect the boundaries of inclusion and exclusion, and thus, forge social citizenship status. It will influence the strategic resources and promote some claims over others. They mention: “[...] in terms of citizenship claims we can see that making choices about names – that is, by their representational strategies – actors generate an imaginary of the boundaries of inclusion and exclusions”.¹⁶⁸ As noted by Ruth Lister, women are deemed to be either integrated into the seemingly neutral policy or are simply forgotten.¹⁶⁹

With the evolution of STEs, it is relevant to examine how women are represented in the tax policy discourse behind their implementation, as this can carry assumptions regarding

¹⁶⁷ Joan W. Scott, “Gender: A Useful Category of Historical Analysis” (1986) 91(5) *American Historical Review* 1053.

¹⁶⁸ Dobrowolsky & Jenson, *supra* note 17 at 156.

¹⁶⁹ Ruth Lister, *Citizenship: Feminist Perspectives* (London, Macmillan, 1988) 73.

women's citizenship in all spheres of their life, either as workers, in the family or in their relations with the state.¹⁷⁰ This emphasis was also made by Evans and Wekerle when they said: “[t]he control over language and the naming of issues and solutions, while often neglected, are key elements in welfare debates and becoming increasingly important as the welfare state retreats.”¹⁷¹

By valuing certain claims over others, the discourse will be the source of boundaries for what is legitimate and what is not. This is what Dobrowolsky and Jenson identified as constituting the boundaries of inclusion and exclusion.¹⁷² The construction of the discourse also dictates the government's response to various claims and the allocation of resources to specific social policy problems.¹⁷³ This construction has also interested welfare state researchers, such as Nancy Fraser, who argued “[...] the welfare system does not deal with women on women's terms. On the contrary, it has its own characteristic ways of interpreting women's needs and positioning women as subjects”.¹⁷⁴ Denise Réaume states:

A feminist critique of law is, negatively, an analysis of how some or all women have been excluded from the design of the legal system or the application of law, and

¹⁷⁰ Masson, *supra* note 13 at 11.

¹⁷¹ Evans & Wekerle, *supra* note 40 at 11.

¹⁷² Dobrowolsky & Jenson, *supra* note 17 at 157.

¹⁷³ Tasleem J. Padamsee, “Culture in Connection: Re-Contextualizing Ideational Processes in the Analysis of Policy Development.” (2009) 16(4) *Social Politics* 413; Dobrowolsky & Jenson, *ibid.*

¹⁷⁴ Fraser, *supra* note 18 at 149.

positively, a normative argument about how, if at all, women's inclusion can be accomplished.¹⁷⁵

Once it is accepted that STEs are of the same nature as welfare benefits, there is a risk of friction with the fundamental principles of tax theory (neutrality, equity and simplicity). Where STEs and tax theory meet this can lead to a clash between the issue of gender neutrality and the potential impact on women. The problem can hardly be solved by looking to the Supreme Court, as the postulate of neutrality of tax law is also constructed into legislative interpretation. This opinion is shared by Rhode:

Nor are mandates guaranteeing equality in formal rights adequate to secure equality in actual experience as long as rights remain restricted to those that a predominately white upper middle class male judiciary has been prepared to regard as fundamental.¹⁷⁶

Again, both decisions concerning the possible discriminatory impact of tax law had a strong gendered division within the Supreme Court, as the two women judges dissented on the result that there was no discrimination.

I believe that approaching the study of STEs through court decisions, or a constitutional approach, would not be enough to provide a critical approach to the neutrality of tax law. As this postulate is also present in judicial interpretation, it will be hard for any tribunal to highlight how STEs may contain assumptions about women and how they can reproduce patterns of power. Gunnarsson expresses the same idea:

¹⁷⁵ Denise G. Réaume, "What's Distinctive About Feminist Analysis of Law?: A Conceptual Analysis of Women's Exclusion from Law" (1996) 2 *Legal Theory* 265 at 273.

¹⁷⁶ Deborah L. Rhode, "Feminist Critical Theories" (1989-1990) 42 *Stan L Rev* 617 at 633.

The only frame of reference for formalist legal analysis is the normative model, according to which all citizens are equal under a neutral law. Using such a uniform approach, it is impossible to identify those legal structures or legal discourses in which the patterns of social power reside and which reproduce gender inequalities between men and women, together with stereotyped gender constructions. Using this approach, it is also impossible to detect the possibility that the substantive preconceptions of legal forms, rules and principles can function to the social disadvantage of women (Young 2000).¹⁷⁷

So this ambiguity- STEs are stuck between tax theory and welfare benefits - explains the difficulty for the courts and for the legislature to recognize the discriminatory potential of STEs. This is particularly the case if the courts are reluctant to interfere in section 15 litigation over matters concerning government spending. This deference is even worse if the nature and purpose of STEs are not challenged nor defended, as was the case in *Symes*.

I therefore reiterate what Fineman mentioned in terms of a critical approach to the postulate of the neutrality of laws. Legislated norms are often justified by the assumption that they are neutral and objective, but they could also be a manifestation of power relationships. I am interested in the existence of this power relationship and its role in the construction of knowledge, reality and identity. That is why I seek to analyze the highly normative political process leading to the implementation of STEs rather than the interpretation process.

¹⁷⁷ Gunnarsson, *supra* note 48 at 76, 77, citing Young, *supra* note 48

Other authors have considered the normative criteria of tax theory as being inappropriate for studying tax expenditures.¹⁷⁸ They have suggested that tax expenditures should be evaluated based on budgetary criteria, such as, efficiency and administrative costs.¹⁷⁹ Claire Young added to the normative criteria, the notions of fairness in resource allocation and equality when studying tax expenditures.¹⁸⁰ I argue however, that since STEs are equivalent to social welfare measures, they should be examined using a conceptual framework similar to that used for those regimes. Without naming the concept of STEs, Claire Young said that tax law is among the most important tools of social and fiscal policies¹⁸¹ and according to Rebecca Johnson, it reflects the values of our society.¹⁸²

I therefore want to take the analysis one step back and instead of looking at judicial interpretation, study the discourse behind STEs to understand how they are introduced and defended by legislators, and if this process contains assumptions about women that could interfere with their experience of STEs. In order to do this discourse analysis, themes need to be identified. Because STEs are so closely linked to the welfare state, these themes should be related to welfare state analysis and should allow for gender analysis.

¹⁷⁸ Young, *supra* note 48 at 9.

¹⁷⁹ Rebecca Johnson, *Taxing Choices: The Intersection of Class, Gender, Parenthood, and the Law* (Vancouver, UBC Press, 2002) 11; Young, *supra* note 48 at 9.

¹⁸⁰ Young, *supra* note 48 at 9.

¹⁸¹ *Ibid.* at 11.

¹⁸² Johnson, *supra* note 179 at 10.

An analysis of the premises inherent in the discourse should allow to understand the influence of law in the construction of the female identity and how this can influence women's experience of social tax expenditures.¹⁸³ To be able to identify preconceptions about women and the impacts of STEs on women, I have chosen a thematic discourse analysis. In order to perform this type of discourse analysis, the identification of themes relevant to the welfare state analysis and to gender are necessary. I have identified those themes using welfare state theory, and specifically, a gendered framework developed in the literature on the welfare state. This literature fits well with social tax expenditures because, as I mentioned earlier, tax expenditures are one of the three ways of distributing the welfare state. In tax policy matters, the discourse will reflect the government's attitude towards the role assigned to women.¹⁸⁴ Therefore, I argue that the rarity of tax policy discourse analysis constitutes an important gap in the literature.

This first chapter of the thesis has allowed me to highlight the possible clash between STEs and the tax theory framework. The framework for analyzing tax law assumes that everyone should be treated the same way by a neutral law. The introduction of social tax expenditures in this context should be examined more closely as they do not share the same objectives as the technical provisions of revenue collection. Rather, STEs share common goals with social welfare programs and are a powerful instrument of public policy to implement the government's preferences.¹⁸⁵

¹⁸³ Fineman, *supra* note 16 at 27.

¹⁸⁴ Rose, *supra* note 14 at 24.

¹⁸⁵ Boyd & Young, *supra* note 54 at 554.

CHAPTER 2 INTEGRATING STES INTO WELFARE STATE THEORY

As seen in Chapter 1, STEs are tax expenditures that are similar in nature to welfare benefits. When STEs and tax theory meet the conceived, perceived, and idealized notion of tax law being a neutral instrument is called into question. The postulate of neutrality should therefore be examined and questioned. However, tax law is normative and may contain assumptions about women. It may reproduce the social attribution of women's role or create new ones.¹⁸⁶ The integration of tax expenditures into the welfare state debate will contribute to highlighting what impact tax measures, often qualified as being gender-neutral, can have on women.

Esping-Andersen is well-known for his work on welfare states. His categorization is based on the impact of three dimensions of the welfare state: the decommodification of workers, stratification, and the relationship -or responsibility mix- between the market and the state.¹⁸⁷ His welfare state typology represents an important step forward since it focuses primarily on a qualitative aspect, and attributes a secondary role to the quantitative aspect of government expenditures.¹⁸⁸ It also means that the quality of the protection offered by the state (the reliance on the market, who benefits, and what kind of benefits are secured by the state or by the market) is more important than the amount spent. The qualitative aspect of his framework uncovers themes that are relevant for an examination of the discourse of the welfare state.

¹⁸⁶ Evans & Wekerle, *supra* note 40 at 4.

¹⁸⁷ Esping-Andersen, *supra* note 31.

¹⁸⁸ Mary Daly, "Comparing Welfare States: A Gender Friendly Approach" in Diane Sainsbury, ed., *Gendering Welfare States* (London, Sage, 1994) 101 at 106.

Esping-Andersen has shown that not all welfare states have similar impacts on their citizens.¹⁸⁹ He classified Canada, the United States, Australia, and the United Kingdom as liberal states, which are defined according to his categorization as sharing the following common characteristics: minimal intervention of the state that instead relies on the market for welfare provision, social assistance based on needs assessment, and modest universal transfers. In these states, entitlement to benefits is often stigmatized, meaning that they are not offered universally, are means-tested, and receiving these benefits is often linked to a sense of shame. These regimes favour the market by encouraging private pension plans, often through their tax laws.¹⁹⁰ For example, Canada encourages saving for retirement through tax programmes such as the Tax Free Savings Account (TFSA)¹⁹¹ and the Registered Retirement Saving Plan (RRSP),¹⁹² allowing for important tax exemptions (income not subjected to tax) and deductions (reduction of total income) to be made by investing in these regimes for retirement.

Liberal welfare states allow state intervention only when the market fails, and they tend to use tax expenditures for social purposes more than other types of welfare state.¹⁹³ According to his framework, Social-Democratic states include the Scandinavian countries that are renowned for their universalistic model of welfare provision and the pursuit of

¹⁸⁹ Esping-Andersen, *supra* note 31.

¹⁹⁰ *Ibid.* at 41.

¹⁹¹ Section 146.2 ITA.

¹⁹² Section 146 and subs. 60j ITA.

¹⁹³ Howard, *supra* note 104 at 7:5.

full employment.¹⁹⁴ Conservative states, for their part, show a stronger attachment to the traditional family, and will therefore provide welfare only when the family can no longer meet its own needs. Consequently, family allocations encourage motherhood, child care is poorly developed, and social insurance is not generally available to the housewife.¹⁹⁵ This category regroups most of the countries in Western Europe. However, Esping-Andersen's general categorization of the liberal welfare states does not account for historical changes in the approach identified in Canada and elsewhere. It is a static approach, a snapshot of the welfare state policy at any given moment in time.

As I plan to do a historical analysis of the discourse behind STEs, I need to identify the important periods of the welfare state discourse to be used for the analysis. The welfare state literature recognizes three major economic periods that influenced the discourse about women. I begin the analysis with the period known as the "Glorious 30" or the socio-democrat welfare state. This period is usually referred to as lasting from 1945-1975.¹⁹⁶ I chose the social-democratic welfare state as the first period (I will also refer to this as the Keynesian welfare state) as it corresponds, in terms of STEs, to major tax reforms that took place in 1972. However, the discourse in relation to the implementation of that reform started in the 1960s. The literature mentions the next period as being influenced by neoliberalism that started to model the economy, and therefore, the construction of the welfare state. It reached its peak in the mid-1980s and started to lose

¹⁹⁴ Esping-Andersen, *supra* note 31.

¹⁹⁵ *Ibid.*

¹⁹⁶ Gøsta Esping-Andersen & Bruno Palier, *Trois leçons sur l'État-providence* (Paris, Seuil et la République des idées, 2008) at 6, 7.

influence during the 1990s. The last period the welfare state literature is concerned with is the social investment strategy period, which started in the mid-1990s and continues today. None of these periods are hermetic, nor are they strictly defined in time. There may be some overlapping of the characteristics from one period over to another.

The discourse analysis methodology I have chosen is a thematic one based on themes identified in the literature.¹⁹⁷ For the purpose of coding the discourse and analyzing it, the themes should address two concerns. First, the themes should come from a typology of the welfare state, rather than from fiscal theory, for the reasons outlined in Chapter 1. In addition, the themes should allow me to highlight gender issues in the discourse and uncover stereotypes and assumptions about women.

The themes for my discourse analysis are based on Esping-Andersen's typology as modified by Orloff, O'Connor and Shaver. A gender-sensitive welfare state analysis "is built on the recognition of gender and class and is linked to a more general critique of the dominant conception of citizenship that underpins welfare state research".¹⁹⁸ There is a general consensus in gender studies research that Esping-Andersen's framework is inadequate for a gendered analysis of the welfare state. I therefore utilized the model

¹⁹⁷ Virginia Braun & Victoria Clarke, "Using Thematic Analysis in Psychology" (2006) 3 *Qualitative Research in Psychology* 77.

¹⁹⁸ O'Connor, *supra* note 30 at 3.

proposed by O'Connor, Orloff and Shaver,¹⁹⁹ as it incorporates the mainstream approach (the one developed by Esping-Andersen) but allows for a gendered analysis.²⁰⁰

Section 2.1 of this chapter will first define each of the three periods of the welfare state, which will constitute the timeframe for my discourse analysis: the Keynesian welfare state, the neoliberal welfare state, and then the period of social investment strategies. In section 2.2., O'Connor, Orloff and Shaver's framework will be defined.

2.1. The Three Historical Periods of Welfare States

Any discourse analysis of STEs should be sensitive to the historical socio-economic context. The Canadian welfare state has undergone enormous changes since the early 1970s. The welfare state literature recognizes the changes in economic and discursive approaches, and the fact that this has influenced the discourse on women. In this section, each of the three historical periods will be explained and outlined in detail in chronological order. First, I will examine the Keynesian welfare state, then the neoliberal welfare state, and then the welfare state influenced by social investment strategies.

2.1.1. The First Period: The Keynesian Welfare State

The welfare state regime, built mostly in the 1950s and 1960s, relied on a family model of a male breadwinner and his wife responsible for housework and child care.²⁰¹ The social and economic rights of women were therefore conditional on their attachment to the family and to a breadwinner husband, and their role was in the home being in charge

¹⁹⁹ O'Connor, Orloff & Shaver, *supra* note 2.

²⁰⁰ Rianne Mahon, "Theorizing Welfare Regimes: Toward A Dialogue?" (2001) 8(1) *Social Politics* 24 at 26.

²⁰¹ Esping-Andersen, *supra* note 196 at 24.

of the children and performing other unpaid tasks.²⁰² The Keynesian welfare state uses welfare benefit to support economic growth and job creation. It guarantees a source of income and the citizen's capacity to consume, even if they are incapacitated and unable to work.²⁰³

The market plays a major role in the Keynesian welfare state, since everyone should have access to it and benefit from it.²⁰⁴ It is only when market access is imperfect that the family, the community, and the state will intervene. During this period, public spending on social programmes focused on helping individuals and families, as well as stimulating the economy.²⁰⁵ Nevertheless, these policies were based on a formal equality model rather than on substantive equality.²⁰⁶

In the welfare state [the Keynesian welfare state], despite formal equality, the legitimacy of individuals as actors depended on the role they played within the two-channel welfare state, which privileged participants in paid labor and withheld social citizenship from those whose contributions to society at large did not count (for example, poor single mothers) (Fraser 1989; Gordon and Fraser 1994). Women's nominal inclusion in the welfare state, therefore, had little impact on their substantive treatment.²⁰⁷

²⁰² *Ibid.* at 7.

²⁰³ *Ibid.* at 6-7.

²⁰⁴ Jenson, *supra* note 43 at 29, 32.

²⁰⁵ *Ibid.* at 29, 30.

²⁰⁶ Rachel Simon-Kumar, "The Analytics of 'Gendering' the Post-Neoliberal State" (2011) 18(3) *Social Politics* 441 at 452.

²⁰⁷ *Ibid.* at 452.

Therefore, in this period women are present in the discourse but considered “second-class citizens”.²⁰⁸ This period supports family-focused policies, this means eligibility for benefits was based on an attachment to a family. The family model supported during this period is a conservative model - a male breadwinner with a wife who takes care of the house.²⁰⁹ As O’Connor, Orloff and Shaver put it:

Keynesian welfare states typically assumed the desirability of the family of male breadwinner and dependent spouse, and this family form was encoded in many of their framework of provision.²¹⁰

According to the literature on this period, women’s entry into the labour market was a matter of choice. Everything outside the realm of paid work - child care, other forms of care and unpaid work - was considered private. In 1976, at the very end of the period of the Keynesian welfare state, the percentage of women aged 15 and over who were employed was around 42%.²¹¹ Unpaid work performed at home was not recognized and social citizenship was attached to participation in the labour market.²¹² Women often benefited from welfare programmes through their husbands, who were attached to the labour market. Welfare programmes thus covered some risks, such as the spouse's death or his inability to access the labour market due to illness, age or level of education. The family was still responsible for the children so there were very few programmes covering

²⁰⁸ *Ibid.* at 452.

²⁰⁹ Rose, *supra* note 14 at 30. Simon-Kumar, *ibid.* at 449. Orloff, *supra* note 127.

²¹⁰ O’Connor, Orloff & Shaver, *supra* note 2 at 51.

²¹¹ Vincent Ferrao, “Paid Work” in Statistics Canada, *Women in Canada : A Gender-Based Statistical Report*, (Ottawa, Minister of Industry, 2010) at 6.

²¹² Simon-Kumar, *supra* note 206 at 446.

child care.²¹³ This particularly disadvantaged women, who were left at the margins of many welfare programmes.

Canada, however, showed a greater commitment to universal social programmes during the period of the Keynesian welfare state.²¹⁴ In Canada, this flirtation with social democracy is evidenced by the introduction of universal programmes, such as the Family Allowance,²¹⁵ a monthly payment for parents with children under 18 years of age.²¹⁶ This significant breakthrough in the Canadian welfare state, in 1945, was quickly followed by the implementation of Old Age Security,²¹⁷ another universal programme for people over 65. During the 1960s, and the beginning of the following decade, Canada also introduced its universal health care system, probably one of the best known of Canadian programmes.²¹⁸

At the time of the 1971 tax reform, amongst the provisions under analysis, only the deduction for eligible dependents, and the provision for dependents with disability existed.²¹⁹ At that time, these provisions were exemptions; they are now tax credits. This means that in 1971, the amount a taxpayer was eligible to under these provisions was deducted from his taxable income and not from his tax payable. The exemptions, contrary

²¹³ Jenson, *supra* note 43 at 29.

²¹⁴ Shelagh Day & Gwen Brodsky, *Women and the Equality Deficit: The Impact of Restructuring Canada's Social Programs*, (Ottawa, Status of Women Canada, 1998) at 11 and foll.

²¹⁵ *Family Allowances Act*, 1944, S.C. 1944, c. 40.

²¹⁶ Before 1973, the family allowance was available to family with children under 16 years old. Young, *supra* note 44 at 42.

²¹⁷ *The Old Age Security Act*, 1951, c. 18.

²¹⁸ *Medical Care Act*, S.C. 1966, c. 64. Rose, *supra* note 14 at 30.

²¹⁹ *Income Tax Act*, 1970-71-72 (Can.), c. 63.

to tax credits, are affected by the taxpayer's marginal rate. At the time, these exemptions included:

- An amount for a married person who supported his spouse,²²⁰
- An amount for a wholly dependent child or person connected to the taxpayer by a blood relationship, by marriage, or adoption if the taxpayer was unmarried, or married to a person who he neither supported nor lived with, and if he was not supported by a spouse. This exemption cannot be made with respect to more than one person, and a taxpayer cannot combine this exemption with the exemption for a dependent child, or for the same dependent with a mental or physical infirmity.²²¹ This measure is the equivalent to the married couple's exemption, or credit, for a single-parent family.²²²
- An amount for a child under 18 years of age, and a supplement for a child between 18 and 21 before the end of the year.²²³
- An amount for a person dependent on the individual by reason of mental or physical infirmity.²²⁴

The income of the dependent that exceeded a certain threshold reduced the exemption of the taxpayer. The drafting of these provisions changed very little between 1970 and the

²²⁰ Par. 109(1)a) of the ITA as it then read, now par. 118(1)a) ITA.

²²¹ Par. 109(2) of the ITA as it then read.

²²² Par. 109(1)a) of the ITA as it then read, now par. 118(1)a) ITA

²²³ This provision was an exemption at par. 109(1)d) ITA but was repealed and replaced by the child tax credit.

²²⁴ Par. 109(1)d) ITA as it then read.

1988 reforms,²²⁵ except for the exemption amounts, and the threshold amount of income a dependent could earn without affecting the exemption of the taxpayer.

The child care expenses deduction was introduced in 1971, following the tax reform.²²⁶ When the CCED was introduced, it was available only to women, unless there were exceptional circumstances. This arrangement was considered discriminatory by the Canadian Human Rights Tribunal in 1984²²⁷ and modified so as to grant the deduction to the lowest income-earner within a couple. This was designed to favour women, who were (and often still are) secondary earners within couples.²²⁸ In reality, this mechanism had the right effect as 484,060 mothers claimed the CCED in 1992, as opposed to 156,810 fathers. At its introduction, child care expenses had to be incurred to enable the taxpayer to be employed, carry on a business, carry on research or any similar work for which the taxpayer, or supporting person, received a grant, or attend a designated educational institution or a secondary school (these two last activities were introduced later in the history of the CCED). The deduction is limited to the lowest amount with respect to the following criteria:

- The child care expenses incurred for the year;
- 2/3 of the “earned income” of the taxpayer in the year;

²²⁵ *Income Tax Act*, 1988, c. 55.

²²⁶ *Income Tax Act*, 1970-71-72 (Can.), c. 63.

²²⁷ *Bailey v. M.N.R.*, (1980) 1 C.H.R.R.D./193 [*Bailey*].

²²⁸ The percentage of dual-earner families in which wives earned more than husbands (conditions of application for the CCED requires a dual-earner family or a lone-parent family) was around 12 % in 1976. In 2008, the percentage was around 29%. In 1976, the average family income of women in a lone-parent situation was equivalent to \$28,000 in 2008, and 53,7% of them had an income below the low-income point after-tax cut offs (Statistics Canada calculation) : Williams, *supra* note 109 at 19, 21.

- An amount of \$7,000 for a child who is under 7 years of age at the end of the year, and \$4,000 for other admissible children. However, if a child is mentally or physically impaired,²²⁹ the maximum deduction is \$10,000.

The deduction is limited in monetary terms to 2/3 of the "earned income", which among other provisions, does not include employment insurance benefits, alimony or the amount received from a Registered Retirement Savings Plan.

The child tax credit was first introduced in 1977. It was a non-refundable credit of \$50 per child. However, if a taxpayer did not have enough tax payable, he could not benefit from this tax credit. In 1978, Pierre-Elliott Trudeau's Liberal government introduced a new refundable child tax credit, which fully-benefited any family whose income was below \$18,000.²³⁰ Above that threshold, the credit was gradually reduced until the family income reached \$26,000, at which point the credit was no longer available. The median income was then \$19,500.²³¹ This was the first refundable tax credit introduced in the law and a taxpayer with no tax payable still benefits from this credit. This credit is indexed annually according to the indexation formula in the ITA. However, this credit is means-tested and all income earned above a certain threshold reduces the amount to be reimbursed.

This period also corresponds to an economic slowdown in Canada (and elsewhere in the world) and accelerating inflation, which influenced the political debate away from a

²²⁹ Section 118.3 of the ITA.

²³⁰ Section 122.2 of the ITA, as applicable in 1978 (1978-79, c. 5, s.4).

²³¹ <http://www.thecanadianencyclopedia.com/articles/family-allowance> (Dennis Guest)

discourse of equality towards a discourse of economic efficiency.²³² Thus, the Keynesian welfare state slowly gave way to a more neoliberal approach.

2.1.2 *The Second Period: The Neoliberal Welfare State*

The second period is the Neoliberal welfare state and is associated with the period from the late 1970s to 1995. Rose argues the first policies with a neoliberal perspective can actually be seen emerging as soon as 1975.²³³ The neoliberal perspective actually increased the importance of the market in the responsibility mix. The market was seen as a source of inequality, which was perceived as a good thing for motivating economic production.²³⁴ Within this context, any intervention by the state was considered as a threat to economic prosperity.²³⁵ State spending on social programmes decreased, and while this was intended to help reduce social risks under the Keynesian welfare state, it was considered as creating the risk of dependency on the state from the neoliberal perspective.²³⁶ Aid from the state was therefore limited to the poorest who often had to reciprocate in terms of work effort.²³⁷ It was during this period that the social policy discourse was redirected towards risk. The child (and especially poor children) replaced the mother as the focus of attention in tax policy.²³⁸

²³² Brooks, *supra* note 47 at 144.

²³³ Rose, *supra* note 14 at 34.

²³⁴ Jenson, *supra* note 43 at 36.

²³⁵ *Ibid.* at 30.

²³⁶ *Ibid.* at 32.

²³⁷ *Ibid.* at 36, 37.

²³⁸ Dobrowolsky & Jenson, *supra* note 17 at 155. Lucie White, “Calling the State to Answer for Child Poverty: ‘What Then?’” (1997) 46 UNBLJ 99 at 99.

Neoliberalism can therefore be seen as a period of great individual accountability with responsibility shifting from the state to individual citizens. While in the Keynesian welfare state, access to the labour market by women was seen as a “choice”, in the neoliberal approach, the choice belonged only to women who could afford it.²³⁹ The citizen worker was the reference point for social citizenship. In the neoliberal welfare state, the notion of equality is one of formal equality which means that everyone must be treated in exactly the same manner. This has led Simon-Kumar to conclude that:

The Neoliberal period is often called the ‘lost decade’ in women’s politics (Wilson 2009a, 2009b) – the state saw itself as an arbitrator for market imperatives rather than political struggles of marginal groups.²⁴⁰

In this context, claims based on gender differences are not looked on favourably as women should receive the same treatment as men.²⁴¹ Social citizenship is linked to an attachment to the labour market, and all domestic and care work is not recognized.²⁴² Neoliberalism also clearly influenced tax policy and this is reflected in women’s experience of the welfare state. As Brodie states:

There is now a substantial literature that traces the ways in which neoliberal reforms have redefined the objects of social policy from the structurally disadvantaged citizen and bearer of social entitlements to the self-sufficient and genderless individual, the consumer and the market actor, the self-sustaining patriarchal family, and the

²³⁹ Jenson, *supra* note 43 at 36.

²⁴⁰ Simon-Kumar, *supra* note 206 at 450. Simon-Kumar relied on the work of Margaret Wilson, “It’s Time to Talk about Women - Again” in *Inaugural Professorial Lecture*, Hamilton, New Zealand: The University of Waikato, 19 June 2009 and Margaret Wilson, “There Is No Gain without Struggle”, In *The Lesson of the Working Women’s Charter: Working Women’s Charter Seminar*, AUT Conference Centre, New Zealand, 27 May 2009.

²⁴¹ O’Connor, Orloff & Shaver, *supra* note 2 at 61.

²⁴² Simon-Kumar, *supra* note 206 at 446.

disembodied child, who stands virtually alone in contemporary social policy as a deserving claims-maker on the state (Brodie, 2008; Paterson et al., 2004; Sawer, 2006; McKeen, 2003).²⁴³

This is what Neil Brooks designated as the central themes of neo-conservatism –an idea he ties to the same period as neoliberalism– that he believes led to the following consequences:

But, whatever the motivations of its proponents, neo-conservatism has a significant effect on the structure of the tax system over the past decade. Its main effect has been to disable the tax system as an effective instrument for the redistribution of income and, thus, to make the rich richer and the powerful more powerful.²⁴⁴

The Canadian reality concerning STEs sees the neoliberal period giving rise to important discussions over how child care benefits should be delivered, and if tax legislation was the best way to provide these benefits. As child care and women's employment became a growing concern, the Trudeau liberal government created two commissions: the Royal Commission on Equality in Employment (the Abella Commission), which was created in 1983²⁴⁵, and the Task Force on Child Care created in 1984, which led to the Cooke Report in 1986.²⁴⁶ This last report recommended that the federal government take charge of a national child care programme.²⁴⁷ Before the report was completed, a Conservative government was elected (in 1984) and the report was largely ignored and replaced by the

²⁴³ Janine Brodie, “We Are All Equal Now: Contemporary Gender Politics in Canada” (2008) 9(2) *Feminist Theory* 145 at 155.

²⁴⁴ Brooks, *supra* note 47 at 140.

²⁴⁵ Rosalie Silberman Abella, *Equality in Employment: A Royal Commission Report* (Ottawa, Minister of Supply and Services Canada, 1984).

²⁴⁶ Canada, Task Force on Child Care, *Report of the Task Force on Child Care*, Ottawa, Status of Women Canada, 1986 (Katie Cooke, Chair).

²⁴⁷ Bergeron, *supra* note 2 at 117, 118. Canada, Task Force on Child Care, *ibid.* at 435.

report of the Special Committee on Child Care, created in 1985,²⁴⁸ which placed tax measures at the forefront of addressing the issue of child care.²⁴⁹ Talks over reducing state intervention and privileging the market and individual choices in allocating resources took over.²⁵⁰ Bergeron notes a shift in the child care discourse during this period, which was centred on women's autonomy up until the Cooke Report, and then later focused on children, thus, completely ignoring the condition of parents and women.²⁵¹ She concludes that: "this orientation of policies is part of the fiscalization tendency that formalizes the role of the market and the privatization of services in the delivery of social programs".²⁵²

Canada, along with many other countries, did not escape the neoliberal pressures which redesigned citizenship rights. Canada, which had adopted a model with an element of universality for some of its welfare benefits, was then expected to restructure its policies to reduce state involvement and promote the increased role of the market, the family, and the community, to ensure the well-being of its citizens.²⁵³ Community groups were more and more relied upon to help over issues of poverty, immigration, and other charitable activities. Canada's welfare state weakened during the 1980s and continued to take a back seat.²⁵⁴ The rise of neoliberal ideology resulted in the fiscalization of many welfare

²⁴⁸ Bergeron, *ibid.*

²⁴⁹ Canada, Task Force on Child Care, *supra* note 246. Bergeron, *supra* note 2 at 117, 118.

²⁵⁰ Brooks, *supra* note 47 at 138, 139.

²⁵¹ Bergeron, *supra* note 2 at 123.

²⁵² *Ibid.*

²⁵³ Jenson, *supra* note 43 at 27.

²⁵⁴ Evans & Wekerle, *supra* note 40 at 3.

benefits, thereby favouring the market to meet the needs of individuals.²⁵⁵ The introduction into the tax system of many STEs is also noted by other scholars.²⁵⁶

In 1982, the Children's refundable credit was increased by \$50 to compensate for the fact that family allowance payments would not be indexed above a 6% rate of inflation in 1982, and 5% in 1983.²⁵⁷ Family allowance has been taxed on the spouse with the lower income since 1978. The increase in the credit was to ensure that the lowest income taxpayers would not be penalized by the loss of purchasing power resulting from the partial indexation of family allowance.

During the following years, the refundable child tax credit changed little except to increase the maximum income level, which reduces the size of the tax credit, and to increase the amount of the credit itself.

Only eight months after their election in 1984, the Mulroney government issued a budget with a strong neoliberal influence. The Minister of Finance Michael Wilson announced the need for a change in Canadian politics:

For too long, government decided what is best for Canadians. Government set priorities, directed activity and subsidized effort. My budget calls for Canadians, not government, to choose what is best for

²⁵⁵ Young, *supra* note 2. Bergeron, *supra* note 2 at 118, 119. O'Connor, Orloff & Shaver, *supra* note 2 at 1.

²⁵⁶ O'Connor, Orloff & Shaver, *ibid.* at 128.

²⁵⁷ 1980-81-82-83, c. 140, s. 83.

Canada. And it challenges Canadians by rewarding success, not subsidizing effort.²⁵⁸

STEs were particularly present in that budget.²⁵⁹ The universality of social programmes started to be compromised and benefits started to “fluctuate for each family and individual income”.²⁶⁰ Family Allowance started to be only partially indexed in 1986 and was subject to a clawback for higher income families, meaning that some families had to repay part of their family allowance through their income tax return.²⁶¹ This is one of the payments aimed at women, and if their income was higher than the threshold, they exposed themselves to having to reimburse part of that amount at the end of the year. In the same year, the OAS was also subject to a similar clawback for individuals with income over a certain threshold, and the benefit ceased to be fully indexed at the beginning of the 1990s,²⁶² meaning fewer and fewer people benefited from the Old Age Security Program.

In 1988, all personal exemptions were repealed and replaced by tax credits. This was also the case with the eligible dependent exemption and the exemption for a dependent with a disability. The tax credit has been increased many times since, and so has the threshold of income a dependant can earn before the size of the credit is reduced.

²⁵⁸ *House of Commons Debates*, 33rd Parl, 1st Sess, Vol 4 (May 23, 1985) at 5012 (Hon. Michael Wilson).

²⁵⁹ Bergeron, *supra* note 2 at 118. Evans, *supra* note 2 at 104.

²⁶⁰ Our literal translation of: Bergeron, *ibid.* at 118, 119.

²⁶¹ O’Connor, Orloff & Shaver, *supra* note 2 at 133.

²⁶² Young, *supra* note 48 at 42.

One of the most historic cuts of the 1990s was the replacement of the Canada Assistance Plan (a program through which the federal government matched provincial spending on welfare) with the Canadian Health and Social Transfer (“CHST”) in 1995.²⁶³ With the CHST, the provincial governments were granted a fixed envelope for spending on welfare programmes, with very few conditions being imposed by the federal government over how to use the budget.²⁶⁴ This disengagement of the federal government from welfare programmes meant that the residents of each province were subject to the policies of their individual provincial governments. Evans points out:

The abolition of CAP removes the federal presence from social assistance, and it can only widen the holes in an already tattered social safety net. The reduction in federal transfers, and the removal of all but one existing cost-sharing condition related to social assistance, means that women and men on welfare are considerably more dependent on the goodwill of the individual provinces not to ‘beggar’ their social assistance systems to generally reduce costs or to divert funds to health and education.²⁶⁵

Neoliberal restructuring also led to significant cuts to social programmes and the establishment of eligibility requirements for access to certain benefits in the 1990s.²⁶⁶ In 1992, the child tax credit, the refundable child tax credit, and family allowance were all abolished and replaced by the Child Tax Benefit (CTB).²⁶⁷ The CTB is a single child tax benefit paid monthly to eligible individuals. This benefit is usually paid to the mother as

²⁶³ O’Connor, Orloff & Shaver, *supra* note 2 at 1; Evans, *supra* note 2 at 106; Martha Jackman, “Women and the Canada Health and Social Transfer: Ensuring Gender Equality in Federal Welfare Reform” (1995) 8 *Canadian Journal of Women and the Law* 371.

²⁶⁴ O’Connor, Orloff & Shaver, *ibid.*

²⁶⁵ Evans, *supra* note 2 at 106.

²⁶⁶ Masson, *supra* note 13 at 1-2; Bergeron, *supra* note 2 at 117; Rose, *supra* note 14 at 24.

²⁶⁷ 1992, c. 48.

she is presumed to be the person responsible for the care of the children if both parents care for the child. It is means-tested and calculated based on family income. The CTB includes the monthly amount, a working income supplement (WIS) of 500\$ for low-income working families, and a supplementary amount if the child is disabled. There is also a supplement to the CTB for children under 7 years of age.

During this period, state intervention was characterized as in opposition to economic growth. The citizen is the worker, often a male worker.²⁶⁸ The neoliberal individual has no gender and everyone should be treated identically.²⁶⁹ The market is an acknowledged source of inequality, which is necessary to motivate individuals. Therefore, women disappeared from the discourse.

2.1.3. *The Third Period: The Social Investment State*

Finally, according to some authors, welfare state policies trended towards social investment strategy in the mid-1990s.²⁷⁰ According to Jenson, this is the case for the states that were categorized as liberal welfare states by Esping-Andersen.²⁷¹ Policies oriented towards social investment would mean “increased attention to and investment in children, human capital and making work pay”.²⁷² It was not a sudden change but social

²⁶⁸ O’Connor, Orloff & Shaver, *supra* note 2 at 61; Simon-Kumar, *supra* note 206 at 446.

²⁶⁹ Simon-Kumar, *ibid.* at 452.

²⁷⁰ Jenson, *supra* note 43 at 27; Jenson, *supra* note 39 at 21.

²⁷¹ Jenson, *supra* note 39 at 27.

²⁷² Jenson, *supra* note 43 at 27.

investment strategies quietly modified the discourse concerning welfare benefits, in order to focus on children, human capital, and paid labour.²⁷³

Jenson is one of the authors who suggested the existence of this shift in Canada. According to her, this perspective aims to increase social inclusion, minimizing the intergenerational transmission of poverty, and preparing people for employment conditions in the future, such as, the requirement of higher qualifications and the prospect of more precarious employment.²⁷⁴ The change to a discourse of investment does not surprise her: “[t]he social investment perspective’s macro-economic analysis retains the focus on the supply-side that neoliberalism instituted and it is in this context that talk of social investment (rather than spending) provides discursive coherence”.²⁷⁵ According to Jenson, this approach is a response to the threats to existing social programmes caused by an aging population and a low fertility rate.²⁷⁶

In his more recent works, Esping-Andersen is also a promoter of social investment approaches. This is what Bruno Palier expresses here:

Pour faire face à ces nouveaux risques, Gosta Esping-Andersen propose d’abandonner la perspective statique qui se contente de soulager les difficultés présentes des individus ou bien de maintenir les revenus perdus, pour adopter une perspective dynamique qui pense les problèmes sociaux en termes de trajectoire de vie : quels sont les investissements nécessaires aujourd’hui pour éviter d’avoir à indemniser demain? Comment éviter les effets cumulatifs des

²⁷³ Jenson, *supra* note 39 at 23. Jenson, *supra* note 43 at 27.

²⁷⁴ Jenson, *supra* note 43 at 27.

²⁷⁵ *Ibid.* at 30.

²⁷⁶ Jenson, *supra* note 39 at 23, 29.

handicaps sociaux tout au long de la vie? Il s'agit de passer de politiques sociales réparatrices et compensatrices à une stratégie préventive fondée sur une logique d'investissement social. Dans cette perspective, ce sont les femmes et les enfants d'abord qui devraient attirer notre attention, ne serait-ce que parce qu'ils sont les seuls (les femmes encore inactives, les enfants futurs actifs) susceptibles d'accroître les ressources à consacrer aux retraites à venir.²⁷⁷

The investment of the individual is twofold: investment in human capital to succeed in the market investment in the future by saving and investing for retirement and in the future of his children.²⁷⁸ As Jenson mentions, however, “in contrast to neoliberal ideas, the state is also meant to share this responsibility, by ensuring adequate services (for example, child care) as well as by income transfers to make up for the fact that market incomes are often not high enough to meet family needs”.²⁷⁹ As mentioned earlier, children play an important role in social investment policies.²⁸⁰ The worker is now omnipresent and expectations are high when it comes to women entering and remaining in the labour market.²⁸¹ The state should also permit the individual to acquire human capital through education and training. These measures are not only intended for groups presenting a risk, or to the poor; they also target the middle class.²⁸²

²⁷⁷ Bruno Palier, “Présentation” in Gosta Esping-Andersen & Bruno Palier, *Trois leçons sur l'État-providence* (Paris, Seuil et la République des idées, 2008) 12, 13.

²⁷⁸ Jenson, J., *supra* note 43 at 27, 30.

²⁷⁹ *Ibid.* at 30.

²⁸⁰ Jenson, *supra* note 39 at 25.

²⁸¹ *Ibid.* at 26.

²⁸² Jenson, *supra* note 43 at 30.

The importance of women's work from the social investment perspective led to the creation of child care programmes and work-life balance policies.²⁸³ According to Simon-Kumar, the social investment perspective presents some advantages, including a greater consideration of women in the discourse:

That the neoliberal state 'erased' or 'ignored' gender (and, indeed, most identities other than that of individualised worker), whilst relying on women's activities for its economic viability, is well documented. The Third Way/social investment state, despite its sympathies to the market, has developed practices and discourses that have unique responses to and implications for women and gender, hinting at a new phase in gender relations in Western States.²⁸⁴

Jenson fears that the shift in focus from women to children has had a negative impact on women's rights.²⁸⁵ She also argues that the social investment approach focuses on the role of women as mothers and on how, because of that, they should contribute to the well-being of society.²⁸⁶ The impact of social investment policies on women can be criticized as their place in the public policy discourse leaves less and less room for claims of gender equality.²⁸⁷ Simon-Kumar expresses her criticisms as follows:

In the analysis of the contemporary state, what emerges is not so much the exploitation of women as their erasure and their irrelevance. Women, as a constituency of the marginal in society, are de-linked from conventional sites and activities that have disadvantaged them (such as, the private sphere or child bearing). Instead, there is a lack of clarity regarding women's emancipation in relation to these sites; for example,

²⁸³ Dobrowolsky & Jenson, *supra* note 17. Simon-Kumar, *supra* note 206. Jenson, *supra* note 43 at 30.

²⁸⁴ Simon-Kumar, *ibid.* at 457.

²⁸⁵ Jenson, *supra* note 39 at 33.

²⁸⁶ *Ibid.* at 31.

²⁸⁷ *Ibid.* at 21, 22.

does labor market entry empower or exploit? The woman in the post-neoliberal state is also disembodied – analytically, she is independent of the conditions of subordination that have defined gender oppression for decades. Emerging sites of disadvantage have no clear markers constituted dominantly by gender bias and instead, feminist analysis is superseded by an ‘emancipatory politics of difference’ that renders gender justice at the recognition for a range of marginal groups (Young 1990). Finally, the post-neoliberal woman subject is differentiated; although the fragmented woman subject is not a product of solely the social investment state, the conditions of post-neoliberal welfare exacerbate differences, and indeed create new material inequalities based on class, race, citizenship, and marital status making a politics around women’s solidarity, at the least, particularly fragile.²⁸⁸

Social investment policies do not have equality as a goal in itself but more as a means to an end.²⁸⁹ The whole question of structural discrimination in the labour market is absent from the discourse, even though it is an important source of inequality and has a potential impact on women's long-term economic autonomy.²⁹⁰ As Simon-Kumar states:

Interestingly, as the state becomes more feminized, the society it engenders increasingly seems to encourage discourses that efface ‘women-only’ analysis. It is ironic that at a time when gendering and feminization have entered the discourses and practices of the state, the women question appears to be losing relevance.²⁹¹

According to Esping-Andersen's most recent work, the social protection systems must respond to the changing role of women by supporting families, that is to say, facilitating the employment of mothers by providing child care, maternity leave, and an effective policy of work and family conciliation. Finally, he suggests the state must play a more important role, by getting involved in transfers to family and universal child care

²⁸⁸ Simon-Kumar, *supra* note 206 at 458, 459.

²⁸⁹ *Ibid.* at 457; Jenson, *supra* note 39 at 35.

²⁹⁰ *Ibid.* at 32.

²⁹¹ Simon-Kumar, *supra* note 206 at 459.

systems.²⁹² Of course, these solutions are laudable but as O'Connor, Orloff and Shaver argue:

[...] Esping-Andersen links certain gender issues – women's labour participation, the organisation of care work, and child-bearing – to the political economic outcomes in which he is most interested: competitive economic performance by western democratic environment [...]; the investment in human capital needed to sustain that performance; and the preservation and strengthening of political conditions for the welfare state, which will preserve democracy, civility and human rights.²⁹³

Esping-Andersen was criticized for not considering women in previous welfare state analysis, and Jenson mentions that this interest in the situation of women seems to link Esping-Andersen's approach to her definition of the social investment strategies.

Therefore, there is an important shift in the political discourse as children become more important and women are rendered invisible.²⁹⁴ Jenson argues that women can therefore be the object of social policy, without improving gender equality. The welfare state is then more interested in the risk children may present in the long term than with the situation of their mothers. In this social investment model, women's equality is not an end, but a means to achieving better economic efficiency.

This translated to the abolition of the CAP in Canada, as I mentioned earlier, and the creation of tax measures directed at children. In terms of STEs, in 1998, the CTB was

²⁹² Esping-Andersen & Palier, *supra* note 196 at 29-59. Gøsta Esping-Andersen, *The Incomplete Revolution, Adapting to Women's New Roles* (Cambridge, Polity Press, 2009) 88-110.

²⁹³ O'Connor, Orloff & Shaver, *supra* note 2 at 20.

²⁹⁴ Jenson, *supra* note 39 at 26, 27.

modified and became the Canada Child Tax Benefit (CCTB), which had two major components: the CCTB basic benefit and the CCTB National Child Benefit Supplement.²⁹⁵ The National Child Benefit (“NCB”) also included federal transfers to the provinces.²⁹⁶ This last component was very similar to the WIS. This new regime was the result of a federal and provincial agreement under which the federal government would increase the CCTB, and most of the provinces would reduce the social assistance payment by the amount of the increase, to provide services for low-income families and individuals.²⁹⁷

The Caregiver tax credit was introduced in 1998. A “caregiver” is allowed a federal credit of up to \$674 (for 2013). The taxpayer has to reside with a parent or grandparent over 65 years old, or with an infirm dependent relative. The credit is reduced by the amount of income earned by the dependent over \$11,500.²⁹⁸

Later on, a strong debate over child care emerged. In 2004, there was a willingness on the part of Paul Martin's Liberal government to create more daycare spaces, and it reached an agreement with the provinces whereby 250,000 new spaces would be created.²⁹⁹ But the Conservatives under Stephen Harper were elected in 2005 and abandoned the project,

²⁹⁵ 1998, c. 21, s. 92.

²⁹⁶ Bergeron, *supra* note 2 at 122.

²⁹⁷ Canada, Department of Finance, Budget 1998, *The Budget Plan 1998: Building Canada for the 21st Century* (February 24, 1998), at 110.

²⁹⁸ An average family had an income of \$49,626 in 1998. <http://www.statcan.gc.ca/daily-quotidien/000612/dq000612a-eng.htm>

²⁹⁹ Angela Campbell, “Proceeding with ‘Care’: Lessons to be Learned from the Canadian parental leave and Québec Daycare Initiatives in Developing A National Childcare Policy” (2005-2006) 22 *Can J Fam L* 171 at 172.

introducing instead the Universal Child Care Benefit (UCCB), a taxable monthly payment of \$100 per child under 7 years of age.³⁰⁰ The UCCB is not provided under tax law, but rather by the *Universal Child Care Benefit Act*.³⁰¹ However, the UCCB is closely related to the ITA as the definitions of “eligible individual” and “qualified dependant” in the UCCB Act expressly refer to the provisions of the ITA. Section 3 of the UCCB Act states that the purpose of this measure is “to assist families by supporting their child care choices through direct financial support to a maximum of \$1,200 per year in respect of each of their children who has not attained the age of six years”. The payment is made in monthly installments of \$100 to the eligible individual for each qualified dependent. Thus, each family with a child under 7 years of age is entitled to the UCCB, regardless of their income, and regardless of whether they really incur child care expenses outside the home.

The definition of “eligible individual” is the same which applies to the CCTB. Therefore, the definition is found in section 122.6 of the ITA and requires that the taxpayer resides with the qualified dependent, and that the person (father or mother) is mainly responsible for the care and education of the dependent. There is also a presumption when the dependent lives with his mother, that she is primarily responsible for his care and education. This presumption may be refuted where various factors listed in the regulations point to another person as being primarily responsible for the care.³⁰² The

³⁰⁰ *Ibid.* at 173.

³⁰¹ *Universal Child Care Benefits Act*, S.C. 2006, c. 4, s. 168.

³⁰² See sections 6301 and 6302 of the *Income Tax Regulations*, CRC, c. 945.

“qualified dependant” must be under 18 years of age and no one must claim the married or common-law amount for him.³⁰³

It should be noted, however, that although everyone receives an annual amount of \$1,200 per child, not all families will enjoy an economic advantage from this amount. The UCCB must be added to the income, for income tax purposes, of the spouse with the lower income.³⁰⁴ However, following an amendment to the ITA in 2010, a taxpayer who is not married, or without a common-law spouse, at the end of the year may choose to allocate this income to a wholly dependent person for whom he claims the credit, or to the eligible child for the purpose of the UCCB.³⁰⁵ Thus, the UCCB will be added to the income of the dependent (often a child of a single parent). It is a way to split income within the family unit and prevent the amount of the benefit being added to the income of a single parent at a higher tax rate. The dependent child will often have little or no income (especially if a child under 6 years of age is covered by the UCCB), and this income is likely to be less than the basic exemption. If this is the case, no tax is payable on the UCCB received. In tax law, it is advantageous to try to split the income within the family unit to maximize the use of the personal basic exemption (the tax credit that exempts the first \$11,038 of income) and the other tax credits. It also takes advantage of the lower marginal rates of the other family members who have less income during the tax year.

³⁰³ “Qualified dependant” is defined at section 122.6 ITA.

³⁰⁴ Subs. 56(6) of the ITA.

³⁰⁵ Par. 56(6.1)a) of the ITA.

However, if the lone-parent is able to claim the wholly dependent tax credit of \$11,038, it will be reduced by the UCCB that was added to the child's income.³⁰⁶ The \$1,200 is multiplied by the base rate of 15%. Thus, the maximum credit of \$1,655³⁰⁷ (in 2013) will be reduced by \$180, as a result of the addition of the UCCB. Thus, the parent without a spouse, who is in the situation referred to in subsection 56(6.1), will still not benefit fully from the \$1,200, as he will lose part of the wholly dependent tax credit.

In 2007, the non-refundable child tax credit was reintroduced. This is an indexable amount of \$ 2,000 per child of 18 years of age and younger, and a further provision was introduced for caregivers: "family caregiver for infirm relative".

The identification of these three periods of the welfare state will be useful in delineating the discourse analysis in the second part of the thesis. I will proceed to a historical analysis of the discourse and the effect of STEs, highlighting the change in the evolution of STEs from a gender perspective. I will try to associate the evolution of tax measures with the different characteristics of each period.

Now that the historical periods for the discourse analysis have been identified, a framework that will allow for the identification of themes relevant to studying STEs from a welfare state approach, but also in a gendered analysis, needs to be defined. The next section will define O'Connor, Orloff and Shaver's framework for studying welfare states.

³⁰⁶ This amount is indexed to consider inflation. See par. 117.1(1) of the ITA. The amount of \$11,038 is applicable to the 2013 taxation year.

³⁰⁷ \$11,038 multiplied by the basic tax rate of 15 %.

2.2. A Gendered Welfare State Analysis

So far I have introduced the different periods of the welfare state described by the literature that will define the overall period of the discourse analysis. The literature on the welfare state also plays another important role in the analysis of my thesis question. It will provide the themes necessary to analyze the discourse. I will use the parameters of O'Connor, Orloff and Shaver's framework to highlight the significant themes that will guide my discourse analysis.

Welfare state analysis is an area of research in which the dialogue between feminist and mainstream scholars such as Esping-Andersen is important.³⁰⁸ His framework is certainly one of the best-known in welfare state research. However, there is a consensus among feminists that Esping-Andersen's three dimensions are inadequate for a gendered study of the welfare state. His approach allowed for the categorization of the welfare state into three categories, using these three dimensions: the decommodification of the worker, stratification, and the state/market relationship.

Despite the criticisms that his framework does not allow for a gendered analysis, many feminist authors have used, in a modified way, Esping-Andersen's framework.³⁰⁹ According to Orloff, this is perhaps because "of how changing 'labor market regimes' and shifts from industries to services affected women and gender, or his revitalization of

³⁰⁸ Paul Kershaw, "The Just Commodification of Women, Equal Care Obligations for Men, and Autonomous Households: Gendering the Comparative Analysis of Welfare States in 20 OECD Countries" (paper prepared for the European Network of Social Policy Analysis Annual Meetings, Budapest, September 3, 2010) at 2; Ann Shola Orloff, "Gendering the Comparative Analysis of Welfare States: An Unfinished Agenda" (2009) 27(3) *Sociological Theory* 317 at 319.

³⁰⁹ O'Connor, Orloff & Shaver, *supra* note 2; Orloff, *ibid*.

an emancipatory yet still gender blind concept of social citizenship rights”.³¹⁰ She underlines the fact that he has proven that “politics matter”,³¹¹ which could create the potential for emancipation and changing power relations. Because he investigates power relations, though not from a gender perspective, his framework allows for the further integration of gender issues into the analysis.³¹² Also important for a gender analysis of the welfare state is his demonstration that welfare states are systems of stratification, and therefore, not neutral.³¹³

Welfare state theorists who focus on class, such as Esping-Andersen, base their analysis on workers and how their oppression by the capitalist market led to labour movements and mobilization in order to extend their rights.³¹⁴ Indeed, the analysis often focuses on class relations and on the state/market relationship.³¹⁵ The woman is virtually absent from Esping-Andersen’s framework.³¹⁶ Because of this focus on workers, women disappear

³¹⁰ Orloff, *ibid* at 319.

³¹¹ Ann Shola Orloff, “Gender and the Social Rights of Citizenship: The Comparative Analysis of Gender Relations and Welfare States” (1993) 58(3) *American Sociological Review* 303 at 305. Anette Borchorst, “Welfare State Regimes, Women’s Interests, and the EC” in Diane Sainsbury, ed., *Gendering Welfare States* (London, Sage, 1994) 26 at 27.

³¹² Daly, *supra* note 188 at 106. Orloff, *ibid.* at 306.

³¹³ Esping-Andersen, *supra* note 31 at 38. Barbara Hobson, “Solo Mothers, Social Policy Regimes and the Logics of Gender” in Diane Sainsbury, ed., *Gendering Welfare States* (London, Sage, 1994) 170 at 171.

³¹⁴ Jet Bussemaker & Kees van Kersbergen, “Gender and Welfare States: Some Theoretical Reflections” in Diane Sainsbury, ed., *Gendering Welfare States* (London, Sage, 1994) 8 at 11. Orloff, *supra* note 311 at 306.

³¹⁵ Orloff, A.S., “Gender in the Welfare State” (1996) 22 *Annual Review of Sociology* 51-78, p. 65.

³¹⁶ Borchorst, *supra* note 311 at 27. Clare Bambra, “The Worlds of Welfare: Illusory and Gender Blind?” (2004) 3(3) *Social Policy and Society* 201 at 202.

completely from his analysis if they are not attached to the labour market.³¹⁷ According to Orloff, Esping-Andersen's citizens "are implicitly male workers"³¹⁸ and the relationship between the state, the market, and the family is omitted from the analysis.³¹⁹ She further argues that Esping-Andersen "conceptualize[s] gender as an individual attribute and ignore[s] the relational character of gender".³²⁰ She goes further:

On this view, knowledge, subjectivity, and political agency are both constrained *and enabled* by existing categories, gendered or otherwise (Butler 1990; Clemens 2005, Zerilli 2005). Gendered identities and agency- including orientations to family and employment- are not prepolitical, or "natural". Rather, welfare provision, alongside other political and social institutions, is involved in shaping gendered divisions of labor and the preferences, needs and desires that sustain it (see, e.g., Fraser 1989; Hanye 2002; Lewis 1997; Morgan 2006).³²¹

Esping-Andersen therefore lacks any consideration for unpaid domestic work (performed mostly by women), and its distribution.³²² The feminist analysis of the welfare state emphasizes the importance of including a "gender" variable in public policy analysis, as well as the issue of paid and unpaid labour.³²³

³¹⁷ Jane Lewis, "Gender and the Development of Welfare Regimes" (1992) 2 *Journal of European Policy* 159 at 161.

³¹⁸ Orloff, *supra* note 127 at 65.

³¹⁹ *Ibid.*

³²⁰ Orloff, *supra* note 308 at 322. See also: Borchorst, *supra* note 311 at 28. Orloff, *supra* note 311 at 312. Bussemaker & van Kersbergen, *supra* note 314 at 13.

³²¹ Orloff, *supra* note 308 at 322.

³²² Lewis, *supra* note 317 at 160; Jane Lewis, "Gender and Welfare Regimes: Further Thoughts" (1997) 4(2) *Social Politics* 160 at 162. Evans & Wekerle, *supra* note 40 at 11. Orloff, *supra* note 311 at 312.

³²³ Evan & Wekerle, *ibid.*

According to O'Connor, a gender sensitive welfare state analysis "is built on the recognition of gender and class and is linked to a more general critique of the dominant conception of citizenship that underpins welfare state research".³²⁴ In order to underline issues of gender equality in the welfare state, a gender framework is necessary.³²⁵ The feminist researchers have greatly contributed to welfare state studies. They gave the family a central role, and according to Daly, feminist scholars identified underlying ideologies of the welfare state and evidenced how the state could support some family models over others, such as the male breadwinner/women carer model.³²⁶ They have also shown how the states rely on the unpaid work of women and underlined the still existing gender inequalities.³²⁷ According to Evans and Werkele, there are numerous reasons to focus on women's relationship with the welfare state. They assert that public policies incorporate assumptions about the role of women, that they can reproduce the social attribution of the role of women and create new ones.³²⁸

My approach will focus on a gendered analysis of the welfare state to highlight the impact of STEs on women in Canada.³²⁹ Feminist analysis of the welfare state concentrates on two types of approaches: those that take as their starting point the

³²⁴ O'Connor, *supra* note 30 at 3.

³²⁵ O'Connor, Orloff & Shaver, *supra* note 2 at 20.

³²⁶ Daly, *supra* note 188 at 101.

³²⁷ *Ibid.*

³²⁸ Evans & Wekerle, *supra* note 40 at 4.

³²⁹ Orloff, *supra* note 308 at 331.

mainstream framework by incorporating a gender perspective,³³⁰ and those who reject the dominant model by developing a new gender-sensitive framework.³³¹ O'Connor, Orloff and Shaver's analysis is also the most inclusive and allows for the examination of a wider range of criteria and factors affecting women's experience of the welfare state. Although Sainsbury criticizes Orloff and O'Connor for "building gender into mainstream frameworks of analysis"³³² – in Esping-Andersen's framework - O'Connor, Orloff and Shaver do more than that, they integrate a new gendered dimension, as well as, introduce a gender perspective into the other mainstream dimensions.³³³

Their framework dwells on three dimensions that take their origin from Esping-Andersen's work, but they have modified it for gender analysis: (1) the state, market, and family relations (or the social organization of income and services), (2) the stratification effect of the welfare state, and (3) the social citizenship aspect and the capacity to form and maintain an autonomous household.

2.2.1 *Character of State, Market and Family Relations*

O'Connor, Orloff and Shaver introduced the first dimension that studies the relationship between the state, the market, and the family. It is inspired by one of Esping-Andersen's

³³⁰ Julia S. O'Connor, "Gender, Class and Citizenship in the Comparative Analysis of Welfare State Regimes: Theoretical and Methodological Issues" (1993) 44(3) *British Journal of Sociology* 501; Orloff, *supra* note 311; O'Connor, Orloff & Shaver, *supra* note 2; Diane Sainsbury, "Introduction" in Diane Sainsbury, ed., *Gendering Welfare States* (London, Sage, 1994) 1.

³³¹ Diane Sainsbury, "Women's and Men's Social Rights: Gendering Dimensions of Welfare States" in Diane Sainsbury, ed., *Gendering Welfare States*, (London, Sage, 1994) 150 at 150; Alan Siaroff, "Work, Welfare and Gender Equality: A New Typology" in Diane Sainsbury, ed., *Gendering Welfare States* (London, Sage, 1994) 82; Lewis, *supra* note 317.

³³² Sainsbury, *ibid.*

³³³ O'Connor, Orloff & Shaver, *supra* note 2 at 11.

three dimensions that considered the relationship between the state and market, to evaluate the level of needs that are satisfied by the state rather than by the market. The benefits and services offered are therefore analyzed according to what benefits are provided by the state, and which ones are provided by way of private contracts or structures.³³⁴

For O'Connor, Orloff and Shaver, the family element is critical in identifying the power and dependency relationships, partly because access to the labour market for women is heavily influenced by the availability of public care.³³⁵ As they mentioned, “the mere absence of public care does not tell us which private source – market, voluntary organisations or families – will provide care”.³³⁶ They conclude:

[...] family life results in economic and social subordination for women, although in mainstream social and legal science and according to political notions of social justice, it is assumed that family institutions are just. However, the unequal distribution of responsibilities, financial resources, powers and time within the family is closely related to inequalities that exist in society outside the family.³³⁷

The introduction of the family in the analysis is necessary because if it is busy with other social responsibilities, such as providing for care if it is not available or affordable in the market, family members will not be able to fully participate in the market.³³⁸

³³⁴ Esping-Andersen, *supra* note 31 at 102, 129. O'Connor, Orloff & Shaver, *supra* note 2 at 30.

³³⁵ O'Connor, Orloff & Shaver, *idid*.

³³⁶ *Ibid*.

³³⁷ *Ibid*. On the same subject, see also O'Connor, *supra* note 30 at 6.

³³⁸ Borchorst, *supra* note 311 at 28. Esping-Andersen, *supra* note 31 at 60.

2.2.2. *Stratification*

The second dimension of O'Connor, Orloff and Shaver's framework is the stratification effect of the welfare state. Here, they agree with Esping-Andersen that even if the welfare state can mitigate inequality, it can also be a system of stratification that plays a role in organizing social relations.³³⁹ In accordance with their feminist approach, they defined that dimension as being "concerned with both gender differentiation, that is the reinforcement of the gender division of labour, and inequality, that is, differences in access to valued resources".³⁴⁰ Esping-Andersen's perspective concentrates on class division and social solidarity, which "tends to underrate the importance of other inequalities, notably those associated with the dimension of gender in our society".³⁴¹ A gender perspective needs to be added, according to O'Connor, Orloff and Shaver. This should bring into focus the states' potential of deepening gender inequalities. They point out that the treatment of unpaid work and the development of programmes focused on the labour market may further gender inequalities. Therefore, this dimension should highlight the importance of unpaid work done by women and gender segregation within the labour market, as it will also shape the characteristics of female employment, such as part-time work.³⁴² Gender segregation of labour will also disadvantage women when it comes to benefits based on labour market attachment (such as unemployment benefits, pension regimes in Canada and maternity benefits).³⁴³ The stratification criteria compels an

³³⁹ Esping-Andersen, *ibid.* at 38. O'Connor, Orloff & Shaver, *supra* note 2 at 188.

³⁴⁰ O'Connor, Orloff & Shaver, *ibid.* at 30.

³⁴¹ Bussemaker & van Kersbergen, *supra* note 314 at 13.

³⁴² Orloff, *supra* note 311 at 313.

³⁴³ *Ibid.* at 314.

examination of the ways in which welfare regimes establish different programmes to meet the needs of the family and the labour market, and if the construction of these programmes favours gender differences or gender sameness.³⁴⁴

Social benefits that favour full-time employment over part-time (or unpaid employment) reinforce the gender segregation of work.³⁴⁵ A regime based on universal citizenship promotes greater equality³⁴⁶ and collective responsibility.³⁴⁷ The state should also promote the equality of women by spreading the burden of care and housework to the state and to men.³⁴⁸ Universalism, for T.H. Marshall is a symbol of an advanced welfare state. However, as acknowledged by Esping-Andersen, all universal systems will not produce the same effects of stratification.³⁴⁹ In terms of identifying women's place in the discourse, stratification and the potential of universal benefits will be examined.

2.2.3. *Social Rights / Decommmodification*

The last of the dimensions proposed by O'Connor, Orloff and Shaver is the analysis of the quality of social rights covered by the welfare state. This is a broader category, based on the work of T.H. Marshall on citizenship. As I shall demonstrate below, this dimension concerns the analysis of the quality of social rights and how they contribute to

³⁴⁴ Mahon, *supra* note 200 at 27.

³⁴⁵ Orloff, *supra* note 311 at 314.

³⁴⁶ *Ibid.* at 316.

³⁴⁷ Masson, *supra* note 13 at 5.

³⁴⁸ Orloff, *supra* note 311 at 314. Paul Kershaw, "The 'Private' Politics in Caregiving: Reflections on Ruth Lister's Citizenship: Feminist Perspectives" (2010) 38(1/2) *Women's Studies Quarterly* 302.

³⁴⁹ Esping-Andersen, *supra* note 31 at 78, 79.

decommodification, as well as to the ability to form and maintain an autonomous household.³⁵⁰

Social citizenship is a key concept in the analysis of the welfare state.³⁵¹ Marshall sees three levels of citizenship: the civil aspect, which includes individual freedom rights,³⁵² political citizenship, which is linked to the right to vote and to participate in the political sphere,³⁵³ and the third component, social citizenship. This last level of citizenship is particularly relevant to the study of the welfare state as it represents the capacity for social, political, and economic autonomy.³⁵⁴ It was defined by T.H. Marshall as a “whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society”.³⁵⁵ Although there was a growing interest in equality and social justice in the 19th century, according to Marshall, it was in the 20th century that social citizenship really began to develop,³⁵⁶ that is to say, when the welfare state grew in importance in industrialized countries. The access, nature, and value of the

³⁵⁰ O’Connor, Orloff & Shaver, *supra* note 2 at 109.

³⁵¹ *Ibid.* at 17, 31.

³⁵² Marshall, *supra* note 36 at 8.

³⁵³ *Ibid.*

³⁵⁴ Jenson, *supra* note 39 at 28.

³⁵⁵ Marshall, *supra* note 36 at 8. Also Evans & Wekerle, *supra* note 40 at 10.

³⁵⁶ Marshall, *ibid.* at 24.

benefits, and how state revenues are perceived will be crucial to the quality of social citizenship.³⁵⁷ Social citizenship guarantees the right to equality of opportunity.³⁵⁸

Citizenship is an important concept in the welfare state analysis and counts many advantages. According to Nira Yuval-Davis:

Studying citizenship, however, can throw light on some of the major issues which are involved in the complex relationships between individuals, collectivities and the state, and the ways gender relations (as well as other social divisions) affect and are affected by them.³⁵⁹

This concept has however been the subject of considerable scholarly critics as it may not be devoid of bias. Citizenship is a construction made by dominant groups in society³⁶⁰ as is the portrayal of an ideal citizen.³⁶¹ This concept has been criticized in the feminist literature because it tends to evacuate the gender dimension from the analysis. As Orloff puts it: “[c]itizenship has long been understood in exclusively masculine terms, linked to a particular conception of political subjects: as rational, autonomous, unburdened by care, impervious of bodily integrity”.³⁶²

Jane Jenson discusses Marshall’s citizenship concept in the following terms: “definitions of citizenship establish the boundaries of inclusion and exclusion, thereby providing access to full membership in nation state and the grounds for making claims to that state

³⁵⁷ *Ibid.* at 32.

³⁵⁸ *Ibid.* at 38.

³⁵⁹ Nira Yuval-Davis, “Women Citizenship and Difference” (1997) 57 *Feminist Review* 4 at 6.

³⁶⁰ Evans & Wekerle, *supra* note 40 at 10. O’Connor, *supra* note 30 at 1.

³⁶¹ Marshall, *supra* note 36 at 18.

³⁶² Orloff, *supra* note 308 at 333.

for rights and welfare”.³⁶³ A parallel can be drawn between these limits to inclusion and exclusion and the dichotomy between public and private spheres often discussed by feminists. Lister exposes this point in the following terms:

Feminist accounts of citizenship have been pivotal in much of the momentum achieved by this “momentum concept” over the past decade. The starting point was to expose how, despite its claims of universalism, citizenship was drawn according to a quintessentially male template so that women’s exclusion (and the chequered nature of their inclusion) was integral to both the theory and practice of citizenship. The wider challenge to the public–private dichotomy framed feminist re-interpretations of citizenship, particularly with regard to the status accorded unpaid care work in relation to the rights and responsibilities of citizenship and, related to that, the gendered division of domestic labour and time (discussed further below).³⁶⁴

For Bussemaker and van Kersbergen this dichotomy may either exclude women from social citizenship, or create a distinct citizenship,³⁶⁵ while Pateman takes the position that “either women become (like) men, and so full citizens; or they continue women’s work, which is of no value for citizenship”.³⁶⁶ This dilemma has been described by Pateman:

Pateman (1989, p. 197) has conceptualised it as ‘Wollstonecraft’s dilemma’. On the one hand, she writes, women “have demanded that the ideal of citizenship be extended to them, and the liberal-feminist agenda for a ‘gender neutral’ social world is the logical conclusion of one for of this demand”. On the other hand, women have also insisted, often simultaneously, as did Mary Wollstonecraft, that as women, “they have specific capacities, talents, needs and concerns”, so that the expression of their citizenship will be differentiated from that of men. Their unpaid work providing welfare could be seen, as Wollstonecraft

³⁶³ Evans & Wekerle, *supra* note 40 at 10.

³⁶⁴ Ruth Lister, “Inclusive Citizenship: Realizing the Potential” (2007) 11:1 *Citizenship Studies* 49 at 52.

³⁶⁵ Bussemaker & van Kersbergen, *supra* note 314 at 16.

³⁶⁶ Carol Pateman, as cited in Evans, *supra* note 2 at 107, 108.

saw “women’s tasks as mothers, as women’s work as citizens, just as their husbands’ paid work is central to men’s citizenship.”³⁶⁷

According to Lister, the question is: what activities (care, work, or both) will lead to social citizenship rights?³⁶⁸ According to her, in analyzing citizenship, authors need to be aware that the public-private dichotomy may impose a bias in the conception of the citizen, especially pertaining to the issue of care.³⁶⁹ She explains, in the following terms, the complex relationship the concept of care shares with citizenship:

More difficult to resolve, at least theoretically, are some of the different positions taken on the question of how care constitutes citizenship. A currently dominant strand in the feminist literature contends that care should be acknowledged as an expression of social citizenship responsibilities and should be accorded equal value with paid work obligations, which are currently privileged in modern, “active” welfare states. This idea has been developed in a slightly different direction by Herd and Harrington Meyer who apply it to debates about civic engagement in order to argue that care work represents “an active form of participatory citizenship with far-reaching civic benefits” (2002, p. 666; see also Prokhovnik, 1998). More controversial is the argument that care constitutes a form of political citizenship, which goes further than the orthodox feminist position that the political pertains to the private as well as the public sphere.³⁷⁰

³⁶⁷ Ruth Lister, “Dilemmas in Engendering Citizenship” in Barbara Hobson, *Gender and Citizenship in Transition* (New York, Routledge, 2000) 33 at 50 quoting Carole Pateman, *The Disorder of Women* (Cambridge, Polity Press, 1989) at 197.

³⁶⁸ Lister, *ibid.* at 49.

³⁶⁹ *Ibid.* at 55-56.

³⁷⁰ *Ibid.* at 56

Particularly present in Esping-Andersen's analysis is the gender bias that arises when focusing on the worker as the ultimate citizen.³⁷¹ Nira Yuval-Davis exposes the consequences of evacuating gender from citizenship when studying welfare states:

The liberal definition of citizenship constructs all citizens as basically the same and considers the differences of class, ethnicity, gender, etc., as irrelevant to their status as citizens. On the other hand, the welfare state assumes a notion of difference, as determined by social needs. In the words of Edwards 'Those with similar needs ought to get similar resources and those with different needs, different resources, or - more succinctly - treatment as equals rather than equal treatment' (1988: 135). These differences were initially conceived exclusively as class differences.³⁷²

As was previously established, this criticism is especially valid for Esping-Andersen's analysis of welfare states, which focuses on the relationships between classes.

Lister therefore thinks the dilemma between being treated as equal or as being different is the wrong debate for women because both concepts are not incompatible or opposites.³⁷³

I agree with this statement and that the solution lies, as argued by Scott, in "the unmasking of the power relationship constructed by posing equality as the antithesis of difference and the refusal of its consequent construction of political choices".³⁷⁴ The notion of citizenship, and who and what activities are valued in defining citizenship, will therefore contribute greatly to my discourse analysis.

³⁷¹ O'Connor, *supra* note 30 at 2, 3.

³⁷² Yuval-Davis, *supra* note 359 at 8-9 quoting J. Edwards, "Justice and the Bounds of Welfare" (1988) 17.02 *Journal of Social Policy* 127.

³⁷³ Lister, *supra* note 367 at 51.

³⁷⁴ Joan W. Scott, "Deconstructing Equality versus Difference: Or, the Uses of Poststructuralist Theory for Feminism" (1988) 14(1) *Feminist Studies* 33. Lister, *ibid.* at 51.

Thus, O'Connor, Orloff and Shaver clearly addresses these criticism of the citizenship concept by defining social citizenship in the following terms: "social rights are significant in that they provide a basis for citizen's personal and household autonomy and may insulate them from exploitable dependencies in families and markets".³⁷⁵ Therefore, social rights for these authors include both a decommodification aspect, to which a gender perspective but also the "capacity to form and maintain an autonomous household" must be added. This last aspect of this dimension was first introduced by Orloff in 1993. This was a response to severe criticism of the decommodification concept of Esping-Andersen and his focus on class and workers.

I will now turn to O'Connor, Orloff and Shaver's analysis of decommodification and of the capacity to form and maintain an autonomous household.

- Decommodification

For Esping-Andersen, the commodification of the labour force weakens the position of the workers and makes them vulnerable to the vagaries of life (sickness, etc..), which could force them to enter into, or maintain, employment in otherwise precarious conditions. Decommodification corresponds to the degree to which individuals can maintain a socially acceptable standard of living outside the market.³⁷⁶ Thus, workers' decommodification can contribute to ensuring an acceptable degree of individual welfare

³⁷⁵ O'Connor, Orloff & Shaver, *supra* note 2.

³⁷⁶ Esping-Andersen, *supra* note 31 at 54.

and security, which is made firm in the eligibility rules and restrictions of rights, but also in the level of income replacement provided by social assistance.³⁷⁷

However, the decommodification criterion is relevant insofar as integration into the labour market is successful.³⁷⁸ As O'Connor puts it:

Since both labour force participation and quality of employment are gender-linked and constrained by caring responsibilities, which are in turn gender-linked, those entitlements which facilitate labour force participation are of crucial importance to the economic and social rights of women and in the mitigation and/or prevention of dependence.³⁷⁹

But Hobson notes that the decommodification aspect does not consider that many women are not part of the labour market³⁸⁰ “not because they have been de-commodified rather because they have not been commodified”.³⁸¹ So, how should one conceive the relationship between women and the labour market: as commodification or decommodification?³⁸²

Access to the formal labour market for women means less dependency and more bargaining power within the family.³⁸³ Daly warns us of the gender bias of some social provisions, as it is “de-commodifying male risks” such as unemployment and retirement, while pregnancy and care were initially less readily incorporated into these

³⁷⁷ *Ibid.* at 66.

³⁷⁸ O'Connor, *supra* note 330 at 513.

³⁷⁹ *Ibid.*.

³⁸⁰ Hobson, *supra* note 313 at 171. O'Connor, *ibid.*

³⁸¹ Daly, *supra* note 188 at 107.

³⁸² Bussemaker & van Kersbergen, *supra* note 314 at 13.

³⁸³ Hobson, *supra* note 313 at 171.

programmes.³⁸⁴ Thus, to incorporate gender into the decommodification dimension, Orloff proposed this standard:

[...] the extent to which states guarantee women access to paid employment and services that enable them to balance home and work responsibilities, and the mechanisms and institutions that implement these guarantees.³⁸⁵

Orloff was aware that approaching decommodification from a gender perspective had limits and did not allow for a true gender analysis of the welfare state.³⁸⁶ She, and her co-authors in 1999, introduced another component to social rights analysis: the capacity to form and maintain an autonomous household.³⁸⁷

- Capacity to form and maintain an autonomous household.

The decommodification of workers has been at the forefront of the discussion on the welfare state but, access to the labour market might be a crucial issue for many women in order to enhance their economic independence, not only to contribute to their power within the family but also within society.³⁸⁸ Julia O'Connor argues that participation in the labour market is a key issue in achieving equality.³⁸⁹ Therefore, decommodification is too limited a concept to illustrate women's relationship to the labour market. It is therefore necessary to add a new criterion that reflects the contradictory relationship of

³⁸⁴ Daly, *supra* note 188 at 113.

³⁸⁵ Orloff, *supra* note 311 at 317

³⁸⁶ Bussemaker & van Kersbergen, *supra* note 314 at 24.

³⁸⁷ Orloff, *supra* note 311. O'Connor, Orloff & Shaver, *supra* note 2.

³⁸⁸ Hadas Mandel & Moshe Semyonov, "A Welfare State Paradox: State Interventions and Women's Employment Opportunities in 22 Countries" (2006) 111(6) *American Journal of Sociology* 1910 at 1911; Orloff, *supra* note 308 at 326; Evans, *supra* note 2 at 93.

³⁸⁹ O'Connor, *supra* note 330 at 507.

women with the decommodification dimension. This new component of the analysis should not only take into account the rights of women to integrate the labour market but it should also consider family dependence.³⁹⁰ It is conceptualized by O'Connor, Orloff and Shaver as the capacity to maintain an autonomous household.

Not surprisingly, shortly after the publication of *The Three Worlds of Welfare State*,³⁹¹ many authors proposed new dimensions to supplement the notion of decommodification³⁹² O'Connor proposed a criterion of "personal autonomy and insulation from personal and/or public dependence".³⁹³ Orloff meanwhile, introduced women's "capacity to form and maintain autonomous households", "that is to survive and support their children without having to marry to gain access to a breadwinner's income".³⁹⁴ Lister also proposed defamilialization, meaning the possibility of living according to "socially acceptable standards of living" without relying on the family,³⁹⁵ a concept which has a lot in common with models proposed by Orloff and O'Connor.³⁹⁶ O'Connor, Orloff and Shaver retained Orloff's autonomy dimension.³⁹⁷ This concept responds to the concerns raised by Kershaw that the effect of independence from the family, as well as the right to integrate into the labour market, are two issues that must be

³⁹⁰ Kershaw, *supra* note 348 at 303, 304.

³⁹¹ Esping-Andersen, *supra* note 31.

³⁹² Orloff, *supra* note 311 at 71.

³⁹³ O'Connor, *supra* note 330; Orloff, *supra* note 127 at 71; Bussemaker & van Kersbergen, *supra* note 314 at 16.

³⁹⁴ Orloff, *supra* note 311 at 319; Bussemaker & van Kersbergen, *ibid.* Lister, *supra* note 368 at 69.

³⁹⁵ Lister, *ibid.*

³⁹⁶ Orloff, *supra* note 308 at 320.

³⁹⁷ O'Connor, Orloff & Shaver, *supra* note 2 at 31-33.

elaborated in a gender-based analysis.³⁹⁸ Paid work and cash benefits both contribute to the pursuit of autonomy and independence for women.³⁹⁹ Further to encouraging paid work, they ask “how different sorts of support for diverse households affect the balance of power between men and women within marriages and families as well as outside them, and is therefore relevant for men’s as well as women’s situation”.⁴⁰⁰ Some authors, such as Lister, use the term “defamilisation” when talking about “the capacity to form an autonomous household”.⁴⁰¹ However, O’Connor, Orloff and Shaver argue that this is not the appropriate wording.⁴⁰² They explain their position in the following way:

We fear that ‘defamilisation’ will suggest a preference for substantive autonomy – no families – and conjure up exactly the sort of illusions about individuals’ capacities to operate without interdependencies for which traditional advocates of liberalism have been criticised by feminist political theorists.⁴⁰³

Concerning measures around the commodification of women's work, many of the state's actions have facilitated women’s integration to the labour market, such as, maternity leave, child care benefits, employment equity, and anti-discrimination measures.⁴⁰⁴ Nevertheless, access to the labour market is not always synonymous with good paying jobs and equality enhancement as Mandel and Semyonov argue:

³⁹⁸ Kershaw, *supra* note 348 at 303-304.

³⁹⁹ O’Connor, Orloff & Shaver, *supra* note 2 at 33.

⁴⁰⁰ *Ibid.*

⁴⁰¹ Esping-Andersen designated Orloff’s concept of “capacity to form an autonomous household” as “defamilialisation” in Esping-Andersen, *supra* note 31 at 277-278.

⁴⁰² O’Connor, Orloff & Shaver, *supra* note 2 at 32.

⁴⁰³ *Ibid.*; See also Mahon, *supra* note 200 at 27.

⁴⁰⁴ O’Connor, Orloff & Shaver, *supra* note 2 at 31.

[...] we contend that the massive entrance of women into the labor force of well-developed welfare states has not been accompanied by their equivalent entrance into powerful and desirable positions. On the contrary, in highly developed welfare states the “glass ceiling” has become lower and wider. Social rights attached to women’s employment in advanced welfare states are likely to increase employers’ tendency to discriminate against women in recruitment to powerful and elite positions in the private sector. Likewise, in a large “protected” public sector women are likely to be relegated mostly to female-typed service jobs. Although under these conditions the concentration of women in feminine niches can be seen as rational choice, we tend not to view it as a purely free choice, mainly because job preferences are shaped by labor market opportunities, which cannot be separated from employers’ discrimination.⁴⁰⁵

This means that measures such as maternity leave may not only affect women's short-term income and create a long-term earning gap,⁴⁰⁶ they may also be a source of discrimination in the hiring and promotion of all women.⁴⁰⁷ Mandel and Semyonov attribute this negative effect of welfare policies to the fact that “none of them seriously challenge the traditional distribution of market-family between men and women. On the contrary, adjusting the demands of employment to women’s home duties or work are likely to preserve women’s dominant roles as mothers and wives”.⁴⁰⁸ Kershaw relevantly stresses that the redistribution of care within the family is an issue rarely addressed in the literature,⁴⁰⁹ whereas this activity should be recognized as valuable.⁴¹⁰ He adds that many argue for policies that encourage men to participate more in this task, with the objective

⁴⁰⁵ Mandel & Semyonov, *supra* note 388 at 1917.

⁴⁰⁶ Orloff, *supra* note 308 at 326.

⁴⁰⁷ *Ibid.*

⁴⁰⁸ Mandel & Semyonov, *supra* note 388 at 1911.

⁴⁰⁹ Kershaw, *supra* note 308 at 2; see also Orloff, *supra* note 308 at 329.

⁴¹⁰ See Orloff, *ibid.* at 327; Kershaw, *ibid.*

of promoting equality.⁴¹¹ Indeed, many of the policies targeting reconciliation between work and family are first aimed at women, putting the responsibility for care on them, and therefore, increasing discrimination in the workplace.⁴¹² Displacing the burden of care and unpaid work within the family would contribute to enhancing gender equality in the labour market.

This of course leads us to the issues of care. On this subject, Orloff argues that care is more than a barrier to employment for women, it is a “socially necessary activity, but due in part to its gendered character, it is not always recognized as such”.⁴¹³ Therefore, the debate over care and unpaid work must be pushed further than seeing the obstacle as employment, even though it is true that women are more likely to organize their paid work according to their responsibility for caring for dependents, the availability of quality child care and affordability is also a crucial issue for them.⁴¹⁴

I have chosen the model of welfare state analysis proposed by O’Connor, Orloff and Shaver because its dimensions appear to be the most inclusive with respect to the diversity of women’s choice. I also believe that this model incorporates all the proposals made by researchers regarding the feminist approach looking at public regimes.⁴¹⁵ Although criticized, the dimensions proposed by Orloff offer a flexible approach for

⁴¹¹ Kershaw, *ibid.*

⁴¹² *Ibid.*

⁴¹³ Orloff, *supra* note 308 at 324.

⁴¹⁴ *Ibid.* at 326.

⁴¹⁵ Lister has criticized Orloff’s dimension arguing it “does not include the capacity to achieve financial autonomy within marriage (or its equivalent) other than through paid work”. As previously exposed, Orloff has answered that critic. Lister, *supra* note 368 at 70.

examining public policy, focusing on the question of equality between men and women.

Lewis commented on Orloff's proposal as follows:

However, given the gendered division of unpaid work, paid work is unlikely to prove an adequate means of achieving financial autonomy for women. It may therefore be that in the first instance it is necessary to elaborate a gender-centered analysis of welfare regimes before we attempt the extremely difficult, but extremely necessary, tasks of merging mainstream and feminist analysis.⁴¹⁶

However, there is more to Orloff's autonomy dimension than the simple integration of women into the labour market to achieve the goals of autonomy and independence. For her, the ability to integrate into the labour market is one important criterion among many of the factors that will enable women to form and maintain an autonomous household. Lewis acknowledges, however, the potential of the "defamilisation" criterion when suggesting that it allows an analysis centered on gender, while avoiding the sensitive issue of deciding of what is "good" for women.⁴¹⁷ Lewis focuses on a model that studies if a state favours the male breadwinner family.⁴¹⁸ Lewis' model still binds the issue of care to the relationship between work (paid or unpaid) and the state, while Orloff previously argued that the issue of care should be studied beyond its impact on access to work. Moreover, the dimension proposed by Lewis "seems to give inadequate attention to

⁴¹⁶ Jane Lewis, "Gender and Welfare Regimes: Further Thoughts" (1997) 4(2) *Social Politics* 160 at 166.

⁴¹⁷ *Ibid.*

⁴¹⁸ *Ibid.* at 161.

women's situation when they are not linked to men through marriage",⁴¹⁹ and it fails to consider that redistribution of the state's resources can benefit women directly.⁴²⁰

In a recent article, Simon-Kumar highlights four themes in the literature that are relevant for a feminist critique of the ideologies of the state, its structures, and practices.⁴²¹ From the four themes she identified, the first two are relevant to the study of STEs: the domain of production and reproduction, and the domain of the public and private spheres.⁴²² I believe that the themes identified in table 1 cover Simon-Kumar's themes. The domain of production and reproduction includes two variables which are covered in our parameters: (1) the values and policies around care work and unpaid work, and (2) the values and policies around paid work.⁴²³ My parameters allow the study of how care is considered and who has the responsibility for it in tax policy: the family, women, is it a shared responsibility of the state, or is it delegated to the market? Second, how care and unpaid work is valued is another important issue for production and reproduction. My parameters also permit to cover these issues.

Although, as I have shown above, the second variable in Simon-Kumar's domain of production and reproduction, is access to the labour market, it is also one of the means for achieving autonomy according to O'Connor, Orloff and Shaver. Nonetheless, the labour market can be a source of inequality and measures promoting access to it do not always

⁴¹⁹ Orloff, *supra* note 127 at 71.

⁴²⁰ Hobson, *supra* note 313 at 175.

⁴²¹ Simon-Kumar, *supra* note 206 at 445.

⁴²² *Ibid.*

⁴²³ *Ibid.*

have the desired effect of promoting equality and autonomy.⁴²⁴ Simon-Kumar outlines the effect of the pressure to integrate into the labour market:

For a gender analysis of paid work, there are particular ramifications; the labor market, despite its structural inequities, is constructed as the site where equality is played out, thus placing greater pressures on women to participate regardless of family status. Further, there is a shift towards equality of opportunity thereby undercutting discourses of substantive equality.⁴²⁵

She reminds us that the discourse and policies encouraging women to integrate into the labour market can remove the whole issue of structural discrimination that may exist there.

I believe that O'Connor, Orloff and Shaver's three-dimensional model of the welfare state will allow for a thorough analysis of women's experience of the welfare state. The analysis of social citizenship will allow us to study the role assigned to women by the legislation through the development of these policies, and how this representation of women may have contributed to maintaining their position of inequality and dependency both within the market and within the family.

2.3 Conclusion

This chapter examines the welfare state literature necessary for the tax policy discourse analysis. First, it highlighted the three historical periods of the evolution of the discourse on the welfare state, starting from the period influenced by social democratic policies, through neoliberalism and ultimately the social investment welfare state. Although none

⁴²⁴ Mandel & Semyonov, *supra* note 388.

⁴²⁵ *Ibid.* at 448.

of these periods are precisely defined in time, they will guide the analysis of the discourse.

Then, the literature on the welfare state has given a framework of analysis that will allow highlighting important themes in the discourse analysis, in a gendered approach. The main categories of themes provided by the framework by O'Connor, Orloff and Shaver, will be: (1) the character of state, market, and family relationships, (2) stratification, and (3) social rights which includes the potential for decommodification and the capacity to form and maintain an autonomous household.

CONCLUSION OF PART I

Tax scholars have often ignored the specific identity of tax expenditures and their distinction from the normative framework. Tax expenditures are the preferences of the government and could be withdrawn from tax law without affecting the tax system. Within tax expenditures there is a specific category – Social Tax Expenditures – which are tax expenditures that are similar in nature to welfare benefits. Tax expenditures are increasingly used for social provision in most of the welfare states that were qualified as “liberal” in Esping-Andersen’s typology. These states have suffered the same neoliberal pressures as Canada. They were also subject to very similar social, economic, and political changes.

These welfare provisions exist within a context that is being significantly influenced by notions of neutrality - everyone should be treated in the same manner. The only acceptable distinction in tax law seems to be the level of income. Tax law is perceived as neutral - and therefore gender neutral. This apparent neutrality is not only present in the legislative implementation but also in the judicial interpretations made in its name. There is a deference to the state when a taxpayer seeks to establish a discriminatory distinction under section 15 of the *Charter*, or when the state seeks to justify a discriminatory measure under section 1. A historical discourse analysis of STEs will also highlight the responsibility legislative policy may have for reproducing structures of inequality between men and women.

These seemingly neutral laws often reflect the dominant ideology and reality, and may reproduce some of these ideas with respect to marginalized groups. To really determine

whether STEs contain gender assumptions, I chose to conduct a thematic discourse analysis, using welfare state theory. Few authors have developed an analytical framework for this type of spending, and those feminist scholars who have approached the issue mainly based their analysis on equality. The innovation in the first part of my thesis is the integration of the concept of tax expenditures within welfare state theory. STEs need to be withdrawn from tax theory because of their specific nature.

Welfare state literature will be used to delineate the relevant periods for my discourse analysis, and to identify potential discursive changes regarding women during these periods. Thus, three periods have been identified: (1) the welfare state influenced by a social democratic approach (for the purpose of this thesis, 1967 to the late 1970s), (2) the welfare state influenced by neoliberalism (1980-1992) and finally, (3) the period influenced by social investment strategies (starting in 1992). Each of these periods will be an analytical chapter in Part II.

The welfare state literature will also provide with the themes to be used to code the discourse for my thematic discourse analysis. These themes will be the framework from O'Connor, Orloff and Shaver and will guide the analysis of discourse for each of the welfare state periods.

My thesis can therefore contribute to research in liberal welfare states not only by suggesting a theoretical framework for analyzing Social Tax Expenditures, but also by highlighting the potential effect of STEs on women.

PART II: HISTORICAL ANALYSIS OF WOMEN'S ROLE IN STE TAX POLICY

As it was demonstrated in the first section of the thesis, the neoliberal perspective has led to the significant fiscalization of welfare benefits. The introduction of provisions into tax law that were intended to be included in laws of a more social nature can be seen as problematic in terms of redistribution. The judicial response has also been unequivocal when faced with the constitutional challenges claiming discrimination: tax law treats all taxpayers in exactly the same manner, which made these challenges rather ineffective. Moreover, the literature outlined in the first section also informs us that the evolution of different economic perspectives has tended to make women invisible in public policy discourse. So, within this context, what remains of women claims?

This second part of the thesis will answer the question stated in the first part: are STEs really gender-neutral, or do they carry assumptions about women and their role in society?

To answer this question, I will analyze the tax policy discourse relating to STEs. This process meant it was necessary to read, and code, every discussion relating to all the amendments made to the chosen STEs in the ITA following the tax law reform that resulted from the Carter Commission. The provisions of the ITA that are covered by the discourse analysis are the following:

- The Child Care Expenses Deduction⁴²⁶

⁴²⁶ Section 63 of the ITA.

- The Tax Credit for Eligible Dependent⁴²⁷
- The Tax Credit for Dependent with Disabilities⁴²⁸
- The Tax Credit for Caregivers⁴²⁹
- The Universal Child Care Benefit⁴³⁰
- Child Tax Credit⁴³¹
- Canada Child Tax Benefit and Working Income Supplement⁴³²

To answer my thesis question, I have used a methodology named “thematic discourse analysis”, which will be explained in Chapter 3, along with a description of the methodology and the data set. For each welfare policy period identified in the literature, we will examine the tax policy discourse in the light of the criteria identified in the literature on the welfare state. Chapter 4 will deal with the tax policy discourse analysis of the social democratic period. Chapter 5 will discuss the tax policy discourse for the neoliberal period, and finally, Chapter 6 will study the discourse during the social investment strategies period. Finally, I will conclude on the emerging trends and the impacts of STEs on women.

⁴²⁷ Paragraph 118(1)b) of the ITA.

⁴²⁸ Paragraph 118(1)d) of the ITA.

⁴²⁹ Paragraph 118(1)c.1) of the ITA.

⁴³⁰ Hereinafter the “UCCB”. This benefit is provided by An Act to assist families by supporting their child care choices through direct financial support and to make consequential and related amendments to certain Acts, SC 2006, c. 4, s. 168 and not by the ITA. However, this law is closely related to the ITA and federal tax policy affecting care expenses. For this reason, we included this provision in this analysis because it was impossible to separate it from other measures affecting the care of dependents.

⁴³¹ Paragraph 118(1)b.1) of the ITA.

⁴³² Sections 122.6 and 122.7 of the ITA.

CHAPTER 3 METHODOLOGY

STEs are introduced within a legal context where there is an imperative for neutrality. Tax law aims to treat all taxpayers the same way, regardless of the particularities of gender, race and sexual orientation. The chosen methodology should therefore enable to see whether STEs are truly gender neutral, and study how the introduction of social welfare measures in tax law may affect women. Are the effects of STEs the same for men and women? Does the tax policy discourse contain assumptions or underlying ideologies about women? Is there a place for women in the discourse and in the implementation of tax policy? Several authors have identified as problematic the apparent neutrality of tax law. Thus, only an analysis of the situation of women, particularly with regard to their role as mothers, their relationship to pregnancy and care, and to the structural discrimination in the labour market, can highlight otherwise invisible inequalities.⁴³³

I start the analysis with the important tax reforms that occurred concurrently at the federal level. This reform was launched at the federal level after the publication of the report from the Royal Commission on Taxation in 1967.⁴³⁴ The new tax law was adopted in 1970 and came into force on the 1st January 1972. As this tax reform also corresponds to important changes to the role of women in Canadian society, I have established this tax reform as constituting the beginning of my analysis. I will therefore study the discourse using the periods detailed in chapter 2.

⁴³³ See Boyd and Young, *supra* note 54 at 559.

⁴³⁴ Canada, Royal Commission on Taxation, *supra* note 4.

This chapter will outline the methodology used for the thematic discourse analysis. It will go through the different documents that were analyzed (my data set), and outline how I coded the discourse to detect assumptions, or underlying ideologies, in relation to gender and the roles assigned to women. I will then explain the parameters used for the discourse analysis.

I want to approach the analysis in a gender sensitive way and highlight how “gender is involved in process and structures that previously have been conceived as having nothing to do with gender”.⁴³⁵ I have used the framework developed by O'Connor, Orloff and Shaver to create the themes necessary for my thematic discourse analysis. This should allow to see how class and gender interact with each other in “the structuring of inequality”, and furthermore, it enables the focus to be on production and reproduction.⁴³⁶

In this chapter, I will first describe the methodology used for the thematic discourse analysis. Then, I will explain my choice when identifying the provisions of the law to be studied. I selected two groups of social tax expenditures that I believe are most likely to contain gendered assumptions. The first group of provisions are those related to the care of children and other dependents, and the second relates to payments to families.

3.1 Thematic Discourse Analysis

The question asked by this thesis – are STEs gender-neutral?– will be answered by performing a thematic discourse analysis of tax policy discourse. By using this

⁴³⁵ O'Connor, *supra* note 30 at 3.

⁴³⁶ *Ibid.* at 4.

methodology, I wish to highlight the possibility that this discourse carries assumptions about women, which may influence tax policy implementation and the impact STEs may have on them. Foucault argued discourse is in fact a succession of discursive regimes within which the actors, objects, and affirmations are the source of power and knowledge. These standards are constantly evolving and discourse is, therefore, constructed on this genealogy of ideas, and produced by different practices and institutions. Valuing certain claims over others, discourse will be the source of boundaries for what is legitimate and what is not. Fraser argues:

Clearly, the identities and needs that the social-welfare system fashions for its recipients are *interpreted* identities and needs. Moreover, they are highly political interpretations and, as such, are in principle subject to dispute. Yet, these needs and identities are not always recognized as interpretations. Too often, they simply go without saying and are rendered immune from analysis and critique. Doubtless one reason for this ‘reification effect’ is the depth at which gender meanings and norms are embedded in our general culture.⁴³⁷

As it was highlighted in the first part of the thesis, social tax expenditures are welfare state spending inscribed in a legal context, which favours the neutrality of the legislation. How are women talked about in the discourse of these seemingly neutral tax policies? Do we talk about women? I argue that a discourse analysis of tax policy should allow us to identify the evolution of ideas about women. Few authors specifically consider tax policy discourse in this manner. Therefore, I argue that the rarity of tax policy discourse analysis constitutes an important gap in the feminist literature.

⁴³⁷ Fraser, *supra* note 18 at 154.

That is why I have undertaken a thematic analysis of the discourse around STEs. However, there are many approaches to discourse analysis and I have chosen what the literature calls Thematic Discourse Analysis. This methodology will allow us to study how the state has assigned a role to women over the years, and how this could have contributed to producing or constructing an understanding of the position of women. According to Braun and Clarke, this method can be used in many areas of social science research, and “can be a constructionist method, which examines the ways in which events, realities, meanings, experiences and so on are the effects of a range of discourses operating within society”.⁴³⁸

However, I chose to perform this analysis on a theoretical basis, that is to say, I coded the data, rather than base the analysis on its content. This approach relies on themes emerging from the literature that are relevant to my research question.⁴³⁹ Since I want to highlight assumptions and ideologies in the discourse, I needed to go beyond words. Thus, the silence and absence of actors will also be important in my analysis.⁴⁴⁰

My analysis was done in five steps.

3.1.1. First Step: Identification of the Themes

The themes are derived from the welfare state literature outlined in section 2.2. of Chapter 2, and correspond to the parameters developed in O’Connor, Orloff and Shaver’s framework. I identified themes relevant to the analysis of the discourse, around which I

⁴³⁸ Braun & Clarke, *supra* note 197 at 80.

⁴³⁹ *Ibid.* at 84.

⁴⁴⁰ *Ibid.*

coded the data.⁴⁴¹ The analysis is based on findings reported in the literature concerning the public policies in the different economic periods I identified in the theoretical framework. From this framework, I identified the following themes around which I coded my data:

Table 1 –Themes for the Discourse Analysis

State, market, family relationships		<ul style="list-style-type: none"> To what extent are the needs of citizens satisfied by the state, rather than by the market or the family?
Stratification		<ul style="list-style-type: none"> What model of equality is at work and does it value gender sameness or gender difference? Are caring and unpaid work valued? Are the programmes available because of labour market attachment different to those relating to family labour? What is the process of making claims (as individual workers, as citizens, ...)?
Social Rights	Decommodification	<ul style="list-style-type: none"> Are the eligibility rules restrictive? Or, are there some universal programmes? What is the level of income replacement provided? What is the range of risks covered? Are women's risks covered as well as men's? Are the benefits in the form of a social wage, social services or income support?
	Autonomy	<ul style="list-style-type: none"> What is the unit of entitlement and of calculation for different programmes (family income)? What role is assigned to women? How do different sorts of support for diverse households affect the balance of power between men and women within and outside families?
	Access to labour market (commodification)	<ul style="list-style-type: none"> Does the measure favour access to the labour market? Is the effect on labour market equality considered? Does the measure challenge market-distribution between men and women?

⁴⁴¹

Ibid. at 88-89.

The themes are consistent with the framework parameters, thus enabling a gendered analysis of the welfare state.

3.1.2 *Second Step: Data Collection*

In order to perform a discourse analysis, I relied on documents showing the legislative intent for the provisions in the ITA that I have chosen. They will be detailed in the next section of this chapter. I started the discourse analysis with all the documents relating to the 1970 tax reform. In 1962, the Liberal Government of Lester B. Pearson appointed the Royal Commission on Taxation to consider the need for major reform to the federal tax law. The Commission, under the chairmanship of Kenneth Carter, published its report in the spring of 1967.⁴⁴² The government invited submissions from the public following the commission's report, and published the White Paper on Tax Reform in 1969, revealing the government's view on taxation.⁴⁴³ Taxation principles were then redesigned and a major reform effort followed with the intention of thoroughly reviewing the Canadian tax system. The new law was adopted in 1970 and came into force in 1972.⁴⁴⁴ Another major tax reform took place during the revision of federal statutes in 1985, which resulted in significant changes. Then came the 1988 reform, which particularly affected personal

⁴⁴² Canada, Royal Commission on Taxation, *supra* note 4.

⁴⁴³ Canada, Department of Finance, *Tax Reform Proposals*, Ottawa, Queen's Printer, 1969. See also Budget Speech delivered by the Honourable E.J. Benson, Minister of Finance and Member of Parliament for Kingston and the Islands in the House of Commons, Friday, June 18, 1971.

⁴⁴⁴ *Income Tax Act*, L.C. 1970-71-72, c. 63.

income tax as personal deductions were transformed into personal tax credits, and this led to a second White Paper on Tax Reform.⁴⁴⁵

However, apart from these major changes, tax law is modified at least once a year. In order to determine which documents are relevant or not when analyzing the legislative intent and policy intent of the government, I will now explain the tax law modification process.

At the federal level, tax law is the responsibility of the Minister of Finance.⁴⁴⁶ The process for the modification of tax law is the same as for any other law.⁴⁴⁷ However, there are particularities to modifying tax law, as well as to the tax policy documentation, that is specific to this field. We shall therefore outline the process of amending the ITA, and highlight the documents that establish the legislative intent.

One of the first features of modifying tax law is the public announcement that precedes the modification.⁴⁴⁸ The traditional way to make this announcement is to integrate it into the federal government's annual budget, which contains a series of measures amending the ITA. The budget will not only include the proposed changes, it will also outline the

⁴⁴⁵ Canada, Department of Finance, *White Paper on Tax Reform*, *supra* note 81.

⁴⁴⁶ The power of taxation in Canada is divided between the federal level and the provinces. Under s. 91 of the Constitution (*The Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.)), the federal legislature has the power to make law for the “raising of Money by any Mode or System of Taxation”. The provinces have the power of direct taxation within the provinces in order to the raising of a Revenue for Provincial Purposes.

⁴⁴⁷ Marie-Pierre Allard, *La recherche en fiscalité canadienne*, 3rd ed. (Toronto, Thomson Canada Limitée, 2011) at 24.

⁴⁴⁸ Section 54 of the *Constitution Act*, 1867, 30 & 31 Victoria, c. 3 (U.K.); section 54 of the *Standing Order of the House of Commons Including the Conflict of Interest Code for Members*, available online: <http://www.parl.gc.ca/About/House/StandingOrders/toc-e.htm>; Allard, *ibid.* at 24-28.

context and the reason for the proposed modification. This document will therefore be important for understanding tax policy. This public announcement can also be made through a legislative proposal or through draft legislation. The announcement is generally accompanied by a press release from the Ministry of Finance.⁴⁴⁹ The measures contained in the budget are not always complete, and the bill or legislative proposal narrative will contain the text of the proposed modification.

Another specification of the tax regime is the requirement to give notice at least 48 hours prior to the filing of a bill in the House of Commons.⁴⁵⁰ This notice must detail the tax measures that will be presented. Usually this is done by presenting a Notice of Motions of Ways and Means containing the details of the proposed changes and the text of the new provisions. Explanatory notes, a document explaining in general terms the purpose and effect of the proposed changes, usually accompanies the Notice of Motions of Ways and Means or the legislative proposal. This is another important document outlining the objectives of the government's tax policy.⁴⁵¹

When these steps have been completed, the bill containing the final text of the proposal is filed. This will constitute the first reading of the bill and, at this time, it will not be debated, amended or questioned. The bill will be submitted for consideration to the Standing Committee on Finance, which will recommend amendments to it. Two more readings by the House of Commons follow the first reading. Finally, the bill undergoes

⁴⁴⁹ Allard, *ibid.* at 25.

⁴⁵⁰ *Ibid.* at 28.

⁴⁵¹ *Ibid.* 28-31.

three readings in the Senate before becoming law, after receiving the Royal Assent. For these steps, extracts from debates in the House of Commons and the Senate will be available, as well as excerpts from the discussions of the Standing Committee of Finance, and the occasional reports from this committee.

The ITA is amended every year, using the budget for announcing the legislative changes to come. Every budget is then discussed in the House of Commons during the three readings, and then again during the three readings in the Senate. Some amendments are also discussed in the Committees of the House of Commons or Senate. With regard to all the amendments to STEs previously identified, and starting with the recommendations of the Carter Report, I identified the following documents as being representative of the legislative intent (the discourse) of the federal government:

- Law
- Bills
- Budget, budget speech and budget plan
- Press releases
- Notice of Motions of Ways and Means
- Explanatory Notes
- Debates in the House of Commons and in the Senate
- Debates and reports from the Standing Committee on Finances
- The Carter Report

- White Papers of the 1970 and 1987 Tax Reforms

In order to find the documents, I needed to have access to the history of all STEs. A history of all tax provisions is available on TaxnetPro, a tax law database. Once all the amendments were identified, I accessed the Department of Justice Canada's website in order to consult the table of laws of public interest and the responsible Ministers, to access the Annual Statute responsible for the amendment. For the years prior to 1994, I needed to consult the website of Library and Archives Canada. I found the Annual Statutes in the Law Library of the University of Montreal.

All budget documents (budget, budget speech and budget in brief) are available on the Department of Finance's website in the budget section. Independent committee reports are also available on that website. Minutes and reports from the Standing Committee on Finance are available on the Parliament of Canada's website for the years 1994 to 2012. Earlier versions are available in the McLellan Social Sciences Library at McGill University, and in the Library of Human Sciences at the University of Montreal.

All of the Debates from 1994 to 2012 are available online on the Parliament of Canada's website. For years prior to this, the English version of the debates is archived in the d'Youville Deposit of the University of Montreal library and can be accessed through a loan system.

All of the research was done manually, which means I identified every amendment, read through the discussions in the House and Senate for the relevant bills, and photocopied

the important sections. The data corpus amounts to more than 10,000 pages from these documents.

3.1.3. Third Step: Initial Reading of the Documents

The third step of this methodology required an initial reading of all the documents collected in order to familiarize myself with their content.⁴⁵²

3.1.4. Fourth Step: Coding

I then read all the documents again from the perspective of coding the relevant sections according to the themes identified in section 4.1.1. To do this, I created a Word Document, with every question listed in Table 1, and copied the relevant section under the relevant heading. For example, I created a document for the CCED with all the sub-headings from Table 1 under which I copied the relevant extracts from the text. This resulted in 810 pages of coding.

3.1.5 Fifth Step: Identification of Recurring Themes

Within the coded data, I identified recurring themes and tendencies in the discourse, which became the final analysis. However, before going further with the analysis, I reviewed the data for each of the themes to ensure that the patterns I had identified were consistent and that nothing had been forgotten during coding.⁴⁵³ Finally, I identified and

⁴⁵² Braun & Clarke, *supra* note 197 at 87.

⁴⁵³ *Ibid.* at 91.

analyzed the meaning of each theme, and these results will be presented in the next three chapters of the thesis.⁴⁵⁴

This approach could be seen as universalizing the feminine experience. I am very aware of the limitations that this methodological choice entails and I recognize that women's experience is multiple and diverse. This approach gives little consideration to intersectionality, that is to say, how many other personal characteristics (such as sexual orientation, age, race) can affect the relationship between women and STEs. However, like other authors, I believe that universalizing, or essentializing, approaches are not necessarily harmful.⁴⁵⁵ They should however be used with caution. I chose nonetheless to use this method for several reasons. First, the welfare state analysis framework considers class as well as gender. This is one of the factors that is not often considered when feminists are studying intersectionality, and it is one of the personal characteristics that will impact the relationship women have with STEs. In addition, as little analysis has been done on the relationship between social tax expenditures and women, I believe that the first step is to analyze the role of women in the discourse, and whether women could be disadvantaged by this model of redistribution. Unfortunately, I already suspected that the issue of intersectionality would be nonexistent in the fiscal policy discourse, and this was confirmed by my analysis. I believe, however, that this is a first step and it must remain temporary. I intend to use further levels of analysis to account for other personal characteristics in future research. A different methodology will most likely be used for

⁴⁵⁴ *Ibid.* at 92.

⁴⁵⁵ Champagne, *supra* note 24 at 96.

this purpose. I therefore consider that though the approach could be considered “essentialist” or universalistic, I have used it in a strategic sense in order to pave the way for many other studies of the relationship between women and STEs.⁴⁵⁶

Now that the methodology used for the discourse analysis is clear, and each of the five stages of my analysis have been explained, I shall now turn to the justification of the choice of STEs, whose discourse will be the subject of my analysis.

3.2 Choice of the Tax Expenditures Analyzed for a Gender-Sensitive Analysis

My analysis seeks to look at the tax policy discourse relating to STEs to see if it contains assumptions about women. In order to do this, I must first identify what provisions I want to study. I have identified two groups of STEs that can be affected by the neutrality of the context of tax law: (1) the tax expenditures related to child care and the care of other dependents, and (2) STEs in relation to transfers to the family. The study is limited to the provisions of the ITA under federal law. All but one provision identified (the CCED) are tax expenditures according to the 2010 federal government report on tax expenditures,⁴⁵⁷ and also according to Séguin and Gurr, who have made a detailed analysis on the subject.⁴⁵⁸ The UCCB is not among these expenses because it is not paid through the ITA. It is nevertheless a direct subsidy to parents of children, and for this reason I chose to include this non-income tax benefit because it triggers many income tax consequences,

⁴⁵⁶ *Ibid.*

⁴⁵⁷ Canada, Department of Finance, *Tax Expenditures 2010* (<http://www.fin.gc.ca/taxexp-depfisc/2010/taxexp10-fra.asp>),

⁴⁵⁸ Séguin & Gurr, *supra* note 70 at 126 and foll.

and it interacts with other STEs which could have a gendered impact. This programme and income tax law are intricately linked.

3.2.1. *Childcare and Care of Other Dependents*

The first set of provisions are related to care since mainstream researchers have often treated this issue as a barrier to integration into the labour market, or linked it to gender differences.⁴⁵⁹ For feminist scholars, care is much more than a barrier; it is also a devalued necessary social activity.⁴⁶⁰ STEs tend to privatize the question of care, relegating it to the market, or the family, to provide welfare services.⁴⁶¹ The family is increasingly called upon to compensate for this diminished responsibility of the state.⁴⁶² When transferred to the family, for example after the “virage ambulatoire” in Quebec, people were being more and more taken care of in the home. This responsibility is still not well distributed within the family, and the type of provisions used by the state have an increasing potential to affect women.⁴⁶³ When public services are reduced women step in to take over more so than men.⁴⁶⁴ Because this responsibility falls more on women, access to the labour market may be affected by inadequate fiscal measures. Access to the labour market is one of the conditions for full social citizenship as expressed by O'Connor, Orloff and Shaver. Our analysis should, amongst other things, underline how

⁴⁵⁹ Orloff, *supra* note 308 at 324.

⁴⁶⁰ *Ibid.*

⁴⁶¹ O'Connor, Orloff & Shaver, *supra* note 2 at 60, 325.

⁴⁶² Bergeron, *supra* note 2 at 128-129.

⁴⁶³ Rose, *supra* note 14 at 27; O'Connor, Orloff & Shaver, *supra* note 2 at 78, 325.

⁴⁶⁴ Rose, *ibid.* at 42.

STEs affect attachment to paid work or the structure of the labour market.⁴⁶⁵ Good measures for child care are therefore necessary for the equality of women in terms of employment.⁴⁶⁶

The care of dependents is not just about the role of women. This responsibility, according to many, should be better distributed within the family, but also, between the state and the family, as the care of children and dependents benefits the whole of society.⁴⁶⁷ Caring measures in tax legislation will therefore affect the decommodification of women, the stratification of the labour market, and even more particularly, the capacity to form and maintain an autonomous household. Therefore, I identified the provisions concerning care in the ITA, and the historical discourse relating to these provisions will be analyzed through the lens of the three dimensions proposed by O'Connor, Orloff and Shaver. The STEs I identified concerning care are listed in Table 2.

Table 2 – STEs Concerning the Care of Children and Other Dependents

Provisions of the ITA
<ul style="list-style-type: none"> • Child Care Expenses Deduction (Annex 1)⁴⁶⁸ • Tax Credit for Eligible Dependent (Annex 2)⁴⁶⁹ • Tax Credit for Dependent with Disabilities (Annex 2)⁴⁷⁰ • Tax Credit for Caregivers (Annex 2)⁴⁷¹ • Universal Child Care Benefit⁴⁷²

⁴⁶⁵ O'Connor, Orloff & Shaver, *supra* note 2 at 78.

⁴⁶⁶ Abella, *supra* note 245 at 196.

⁴⁶⁷ Orloff, *supra* note 308 at 326. Lisa Philipps, "Income Splitting and Gender Equality: the Case for Incentivizing Intra-Household Wealth Transfers" in Kim Brooks, Åsa Gunnarsson, Lisa Philipps & Maria Wersig, eds, *Challenging Gender Inequality in Tax Policy Making – Comparative Perspectives* (Portland, Hart Publishing, 2011) 235 at 249. Campbell, *supra* note 299 at 175.

⁴⁶⁸ Section 63 of the ITA.

All of the tax credits listed in Table 2 are measures departing from the normative structure of the law because they consider the dependents of the taxpayers. They are also STEs in the sense that social expenditures, or services, would have to be provided if those provisions were not in the ITA.

The CCED, however, is sometimes seen as problematic in terms of qualifying as a STE. Some argue that child care costs reduce the ability to pay and are a necessary cost of earning income, and therefore, should be included in the normative structure of the law. Others describe it as a tax expenditure assisting parents with access to daycare.⁴⁷³

When looking at the CCED, it covers only a small part of the expenses, it is more beneficial to taxpayers with higher incomes and cannot be claimed by parents who do not earn income⁴⁷⁴ (unless they are students). Moreover, this measure does not necessarily benefit the parent, as it is available to the spouse with the lowest income, implying that a new spouse who is not the parent of the child may be the one claiming the deduction.⁴⁷⁵ All of these conclusions about the CCED make it a departure from the normative structure, and therefore a tax expenditure. The policy objective of the CCED when it was

⁴⁶⁹ Paragraph 118(1)b) of the ITA.

⁴⁷⁰ Paragraph 118(1)d) of the ITA.

⁴⁷¹ Paragraph 118(1)c.1) of the ITA.

⁴⁷² *An Act to assist families by supporting their child care choices through direct financial support and to make consequential and related amendments to certain Acts*, SC 2006, c. 4, s. 168 and not by the ITA.

⁴⁷³ Séguin & Gurr, *supra* note 70 at 100.

⁴⁷⁴ Woodman, *supra* note 144 at 386.

⁴⁷⁵ *Ibid.*

introduced identified it as not just an expense for the purpose of earning income, but as a social responsibility and a shared concern:

2.7 We propose to permit deduction of the child care expenses that face many working parents today. The problem of adequately caring for children when both parents are working, or when there is only one parent in the family and she or he is working, is both a personal and a social one. We consider it desirable on social as well as economic grounds to permit a tax deduction for child care expenses, under carefully controlled terms, in addition to the general deduction for children.

2.9 This new deduction for child care costs would be a major reform. While it is not possible to make an accurate forecast of the number who would benefit from this new deduction, it seems likely to be several hundred thousand families. It would assist many mothers who work or want to work to provide or supplement the family income, but are discouraged by the cost of having their children cared for.⁴⁷⁶

Johnson, in the aftermath of the *Symes* judgment, produced a scathing critique of the qualification of the child care expenses deduction as a tax expenditure. According to her, the deduction should be analyzed using the normative criteria of equity, simplicity, and neutrality, because this would underline the unfairness resulting from the current application of this provision of the ITA, which does not fully consider the central role of child care as enabling a mother to earn a business income. She argues that the characterization of that deduction as a tax expenditure, would only cause greater deference on the part of the judges with regard to the government's budgetary allocation

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Canada, Department of Finance, *Tax Reform Proposals*, *supra* note 443.

for social programmes.⁴⁷⁷ In fact, the courts have shown a lot of deference to choices in government spending. Turnbull goes even further:

Perhaps Johnson intended to imply what I propose to state explicitly: that tax expenditure analysis should not apply to the reasonable costs associated with the raising of future generations. I would argue that such reasonable costs, including the cost of substitute care when a parent is occupied in market labour, directly affect the resources upon which a taxpayer may draw to pay taxes.⁴⁷⁸

My response to these authors has two parts. First, the scope of the normative standard of fairness (or equity) should not be overestimated. This criterion ensures that a taxpayer will pay tax on the ability to pay using the economic situation as a comparative element. Thus, two people in a similar position should assume the same share of taxes, while a person with a greater ability to pay should contribute more (these are the criteria of horizontal and vertical equity). The fairness criterion does not allow large enough margins for conclusions to be drawn over gender equality.

The following expression used by Turnbull summarises our second criticism: “the reasonable costs of raising future generations”. This sentence shows that child care costs are more than just a business expense, and that using the normative structure to evaluate this provision renders invisible a much bigger question: the recognition that children represent future wealth that benefits all of society, and that child care, as with education, should be subsidized and encouraged. This shared responsibility and social objective is

⁴⁷⁷ Johnson, *supra* note 179, as summarized in Lorna Turnbull, “Taxing Choices: A Conversation About the Demands of Motherwork on Tax Policy” (2003) 51 Can Tax J 1953 at 1959.

⁴⁷⁸ *Ibid.*

also one of the rationales behind the introduction of section 63 of the ITA, and it pleads for the categorization of the CCED as a STE.

Concerning a similar debate over the qualification of medical expenses deduction as a tax expenditure, Surrey wrote:

Pechman accepts the doctor's bill as given and in the desire to relieve the hardship of medical expense he focuses on the ill family's ability to pay its income tax. He thus shifts the focus from the ability of people to pay their doctors' bills to the ability of people who are burdened with those bills to pay their income taxes. But a direct medical care expenditure program would keep the focus on the main problem – the cost of medical care – and in so doing would provide an entirely different allocation of funds without the upside-down effect that results from the focus on the income tax as the mechanism for relief. Pechman would not worry about the ability to pay income taxes of families with gambling debts or high entertainment expenses or charitable contributions. The fact that it is medical expenses which cause his worry about the income tax indicates the main problem is those expenses themselves. The focus should therefore be kept on those expenses and not be shifted to the income tax.⁴⁷⁹

As feminist scholars have defined care as more than just a barrier to the labour market, the cost of child care should be more than a simple consideration of the ability to pay, but rather, a measure of redistribution needed to achieve equality. Claire Young speaks in terms of the child care expenses deduction as a method of “subsidy” and draws parallels with “social programs”.⁴⁸⁰ Faye Woodman believes that the assessment of the child care expenses deduction as a tax expenditure is the most appropriate solution.⁴⁸¹ She insists

⁴⁷⁹ Surrey, *supra* note 1 at 22, 23.

⁴⁸⁰ Woodman, *supra* note 144 at 385, 387.

⁴⁸¹ *Ibid.*

that until the *Symes* case, it was conceived of as a tax expenditure.⁴⁸² In an Australian context, Stebbing and Spies-Butcher have qualified the deduction as a STE.⁴⁸³

As the Supreme Court pointed out in *Symes*, child care costs represent a hybrid expenditure, thus, difficult to characterize.⁴⁸⁴ Moreover, the Court declined to comment on the nature of this expense. I classified the CCED as a STE departing from the normative structure in two ways: it deviates from the individual tax unit, but also, from the normally accepted accounting standards for the calculation of income. The deduction departs from individual taxation because it is only available to the lower income earner in the couple. Normally, using the Haig-Simons definition, the taxpayer who incurs the expense shall be the one taking the deduction. This is not the case for this deduction. The claimant has to be the lower-income earner in the couple, which may not even be one of the parents of the child (it could be a new spouse of the parent, for example). In the case of the provincial tax credit, only one parent can claim it following an election - a choice in the income tax return- by one of the parents. The Generally Accepted Accounting Principles (“GAAP”), and the International Financial Reporting Principles (“IFRS”), do not consider child care expenses as being deductible. Therefore, it is another reason for concluding that this expense deviates from the normative structure of tax legislation.⁴⁸⁵ I also conclude it is a STE as it provides the necessary help for accessing child care. The tax policy objectives of the CCED are not drafted in terms of the normative structure; it is

⁴⁸² *Ibid.* at 386.

⁴⁸³ Stebbing & Spies-Butcher, *supra* note 1 at 9.

⁴⁸⁴ *Symes*, *supra* note 10 at para 80.

⁴⁸⁵ McDaniel, *supra* note 74 at 3:3.

gender specific -it was only available to women at first- and there is a strong social aspect behind the child care expenses deduction. It also deviates in many ways from the normative structure and I believe it should be analyzed as a social tax expenditure.

3.2.2. *Dependency Provisions and Benefits Using Family Income*

I also wish to examine the dependency provisions within the law and the benefits that are calculated using “family income”. As previously discussed, the Canadian government concentrates more and more of its social provisions on needy citizens.⁴⁸⁶ This is also reflected in the tax law through targeted measures, and low income thresholds for claiming benefits.⁴⁸⁷ Although one tenet of tax law in Canada is individual taxation, tax expenditures designed to help low-income families, or which target families with children, are often measures that use family income in the determination of the eligibility for the benefits.⁴⁸⁸

Young has divided the provisions of the ITA that take marital status into account, into two categories: the provisions that assume economies of scale, usually by using family

⁴⁸⁶ Rose, *supra* note 14 at 45.

⁴⁸⁷ For example, the Canada Child Tax Benefit is reduced if the family income is higher than \$41,544 while the National Child Benefit Supplement is reduced if the family income is higher than \$24,183 (section 122.6 ITA). However, the Canada Child Tax Benefit is available (even if reduced) to middle-income to high-income families. The amounts received are considered as income for the purpose of social assistance programmes in the provinces. Therefore, the receipt of the CCTB negatively affects lower income individuals and families. The Working Income Tax Benefit (section 122.7 ITA) is reduced if the family's net working income is higher than \$15,205, and is lost if the family's net income reaches \$26,952. For an individual with no children, the maximum benefit is available if the net income is between \$6,880 and \$11,011. The payment is gradually reduced when net income exceeds that amount, and no amount is paid when net income exceeds \$17,477. These are the amounts for the 2012 taxation year.

⁴⁸⁸ Philipps, *supra* note 467 at 235. Law Commission of Canada, *Beyond Conjuality: Recognizing and Supporting Close Personal Adult Relationships* (Ottawa, Public Works and Government Services, 2001) at 72-89

income in their distribution (such as the Child Tax Benefit, and the GST credit), and the dependency - on the family - provisions (such as the Spousal Tax Credit).⁴⁸⁹ Family income (designated as the “adjusted income” in the ITA) takes into account the income of the spouse or the “common law partner”, which is defined as a person of the opposite or same sex, who co-habits in a conjugal relationship for one year, or with whom he had a child.⁴⁹⁰ Kathleen Lahey notes that “[b]etween the early 1990s and 2005, for instance, Canada has doubled the number of joint provisions in its income tax law”.⁴⁹¹ The most famous example of this is the introduction in 2006 of the provision for the splitting of pension income.

For tax purposes, relying on family income to grant a benefit is contested. Young states that tax law relies increasingly on the private market, and points out that “by taking spousal and common law partner status into account with respect to entitlement to and allocation of a variety of tax expenditures, the tax system is one important tool in this privatization”.⁴⁹² The consequence of using family income is well described by Young:

in Canada the couple in which there are two low rate taxpayers pays more tax when they are treated as a couple rather than as individuals. The couple in which there are two high rate taxpayers and the couple in which one person is a high rate taxpayer and the other has little or no income both tend to benefit in terms of taxes saved when treated as a couple.⁴⁹³

⁴⁸⁹ Young, *supra* note 2.

⁴⁹⁰ Subsection 248(1) “common-law partner” of the ITA.

⁴⁹¹ Lahey, *supra* note 90 at 28.

⁴⁹² Young, *supra* note 2 at 323

⁴⁹³ *Ibid.* at 321.

Some of those provisions make it advantageous for a taxpayer to stay at home and therefore rely on the family for welfare.⁴⁹⁴ Another reason I chose to study these provisions is the recent introduction of measures that seem to favour the old breadwinner model, just like the UCCB.⁴⁹⁵ For Philipps, tax law in Canada tends to privatize “women’s economic interests within the family”.⁴⁹⁶ I need to examine these policies in order to appreciate their impact on women.

Two low-income individuals would lose more benefits if they are considered as a couple. Women would lose even more as they often earn the lowest income, and would therefore be the one losing the benefit when considering family income.⁴⁹⁷ These provisions of income tax legislation take for granted that couples share their income equally, which according to many studies is often not the case.⁴⁹⁸ Particularly, in the actual context of the different family model, the Law Commission of Canada warns us against the assumption that couples pool their income. As studies show, it is difficult to make a generalization about how couples distribute resources within the family. Moreover, the Law Commission makes another important point, couples are not the only relationship that

⁴⁹⁴ *Ibid.* at 318; Rose, *supra* note 14 at 41.

⁴⁹⁵ Young, *ibid.* at 318.

⁴⁹⁶ Philipps, *supra* note 15 at 68.

⁴⁹⁷ Abramovitz & Morgen, *supra* note 8 at 18.

⁴⁹⁸ Dulude, *supra* note 20 at 88-89; Miranda Stewart, “Gender Equity in Australia’s Tax System: A Capabilities Approach” in Kim Brooks, Åsa Gunnarsson, Lisa Philipps & Maria Wersig, eds, *Challenging Gender Inequality in Tax Policy Making – Comparative Perspectives* (Portland, Hart Publishing, 2011) 53 at 63.

might involve the pooling of income, roommates may put their resources together, and friends may share the amount of some expenses, such as the cost of a nanny.⁴⁹⁹

Tax legislation, thus, rarely takes into account other ways of distributing resources within the family. Lister sees the distribution of resources as an important basis for women's citizenship:

The distribution of resources (including work and time as well as money) within the family is partly a function of power relationships which, in turn, reflect to some extent the relative economic resources that each partner commands independently (Fuchs 1988; Okin 1989; Pahl 1989). The unequal power relationship, already noted as typical of full or partial economic dependency, is experienced by many women as a lack of control over resources; a lack of rights and a sense of obligation and deference (Pahl 1989). Such relations are corrosive of women's citizenship.⁵⁰⁰

This question of dependency within the family leads us to the fact that they are often targeted at low income families, another reason to focus on these provisions. Women are more affected by a deficient regime of social provisions, as they are more likely to rely on them because of their caring responsibilities, plus the fact that they are often part-time workers, and thus, tend to earn less income. These provisions directed at "needy" citizens are therefore of particular importance for women.⁵⁰¹

The provisions of both federal and provincial income tax legislation may affect women's dependency on the family and on the state, and need to be examined. It will be necessary

⁴⁹⁹ Law Commission of Canada, *supra* note 488 at 68.

⁵⁰⁰ Lister, *supra* note 368 at 68.

⁵⁰¹ Joseph William Singer, "Re-Reading Property" (1991-1992) 26 *New Eng L Rev* 711 at 726; Abramovitz & Morgen, *supra* note 8 at 12.

to examine one of the important dimensions according to O'Connor, Orloff and Shaver: the capacity to form and maintain an autonomous household. The STEs I have identified are listed in Table 3.

Table 3 – STEs Concerning Transfers to the Family and for Children

Provisions of the ITA
<ul style="list-style-type: none"> • Child tax credit (Annex 2)⁵⁰² • Canada Child Tax Benefit and National Child Benefit Supplement (Annex 3)⁵⁰³ • Working income tax benefit (Annex 4)⁵⁰⁴

The Canada Child Tax Benefit and National Child Benefit Supplement are undoubtedly STEs. They were previously payments made under the *Family Allowance Act*, a social act that was later introduced through tax legislation. The credit for children is another tax measure accounting for dependents, and therefore, deviating from the normative tax structure.

I have now defined the methodology that is to be used in the next three chapters of analysis, as well as the provisions that will be studied. The next three chapters give the results of the thematic discourse analysis of the STEs identified above. Thus, each chapter chronologically represents the welfare periods. I have summarized in Table 4 which provisions are concerned with the different periods.

⁵⁰² Section 118(1)b.1) of the ITA.

⁵⁰³ Section 122.6 of the ITA.

⁵⁰⁴ Section 122.7 of the ITA.

Table 4 – Provisions of the ITA, by periods

YEAR	Period	CCED ⁵⁰⁵	Eligible Dependent ⁵⁰⁶	Dependent with disabilities ⁵⁰⁷	Caregiver Tax Credit ⁵⁰⁸	UCCB ⁵⁰⁹	Refundable Child Tax Credit	Child Tax Credit ⁵¹⁰	CTB and WIS ⁵¹¹
1970-1974	<i>Keynesian Welfare State</i>		Exemption	Exemption				Deduction	
1975-1979								Credit	
1980-1984	<i>Neoliberal Welfare State</i>								
1985-1989			Credit	Credit					
1990-1994									
1995 - 1999	<i>Social Investment Strategies</i>								CCTB
2000-2004									
2005-2009									
2010-									

My analysis will thus start with the welfare state influenced by social democracy in Chapter 4, Chapter 5 will cover the neoliberal welfare state period and, finally, the discourse analysis of the social investment welfare state will be examined in Chapter 6. Each chapter is divided according to the parameters identified in the methodology based on the framework developed by O'Connor, Orloff and Shaver.

⁵⁰⁵ Childcare Expenses Deduction, section 63 of the ITA.

⁵⁰⁶ Tax Credit for Eligible Dependent, paragraph 118(1)b) of the ITA.

⁵⁰⁷ The Tax Credit for Dependent with Disabilities, paragraph 118(1)d) of the ITA.

⁵⁰⁸ The Tax Credit for Caregivers, paragraph 118(1)c.1) of the ITA.

⁵⁰⁹ The Universal Child Care Benefit.

⁵¹⁰ Paragraph 118(1)b.1) of the ITA.

⁵¹¹ Canada Child Tax Benefit and Working Income Supplement, Sections 122.6 and 122.7 of the ITA.

CHAPTER 4 THE SOCIAL-DEMOCRATIC WELFARE STATE: THE VISIBLE BUT DEPENDENT WOMAN

As demonstrated in Chapter 2, the period influenced by social democracy was a period that relied heavily on the market for welfare services provision.⁵¹² There was also a strong familialist tradition.⁵¹³ The benefits were often linked to an attachment to the labour market, and the labour market was highly masculine. Thus, women usually received benefits through their working husbands. Women were therefore kept in the private sphere and retained the primary responsibility for child care and unpaid work. Access to the labour market was thus considered a choice that carried fiscal consequences for the family unit. Finally, this period encouraged a certain egalitarian model of welfare provision with the introduction of a multitude of universal programmes such as healthcare, family allowance, and old age security.⁵¹⁴

This analysis begins with the documents relating to the 1972 tax reform. Among the most important documents from this period is the Report of the Royal Commission on Taxation, commonly called the Carter Report. The Commission's mandate was to make recommendations for improving the federal taxation system. At the time, the taxation system was considered as being unfair, with some taxpayers assuming a higher share of taxation than should have been the case. Following the report, in 1969 the Government published a White Paper on tax reform⁵¹⁵ outlining its intentions. There are numerous

⁵¹² Jenson , *supra* note 43 at 9, 32.

⁵¹³ Rose, *supra* note 14 at 30; Simon-Kumar , *supra* note 206 at 449; Orloff, *supra* note 127.

⁵¹⁴ Jenson , *supra* note 43 at 37.

⁵¹⁵ Canada, Department of Finance, *Tax Reform Proposals*, *supra* note 443.

documents and minutes from debates related to this period, and plenty of information on the legislative intent.

As the Keynesian welfare state favoured more universal programmes, and was less prone to the use of those that were means-tested, STEs were not the privileged mechanism for redistribution before the tax reform. The government started using STEs mostly at the end of the Keynesian welfare state period, in the late 1970s. There were, few STEs in tax law before the reform. Exemptions for children, for a married person supporting his spouse, and for a person dependent on the individual by reason of mental or physical infirmity, were already part of the ITA before the reform. However, the period that followed the tax reform was very fertile in terms of introducing STEs, such as the CCED in 1972, the child tax credit in 1977, and the refundable child tax credit in 1978. These are the measures that I will examine in this chapter.

This chapter therefore covers a very brief period. The literature indicates that this period is mostly associated with the years 1945-1975. However, our analysis has revealed that the characteristics associated with the Keynesian welfare state discourse continued until 1980. Therefore I also looked at the period 1975-1979 to uncover evidence of the Keynesian approach. As a result, this chapter covers the tax policy discourse from 1966 (starting with the Carter Report) until 1979.

Using each of the parameters described by O'Connor, Orloff and Shaver, I analyzed the fiscal policy discourse for this period to highlight the possibility that the discourse around

STEs was not gender neutral and contained assumptions about women. The discourse was coded by themes, as described in the methodology in Chapter 3.

4.1 State, Market, Family Relationships or How Working Mothers Are Perceived As A Normative Tax Problem

During the Keynesian welfare state it was difficult to discuss the introduction of STEs in terms of tax expenditures. When addressing a tax issue, whether normative, or similar in nature to welfare benefits, the discussion revolved around the principles of fiscal theory, such as the ability of taxpayers to pay.

During this period, women were present in the discourse around STEs. The discourse took note of women's integration into the labour market as being an important social change and a reality. But the discourse responded to this change in normative terms. Working mothers created a change of the non-discretionary spending of the family, and therefore, on how they should be taxed. State involvement in terms of child care and subsidies to the family were not seen as being social welfare benefits. They were simply engaging the fairness of the technical provision in the tax law.

Talking about women's entry into the labour market in terms of the taxpayer's ability to pay was exactly the perspective taken by the Carter Commission, which recommended that a tax credit for child care be introduced. According to the Commission, child care expenses were part of the non-discretionary expenses when both parents were working which reduced the ability of a couple to pay. The Commission did not recommend measures for the state to invest in a national child care programme, or frame the analysis in terms of equality of opportunity. Child care expenses were always considered by the

Commission from an “ability to pay” perspective, under the title of “Allowances for Working Mothers”.

The primary reason for recommending the credits for working mothers was mostly an argument based on the normative or technical provisions of income tax, as described by the Commission:

Though the primary reason for recommending credits for working mothers is to reflect a changed ability to pay of the family, the credits would encourage female participation in the labour force.⁵¹⁶

Therefore, the main objective of the Commission was not to encourage female participation in the labour force, nor the promotion of equality. These were merely considered incidental to finding a solution to a problem in the normative aspect of the tax act. It considered the effect of a new social phenomenon on the ability to pay. The conclusions of the Commission concerning child care expenses were a good example of this:

When wives work, some additional family housekeeping expenses may result, but it is unlikely that a significant portion of such added expenses is non-discretionary for a family with no children. However, for a family with children, additional non-discretionary expenses clearly arise when both parents work.

As with other allowances which are not built into the rate schedule, it is possible to make arbitrary allowances which adjust tax payments so as to reflect a different ability to pay. The additional expenses associated with the care of children, when both husband and wife work, are highly variable. We recommend allowances that attempt to reflect these expenses. Because they are greatest when children are below school

⁵¹⁶ *Ibid.* at 194.

age, the allowance should take into account the age of the children in the family.

It is desirable to focus the impact of these allowances on lower income taxpayers whose relative ability to pay is most heavily affected by non-discretionary expenses, and we recommend that these allowances be made as tax credits. Specifically, our recommendations are as follows:

1. A tax credit of \$80 should be allowed to any family unit containing one or more children receiving family allowances in which both husband and wife were engaged in employment or in carrying on a business for more than 120 days a year.

2. An additional tax credit of \$120 should be allowed to such a family unit if it contained a child under the age of seven.⁵¹⁷

The Commission recommended a tax credit, instead of a deduction, because a deduction would have been less beneficial to lower-income families, whose ability to pay was affected the most when there was an increase in their non-discretionary expenses. Therefore, during this period, women were present in the discourse because they created a new reality in terms of the normative provisions of the law.

In terms of the responsibility mix, the use of STEs for redistribution constituted disinvestment by the state, that chose not to provide a service but to offer tax breaks for the acquisition of services through the market. In this period, STEs were introduced like the CCED, the child tax credit, and the refundable child tax credit. However, when acquiring services from the market was impossible, the family was called upon to take over. So, women were not only creating a technical tax problem, they implicitly remained the ones responsible for unpaid work and child care. Women entering the labour market

⁵¹⁷ *Ibid.* at 194

created a tax problem because they used to be responsible for caring for children, and the fact that they now worked implied that services were to be bought in replacement.

In 1969, the Liberal Finance Minister Benson introduced a deduction instead of the recommended tax credit for child care. The use of tax law in general, (as a tax credit or as a deduction) rather than a direct subsidy for the creation of public child care, clearly demonstrated a willingness by the government to remove itself from this sphere of public provision, in favour of the market.

This disinvestment of the state in favour of the market was still very present, years later, in a response to an argument by the opposition that it would be more advantageous to proceed by way of direct subsidy. He then stated that such a measure would be “questionable” for the following reasons:

The hon. gentleman seems to be suggesting that instead of tax deductions we should make a transfer payment to individuals from the public treasury. I think there could be some debate about the wisdom of doing this. One thing is clear. Very likely the apparatus at government level for operating the transfer system and deciding who was to get payments and who was not, would be more expensive than the operation of the present tax system.⁵¹⁸

The state was willing to provide some assistance for the purchase of child care services from the market, but, was not ready to provide any greater involvement. There was no serious talk of a child care programme during that period. Therefore, though the state recognized it should be implicated in child care expenses, particularly when the Finance

⁵¹⁸ *House of Commons Debates*, 30th Parl, 2nd Sess, vol 3 (31 January 1977) at 2569 (Hon. Donald S. Macdonald, Minister of Finance).

Minister admitted that caring for children was also a social responsibility, the market was still heavily relied upon.⁵¹⁹

The privatization of child care had consequences for women as it subsidized any child care expenses.⁵²⁰ If daycare services were not made available by the state, a parent either had to buy them from the market, or provide them themselves. As this responsibility tended to fall more on women, access to the labour market would have been affected by inadequate fiscal measures.

The tax system assumed that everyone had access to the deduction and that everyone had the same opportunity to buy child care services from the market. Therefore, as explained in Chapter 1, low-income taxpayers tended not to benefit from tax deductions as much as higher-income families. In 1972, the total of the CCED deducted by women was \$9,332,000, but only \$8,179,000 was deducted by women who had a taxable return (which meant they paid income tax).

The following table illustrates how lower-income women were the most disadvantaged by the CCED. A total of \$8,058,000 under the CCED was claimed in income tax returns filed by working mothers earning under \$2,800 in 1972. However, the deduction was \$3,725,000 for working mothers who had a taxable return, meaning that the difference between \$8,058,000 and \$3,725,000 could simply not be used by certain taxpayers because they had no tax payable. This discrepancy did not exist in the last income bracket

⁵¹⁹ Canada, Department of Finance, *Tax Reform Proposals*, *supra* note 443.

⁵²⁰ This criticism was made by Ms. MacInnis: *House of Commons Debates*, 28th Parl, 3rd Sess, vol 7 (1 November 1971) at 9229-9230 (Ms. Grace MacInnis). Young, *supra* note 146 at 563.

in Table 5 (working mothers earning more than \$25,000) as they benefited from the \$191,000 claimed through the CCED.

Table 5- Returns With Child Care Expenses (1972 taxation year) Claimed by Working Mothers ⁵²¹				
Income Class	Allowable Deduction Claimed by Working Mothers (All Taxable Returns – money figures in thousands of dollars)		Allowable Deduction Claimed by Working Mothers (All Returns – money figures in thousands of dollars)	
	Number of Children Claimed	\$	Number of Children Claimed	\$
Under \$2,800	21,048	3,725	45,876	8,058
\$2,800 to 3,000	4,793	1,007	5,603	1,260
\$3,000 to 4,000	32,321	7,868	34,506	8,457
\$4,000 to 5,000	40,232	11,319	41,787	11,666
\$5,000 to 6,000	29,010	9,368	29,221	9,435
\$6,000 to 7,000	24,323	7,315	24,349	7,324
\$7,000 to 8,000	18,584	6,149	18,598	6,152
\$8,000 to 9,000	12,977	4,240	12,989	4,243
\$9,000 to 10,000	7,873	2,600	7,884	2,603
\$10,000 to 11,000	2,896	1,031	2,901	1,033
\$11,000 to 12,000	2,014	808	2,021	811
\$12,000 to 15,000	3,545	1,234	3,547	1,235
\$15,000 to 20,000	1,563	620	1,563	620
\$20,000 to 25,000	606	258	606	258
\$25,000 and over	481	191	481	191

Lower-income mothers were less likely to have access to the CCED and they were the ones who needed it the most. Women in 1976, constituted 14.8% of people with a low income after tax (as opposed to 11.1% for men).⁵²² Among the low-income taxpayers in

⁵²¹ Figures obtained from the Canada Revenue Agency (Table 17) for the years 1972. We requested these statistics through access to information.

⁵²² Williams, *supra* note 109 at 20 (Table 12).

1976, 53.7% were female lone-parents.⁵²³ Therefore, their capacity to buy child care services could have been compromised. With fewer economic resources, the quality of the services they were able to buy would also have been affected.

The debate was therefore not in terms of providing welfare benefits to women to encourage their integration into the labour market. Working mothers were perceived as creating a problem within the technical framework of the tax law. They affected the family's ability to pay, and the discourse cared little about their equality of opportunity. It was focused on tax theory and the ability to pay, which removed the whole issue of redistribution from the discourse, and dwelt on the proportionality of the share of income tax payable in relation to earned income. Thus, if a taxpayer had no tax liability, the technical problem was solved, and it was unimportant if a taxpayer did not benefit from the CCED. In terms of welfare benefits, the transfer was not targeted and did not benefit those who needed it most.

Thus, the orientation of the discourse in terms of the normative framework of the law and ability to pay put women in a position of vulnerability. The discourse was responding to a problem of discretionary spending by the family, caused by the large scale entry of women into the labour market. In this context, women were well represented in the tax discourse, but not from a welfare perspective.

⁵²³ *Ibid.* at 21 (Table 13).

4.2 Stratification: When Care Is Only Valued If It Causes An Expense

During the Keynesian welfare state period, care and unpaid work preoccupied the discourse. Even though these issues were discussed, they were not perceived as valued activities. They belonged in the private sphere and were not in the domain of state intervention. For the purpose of tax expenditures, care was recognized, but not particularly to value the activity itself, rather to recognize that the ability of taxpayers to pay would be reduced if they were caring for dependents.

At the time there was the introduction of different STEs in the tax law, and the conversation was therefore concerned with the normative function of the ITA. It was mostly concerned with the reduced ability to pay taxes when a family was responsible for a dependent individual. These expenses were conceived of in terms of the normative part of the ITA, and the mechanism chosen to supply the benefits were deductions (or exemptions), and not tax credits.

None of the deductions, or exemptions, were aimed at recognizing care in the home. In fact, the deductions relating to dependents (i.e. all of the deductions that existed during this period except for the CCED) were in response to the loss of the ability to pay income tax. The conversation existed mostly in economic terms, and not in terms of compensating for time, energy, or the loss of opportunity for women. Instead, the discourse was focused on the reduced ability of families to pay:

We believe that couples with dependent children have a smaller fraction of their total income available for discretionary use than childless couples. The more children the couple have, the smaller the fraction of income available for discretionary use. The first child is, however, more

expensive than subsequent children because the living accommodation adequate for a childless couple is often unsuitable for children. However, the same clothing and equipment can often be used for the subsequent children.⁵²⁴

The objectives of the deductions, as submitted in the Carter Report, were still to provide fairness and equity, and to consider the ability to pay:

We believe that the primary purpose of the additional allowances for dependents, working wives, educational support, and so forth is to reduce the tax burden on low income families whose ability to pay is most heavily affected by the additional non-discretionary expenses resulting from each of these circumstances. We therefore regard the use of tax credits as a more efficient means of achieving this objective. Accordingly, we have recommended the adoption of tax credits in place of exemptions to reflect the effect of family responsibilities upon ability to pay, and have used the tax revenue gained from this substitution both to increase the effective allowances to low income families and to reduce marginal tax rates below what they would otherwise be.⁵²⁵

However, heavy criticisms started to be heard relating to the narrow conception of the role of STEs. The discourse actually began revisiting the objective of the measures: were they part of the normative system of tax law, or were they similar to welfare benefits? As it was the first suggestion of the introduction of tax expenditures in the tax law, the objective of these measures had to be defined. The discourse was very polarized: they were either seen as a social measure, or they were seen simply as an element of the technical part of the tax law:

Mr. Saltsman: It is easy for my friend on my right to jeer, but let them stand up and tell me on what sense of morality is a measure like this based, a measure designed to assist crippled or disabled children but

⁵²⁴ Canada, Department of Finance, *Tax Reform Proposals*, *supra* note 443 at 20.

⁵²⁵ *Ibid.* at 181-182.

under which the rich are to be compensated twice as much as the poor. What is worse, if you do not earn any taxable income, you will get nothing. If you are very poor, you get nothing at all. What is the moral basis for this measure?

Mr. Woolliams: If you have no taxable income, you do not pay any tax.

Mr. Saltsman: Because you do not pay tax, your crippled child will not get benefits.

Mr. Woolliams: But there are other programs, you know.⁵²⁶

There is a recognition in the discourse that conceptualizing these deductions in terms of the ability to pay may have been a problem. Deductions benefited low-income taxpayers less than higher income taxpayers. Because of this conceptual problem related to tax expenditures, questions emerge in the discourse:

It must be obvious that the cost of looking after a child in a wheelchair bears as heavily on the poor than on the rich. This allowance is really not going to cover totally the cost of supporting a child of that kind, yet if we look at the effect that this has we can see quite clearly that the better off are going to benefit more from the dependent child disability deduction. Someone with an income of \$10,000 a year receives a benefit of \$275; someone fortunate enough to have an income of \$50,000 a year receives a tax benefit of \$563. The higher income receives more than twice as much, and of course it is proportional all the way through.⁵²⁷

The debate about the role of tax expenditures was still not clear at the end of this period. What emerged, however, was a growing discomfort with the social objectives of these measures being integrated into the ITA.

⁵²⁶ *House of Commons Debates*, 30th Parl, 2nd Sess, vol 3 (4 February 1977) at 2754 (Mr. Max Saltsman and Mr. Eldon Woolliams).

⁵²⁷ *House of Commons Debates*, 30th Parl, 2nd Sess, vol 3 (4 February 1977) at 2753-2754 (Mr. Max Saltsman).

There was resistance in the discourse to recognize that STEs were similar to welfare benefits, and that they encouraged and valued different activities, instead of only considering income in policy implementation. This discursive approach influenced how women were represented. It also influenced how unpaid work and care were conceptualized. Discussions around care were not in terms of the valuation of women's work done at home, but rather in terms of the cost involved for a family with a dependent. During this period, the discourse on STEs had difficulty going beyond the normative structure of the ITA. The discourse was therefore very narrow in regarding the purposes of these measures. This created a conceptual impossibility for the discourse to evolve beyond and treat tax expenditures as being equivalent to social welfare measures. Thus, child care was the responsibility of mothers, but, because of the approach taken by the discourse on tax expenditures, it was simply impossible to encourage this activity. It belonged in the private sphere.

Although care and unpaid work were not valued activities in the discourse, they were present for different purposes. Though not the principal objective of the CCED, it was recognized at its introduction that child care was often a reality that was the responsibility of mothers, and that the cost may have constituted a barrier to the labour market. It can be seen in the fiscal policy documents that the measure was designed expressly for women to promote their entry into the labour force.⁵²⁸ In this context, it is understandable that the objectives of the CCED were mixed. From its introduction and up until 1984, the CCED

⁵²⁸ Canada, Department of Finance, *Tax Reform Proposals*, *supra* note 443.

could be deducted by working mothers.⁵²⁹ The Canadian government's 1976 budget mentioned the tax policy objective:

The child care allowance was introduced as part of the tax reform program in 1972 to recognize increasing costs of child care, the hardships facing many one-parent families, and the evident desire of many women to re-enter the labour force.⁵³⁰

At its introduction, the deduction was only available if the two parents were working.⁵³¹

The deduction therefore did not recognize the importance of unpaid work and child care. Other programmes existed during that period to subsidize families with children, such as family allowance and the tax credit, and the refundable tax credit for children. The CCED recognized institutional care and the expenses related to it, but not the other mechanisms that parents used for child care, such as having a parent or grandparent at home taking care of the child:

The only hope I see can be found in clause 63 in respect of child care deductions. Perhaps this can be construed in such a way that a woman with a child in a common-law union could in some way charge a baby sitting fee. If a figure could be set, perhaps an exemption would be allowed; but I am not sure the law is that generous. Perhaps a woman in this situation should set up a day nursery in the back yard to look after her own children and other children in the neighbourhood. She might be better off doing this than she is now under the present tax laws. Apart

⁵²⁹ Budget Speech delivered by the Hon. E.J. Benson, Minister of Finance and Member of Parliament for Kingston and the Islands in the House of Commons (June 18, 1971) at 6; *House of Commons Debates*, 28th Parl, 3rd Sess, vol 7 (23 June 1971) at 7302 (Mr. Duncan Gordon Blair).

⁵³⁰ Canada, Department of Finance, *Budget Papers 1976* (25 May 1976) at 14, Supplementary Information. That year, the limit for the deduction of the child care expenses was doubled (\$1,000 per child up to a maximum of \$4,000 per family).

⁵³¹ But at the time other tax and non tax measures such as the family alimony were available to all mothers.

from a very technical approach such as I have taken, I do not think any help is offered these people.⁵³²

The fact that the benefit was aimed at women, and that they received it, contributed to women's economic independence. However, the benefits in relation to care that were aimed at women also carried the assumption that they were responsible for care and, therefore, contributed to the reinforcement of the gender distribution of unpaid work within the family.⁵³³ The CCED debate concerning care and unpaid work was not pushed further than seeing it as an obstacle to employment, and not as a valued activity that should be encouraged or subsidized. In terms of stratification, care was not valued unless a mother entered the labour market and was not performing these tasks herself.

Social Rights: The Tax Expenditures Discourse Used to Maintain Women in the Home

The social rights criteria include both the capacity in the welfare state for the decommodification of workers - the degree to which individuals can maintain a socially acceptable standard of living outside the market – and the capacity to form and maintain an autonomous household – access to the labour market and the capacity for independence from the family.⁵³⁴ As many women were not “commodified”, or did not have access to the labour market during the Keynesian period, the decommodification criterion was less present in the discourse and certainly not a priority. Women entered the labour market in significant numbers and this was the main preoccupation of the

⁵³² *House of Commons Debates*, 28th Parl, 3rd Sess, vol 9 (25 October 1971) at 8995 (Mr. Robert McCleave).

⁵³³ Kershaw, *supra* note 308 at 2.

⁵³⁴ Esping-Andersen, *supra* note 31 at 54.

discourse during the Keynesian period. The discourse around the decommodification of female workers was very marginal, if not completely absent. The focus was on the integration of women into the labour market.

What is seen during this period influenced by social democracy was that women were present in the discourse. They were present in terms of their attachment to the labour market in particular, but also, in terms of their access to autonomy. As women were still conceived of in their traditional role as the housewife, the obvious possibility of an inequitable distribution of power within the family could not be avoided in the discourse. Thus, many of the benefits would be paid directly to the woman. It was also a way of recognizing her responsibility for the care of the children.

4.3.1. Decommodification

Measures that are closely tied to participation in the labour market will bring very little in terms of decommodification. This is the case with the CCED, which was created to compensate for increased non-discretionary expenses when mothers worked and, incidentally, to lower the disincentives for women to participate in the labour market. At its introduction, there was very little focus on its capacity for decommodification. The exemptions for family dependents could have helped decommodify workers as they offered an amount of money for dependents in the home. This could be seen as income replacement, but the amount was so minimal that it did not fulfill that objective. Moreover, if the taxpayer caring for those dependents had no income, he (or she) could not benefit from the exemption, thus, helping little with decommodification. The husband could benefit from it, but then, the person responsible for the caring activity would not

have been rewarded for her work, nor for the loss of opportunity and salary. As it turned out, this was in fact what mainly happened, as more men claimed the Wholly Dependent Children Exemption and the other dependents exemption:

<u>Table 6 - Amounts Claimed under the Wholly Dependent Children Exemption and the Other Dependents Exemption, By Sex, for the 1972 Taxation Year (All money figures in thousands of dollars)⁵³⁵</u>				
	Males		Females	
	Taxable Returns	All Returns	Taxable Returns	All Returns
	\$	\$	\$	\$
Wholly Dependent Children	2,018,813	2,261,841	98,672	136,504
Other Dependents Exemption	87,711	91,510	23,647	24,839

As detailed in Table 6, the exemptions benefited men more than women in 1972, although women were, according to the discourse, mostly responsible for care work in the home.

The Carter Report favoured the use of tax credits to help the poorest groups, and thus, ensure that the measures were aimed at groups in need. The Carter report did not conceive of these measures as being equivalent to social programmes. They were perceived as a solution to equity problems in the calculation of income. For the Commission, expenses relating to the care of dependents and child care diminished the

⁵³⁵ Table 4 of Revenue Canada statistics for 1972.

taxpayers' ability to pay. However, the legislature adopted a deduction mechanism for each of these measures, which was criticized for being economically insufficient and not well-targeted. The use of exemptions, both for dependent relatives and for child care expenses, had the upside-down effect of benefiting higher-income families more, and the poorest less, or not at all. Many of the reasons why the child care expenses deduction, and the exemptions, benefited the poorest less are expressed in the following passage of the House of Commons Debates:

Apart from that, it seems to me the principal criticism I have to make with this provision is the standard type of criticism we make with respect to most tax concessions. The proposal is that the taxpayer should get a tax concession in terms of an exemption amounting to a maximum of \$500 a child. There is a limit on this. No matter how many children a mother may have the amount cannot be more than \$2,000. Then, there is a further limit. A mother cannot claim by way of expenditure on child care an amount greater than two-thirds of her earned income. It is the old story. A working mother with a low income may find that this does not help her much. There is not much point in my saying that a working mother with a high income would probably be better off because a mother with a high income would probably not be out at work.

What is to be granted to these working women, I might point out, is not \$500 in cash; it is not \$500 off their income tax or \$500 toward the cost of child care. It is simply an exemption of that amount, and by the time one applies a marginal rate of 20 per cent, say, it does not mean as much as it might otherwise have meant. It seems to me this is another case where the tax credit principle would have been far more appropriate. I do not understand why the government continues to resist this tax credit concept as it has done in all cases as far as earned income is concerned.⁵³⁶

The CCED, being connected to the pursuit of an income generating activity, was related to the objective of compensating for increased non-discretionary expenses when mothers

⁵³⁶ *House of Commons Debates*, 28th Sess, vol 9 (1 November 1971) at 9208 (Mr. Stanley Knowles).

worked. But this condition limited the positive impact of the deduction on decommodification. It withdrew help when mothers were most vulnerable, such as, during maternity leave, when looking for employment, and during study.

The income generating activity condition became a problem when an employed mother took maternity leave.⁵³⁷ If she had another child, who was either cared for by a babysitter at home or in daycare, these child care costs may not have qualified for the deduction as the mother did not work. Case law interpreted this requirement in relation to maternity leave in contradictory ways, sometimes accepting the deduction, while rejecting it on other occasions.⁵³⁸ It was difficult, if not impossible, to interrupt daycare services for the period of maternity leave. Dismissing the nanny or withdrawing a child from a daycare centre presented a significant risk for the mother in terms of not being able to find another babysitter, or daycare space, at the end of her maternity leave.

Another group affected by tying the deduction to an income generating activity were taxpayers with children who were looking to find employment. As Woodman concluded, “tying childcare so closely to jobs and income leaves a lot of women out in the cold”.⁵³⁹

However, the group that was often mentioned in the discourse were students. A mother who was a student could not benefit from the deduction as it had to be tied to an income

⁵³⁷ Faye L. Woodman, “Women and Children in the Economy: Reflections From the Income Tax System” (1998) 47 U.N.B.L.J. 311 at 319.

⁵³⁸ *D’Amours v Canada*, 90 DTC 1824 (TCC); *McCluskie v R.*, 94 DTC 1735 (TCC); *McLelan v Canada*, 95 DTC 856 (TCC).

⁵³⁹ Woodman, *supra* note 537 at 319.

generating activity. That is what the Parliamentary Secretary to the Minister of Finance explained in this excerpt:

The questions raised by the hon. member for Vancouver-Kingsway in her last presentation regard, first, the university student. The answer is yes, the university student can claim this exemption provided he can say that the child care payments were made for purposes of earning income and not simply for purposes of freeing the parent to attend university.

The exemption during the year is related to the earning of income and I would think that in many cases the working university student, one who works during the off season, would find that he or she could in fact claim at least a good part of this \$500 exemption during the period that he or she is earning income. The allowance is not there specifically to allow the university student or any other student to claim the exemption so that he can attend the institution of his choice. It is related to the earning of income.⁵⁴⁰

That measure was modified in 1976⁵⁴¹ to “allow such deductions to be claimed against income from research grants and adult training allowances”.⁵⁴²

It was therefore too early in the discourse to even conceive of the decommodification of women as an idea because it was so focused on access to the labour market, and whether this was a desirable objective. The priority of focus on the labour market will be described in the next section.

⁵⁴⁰ *House of Commons Debates*, 28th Parl, 3rd Sess, vol 9 (1 November 1971) at 9227 (The Hon. Patrick Morgan Mahoney, Parliamentary Secretary to the Minister of Finance).

⁵⁴¹ 1976-77, c. 4 subs. 21(1).

⁵⁴² Canada, Department of Finance, *Budget Papers 1976* (25 May 1976) at 30.

4.3.2 *Capacity to Form And Maintain An Autonomous Household*

During the Keynesian welfare state period, women were seen as having two principal roles in the legislative discourse around STEs. They were (1) responsible for children and unpaid work at home, and therefore, seen as being dependents, and (2) they should work if they were in a vulnerable situation.

Mothers were responsible for the care of the children in the discourse, and this was clearly apparent from the ITA itself. For example, it contained a presumption that the children were in the custody of the mother, in a common-law couple:

63(4) For the purposes of this section, it shall be assumed that a child of a woman and a man who were living together without being married to each other was ordinarily in the custody of the woman and not in the custody of the man.⁵⁴³

There was some kind of recognition for caring and the unpaid work performed by women in the tax law. Women benefited from the CCED, family allowance was paid directly to mothers, and so was the refundable child tax credit.

But women were considered dependent on their spouses and on the family:

In any event, all of the income limitations of dependents operate to eliminate the allowance entirely when income reaches \$1,600. Because the old age pension supplement is now included in a dependent's income, even though it is not taxable, a recipient on maximum supplement will not qualify as a dependent. Even though this money is not taxable but is deemed to be put in a special category, a dependent within the category prescribed by section 109 – *who is not a wife*, that is – will not qualify as a dependent because the old age supplement will take him beyond the allowable amount. I think the parliamentary

⁵⁴³ 1970-71-72, c. 63.

secretary should furnish an answer as to why provision was made.⁵⁴⁴
[My emphasis]

In this quotation, it is the wife who was perceived as the possible dependent within the couple and not the husband. This was a characterization of the situation of women that was very present in the discourse during the Keynesian welfare state. However, women without an income (and that was mostly how they were depicted in the discourse) did not benefit from the exemptions for dependents. Specifically, these measures did not promote autonomy for women, who were largely responsible for care, because the amounts for dependents would benefit their husbands. Similarly, the calculation of exemptions based on the dependents' income may have put the carer in a precarious situation, since the exemptions could be lost if the dependents' income was too high. Women were responsible for care, this affected their possibility for income generation and caused the husband to benefit from the exemptions, as already highlighted. Therefore, women were part of the family unit which should support the mother.

Women were mostly positioned as dependents in the STEs discourse and were encouraged to remain in that situation. However, the most vulnerable of them were encouraged to work. The main provision of the ITA concerning access to the labour market was the CCED, which tried, as its secondary policy objective, to limit the economic barriers to the labour market, so as to increase the capacity to form and maintain an autonomous household. Already, in terms of access to the labour market, the mechanism used to provide the deduction made it ineffective in achieving this objective.

⁵⁴⁴ *House of Commons Debates*, 28th Parl, 3rd Sess, vol 9 (25 October 1971) at 9009 (Hon. Marcel Lambert).

When considering entering or returning to the labour market, women, who were often the secondary earner in the family, and who had children, may have been discouraged by high child care costs. The parents entitled to claim the CCED received an economic benefit through tax savings. Unfortunately, the benefit did not result in an inflow of income, and if it did, it occurred at the end of the year, long after the expense was incurred. The parent received no immediate help to meet this important expense. For low-income parents, the lack of immediate liquidity for these expenses was, undoubtedly, an important barrier to seeking employment.

During this period, the discourse relating to the CCED was centred on the possibility for women to access the labour market.⁵⁴⁵ The tax policy discourse recognized that women were interested in this possibility, and this excerpt from the 1976 Budget from the Government of Canada mentions that specific tax policy objective:

The child care allowance was introduced as part of the tax reform program in 1972 to recognize increasing costs of child care, the hardships facing many one-parent families, and the evident desire of many women to re-enter the labour force.⁵⁴⁶

There was recognition in the discourse of this interest on the part of women and it was perceived as a reality:

⁵⁴⁵ *House of Commons Debates*, 28th Parl, 3rd Sess, vol 4 (9 March 1971) at 4088 (Mr. Andrew Brewin). Budget Speech delivered by the Honourable E.J. Benson, Minister of Finance and Member of Parliament for Kingston and the Islands in the House of Commons, June 18, 1971 at 6. *House of Commons Debates*, 28th Parl, 3rd session, vol 7 (23 June 1971) at 7302 (Mr. Duncan Gordon Blair).

⁵⁴⁶ Canada, Department of Finance, *Budget Papers 1976* (25 May 1976) at 14, Supplementary Information. That year, the limit for the deduction of child care expenses was doubled (\$1,000 per child up to a maximum of \$4,000 per family).

In that context we have taken a very significant and meaningful step forward in terms of child care allowance and recognition of the fact of the working mother in our society.⁵⁴⁷

But though this recognition existed, it was not accepted by everyone. The resistance to that discourse was important during the whole period. As explained earlier, the CCED was limited to a certain monetary threshold. This limitation to the deduction appeared to be the result of this resistance to mothers working. Evidence for this is clear in the reaction of the Standing Committee on Finance to the government's White Paper on Tax Reform in their 18th report:

The first question to consider is its purpose – that is, is it meant to give relief only to the needy, where the wife works from necessity or where there is only one parent, or is it meant to make it easier for women at all income levels to work outside the home, regardless of whether this is from choice or from necessity? If the latter, there would be justification for extending the scope of the relief to cover all expenses incurred. The White Paper states the measure is considered ‘desirable on social as well as economic grounds’. The Committee has had difficulty in determining which of these grounds should be the principle for judging the adequacy of the proposal.

There is of course, no question of the desirability of giving the relief to the needy. The question of the woman who works from choice is different, and there is – or at least has been in the past – a feeling that she should not be encouraged to leave her children. One answer to this is that it is highly unlikely that a tax advantage would influence a woman who did not wish to leave her children to do so, or that its absence would deter one who did wish to leave them from doing so. While recognizing the principle that these are costs of earning income, the Committee at this time feels that the greater emphasis should be on the needy.⁵⁴⁸

⁵⁴⁷ *House of Commons Debates*, 28th Parl, 3rd Sess, vol 9 (1 November 1971) at 9230 (Hon. Patrick Mahoney, Parliamentary Secretary to the Minister of Finance).

⁵⁴⁸ Government of Canada, *18th Report of the Standing Committee on Finance, Commerce and Economic Questions* (Ottawa, Queen's Press, 1970) at par. 2.7 à 2.9.

During the House of Commons debates, even those in favour of the measure were not very supportive in regard to women's work. There was certainly encouragement for single-mothers or poor mothers to work. But they were encouraged to do so if they had no other choice but to work. For other mothers, the resistance to the idea was clear in conversations like this one:

Day care centres are of supreme importance to women who are in the position of a single parent, who do not wish themselves and their families to depend on welfare, and who, if they are to take employment, must provide for the care of their children. Day care centres are important to large numbers of other women who, *whether or not we approve of it*, are involved and will continue to be involved in the labour force, and to many women who are not in paid employment, such as housewives who, for one reason or another, need day care services for their children.⁵⁴⁹ [My emphasis]

In fact, the tax policy discourse, especially with regard to the deduction for child care expenses, accounted for the social changes bringing women into the labour market, but remained ambiguous over the desire to encourage this behaviour. This provision sought women's autonomy, but the discourse did not encourage the autonomy of all women. It encouraged the autonomy of subgroups identified as being vulnerable, such as the single mother or women who absolutely had to work to support a family (and not just to increase the family's standard of living, which would not have been considered acceptable). This was reflected in the encouragement for poor mothers to work:

To begin with, the government has restricted the deduction for child-care expenses to \$500 per child, and a maximum of \$2,000 per family, or two-thirds of family income, whichever is the lesser. To me, it is

⁵⁴⁹ House of Commons Debates, 28th Parl, 3rd Sess, vol 4 (9 March 1971) at 4088 (Mr. Andrew Brewin); See also, *House of Commons Debates*, 28th Parl, 3rd Sess, vol 8 (7 October 1971) at 8522 (Mr. Sylvester Perry Ryan).

incomprehensible to find a maximum set in this respect. This is surely one area in which payments are made solely for the purpose of earning income. Surely, the group which most needs encouragement and help is the group which includes working mothers, particularly those who are obliged to go out to work to help maintain large families.⁵⁵⁰

There are numerous examples in the discourse of this kind of resistance. Here is a further example:

When both parents work they have the problem of providing care for their children. It is logical that some arrangement should be made for the children quite apart from the convenience to the parents. In this connection I am very interested in the welfare of the children. *If a single parent should be involved, or if both parents are involved because they must work for economic reasons, I think the child has a claim on society for a proper upbringing.*⁵⁵¹ [my emphasis]

The other target group were the lone-mothers. They were certainly another reality emerging at the end of the 1970s. There was an urgency in the discourse to intervene because lone-mothers were considered to be in a position of vulnerability. Contrary to the mothers in a traditional family, they needed to work and be responsible for the well-being of their families.

There were very strong exchanges between Members of Parliament during that period and the question of women working, particularly mothers, was a very emotional issue. For example, there was a MP who read the letter below in the House of Commons. Without claiming to be in agreement with it, he still wanted to share a perspective that he considered as being widespread. He read as follows:

⁵⁵⁰ *House of Commons Debates*, 28th Parl, 3rd Sess, vol 8 (7 October 1971) at 8522 (Mr. Sylvester Perry Ryan).

⁵⁵¹ *House of Commons Debates*, 28th Parl, 3rd Sess, vol 9 (1 November 1971) at 9226 (Mr. Thomson).

Mr. Lambert (Edmonton West): There are a number of cases where the wife does have to work to help maintain the home, but there are far more cases where couples have bought a house at \$18,000 or \$20,000 more than they would if she were not working, or bought a second car or wanted to do extra things. In such cases, the spouse works in order to justify a higher standard of living, not from economic necessity. There is no criticism of that; it is a social phenomenon of today. Husbands and wives have decided to work in part in order to raise their standard of living, not to subsist.⁵⁵²

This same MP later stated:

I am sure the hon. member for Nickel Belt would say that above a certain income there should be absolutely no allowance for child care. The writer makes this point:

Daycare expenses should be available only for those who are (a) single parents with pre-schoolers, or (b) parents whose combined incomes are below a certain level.

The writer feels that more women should stay at home and look after the children, because as a teacher he sees children who have been brought up by day care centres, not through necessity as in the case of the single parent of whom there are a great number. He feels that more children should be looked after at home by the mother, because as a teacher he sees what he considers to be almost social monsters as a result of lack of parental care. They are pushed out in the morning or dropped off at school or picked up by the bus, they lunch at school, drop in on a neighbour after school, and return home about the same time as the parents. That is the extent of their upbringing.

I want to put it on record to indicate that not everyone is in favour of, shall we say, this unrestricted subsidy to child care centres, for that is what it is. Personally, I feel that there is a need for child care centres to serve, particularly, single parents. Indeed, I would much rather the state provided that service for those people. It could be provided through provincial governments or municipal administration and for those whose incomes fall below a certain level there would be no charge. But beyond that fees ought to be charged and such centres ought to be

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House of Commons Debates, 30th Parl, 2nd Sess, vol 3 (3 February 1977) at 2685 (Hon. Marcel Lambert).

considered as private schools and the double family income ought to bear the brunt of that charge. It ought not to qualify for the allowance.⁵⁵³

In terms of STEs, the discursive approach was different. This MP disagreed with the tax policy behind the CCED, and treated the deduction as a “subsidy” and a service that should be provided by the state. It was harder to contest a provision in the ITA when it was justified by fairness – the expenses raised the non-discretionary expenses of the family, which should have been attended to in the technical structure of the law.

A Liberal MP made an outburst in response to this letter, and to the suggestion that women only worked to mostly achieve a higher standard of living and not out of necessity:

Mr. John Rodriguez (Nickel Belt): Mr. Speaker, it is sometimes very revealing and constructive to have debates such as we have had on Bill C-22. Members have revealed their true thoughts about particular situations or issues. One such situation prevented itself last Thursday. The hon. Member for Edmonton West (Mr. Lambert), in the debate on childcare deductions, stated that the working spouse is more of a social phenomenon than an economic necessity. He cited a letter which stated that women should stay at home and look after their children, and that children who go through day care centres are almost social monsters. He seemed critical of families where both husbands and wives work and hence benefit from child care deductions, whereas families where the wives do not work receive no benefit. The hon. Member went further, calling for joint income tax returns to be filed by a family group. I received a letter from a constituent, a woman. She made some points which the hon. Member for Edmonton failed to take into consideration.⁵⁵⁴

⁵⁵³ *House of Commons Debates*, 30th Parl, 2nd Sess, vol 3 (3 February 1977) at 2685-2686 (Hon. Marcel Lambert).

⁵⁵⁴ *House of Commons Debates*, 30th Parl, 2nd Sess, vol 3 (7 February 1977) at 2790 (Mr. John Rodriguez).

The acceptance of women working was far from complete. One concern that was voiced was the fate of the children of working mothers. This confirmed that there was still an important assumption that the responsibility for children remained in the hands of the mother. The discursive approach criticizing this provision was to characterize the CCED as being the same in nature as a welfare benefit. The tax expenditures theory was therefore used to maintain women in a situation of dependency, and to reinforce their traditional role instead of the opposite.

In conclusion, during the Keynesian welfare state period, the CCED played the role of compensating for the increase in non-discretionary expenses for the care of children when women worked. It was also justified as being a measure contributing to reducing barriers related to the integration of mothers into the labour market. The normative criteria of tax theory were used to maintain and justify the deduction, while those who opposed the provisions thought child care services should not be “subsidized”, or that, services should be provided for the very poor. There was significant evidence of reluctance in the discourse towards mothers “choosing” to work. Only poor mothers, who had to work out of necessity, deserved the economic support through tax law, because the priority for women was viewed as caring for their children. Women working was considered a matter of choice, and everything outside the realm of paid work was considered private.

4.4 Conclusion

During the period influenced by social democracy, the tax policy discourse spoke a lot about women. It discussed their large scale entry into the labour market, their role as a carer, as a worker, as a wife. Women were significant actors in policymaking.

Women were assigned a traditional role during the Keynesian period. They belonged in the home, caring for children and performing unpaid work, while their husbands worked and supported the family. Though the discourse considered them from the point of view of their traditional role, it was a role that was not necessarily valued. Some benefits seemed to recognize these activities through payments made directly to women, although the exemptions for dependent children, and for other dependents, mostly benefited men, even though, in the discourse, care was conceived of as being the responsibility of women. Women were mostly depicted as dependents in the STEs discourse. Therefore, there was little discussion of women as individuals, benefiting from these tax advantages. Again, the discourse acknowledged that women were covered by the tax provisions if they were in a vulnerable position.

Some women were encouraged to work through measures such as the CCED, but usually it was aimed at those in a vulnerable situation. The discourse did not encourage women to work if they had a choice, but to work in order to support their family or if they were single mothers. The discourse did not argue in favour of equality when talking about access to employment. The traditional role of a woman was still very much anchored in the discourse, where she was positioned as caring for the children and working in the home. Women's traditional responsibilities were perceived as something natural and normal, the law did not reward unpaid work and caring for children. Care work was totally regarded as being in the private sphere, and it was taken for granted that women would perform it.

CHAPTER 5 - THE NEOLIBERAL WELFARE STATE: THE INVISIBLE HAND ON WOMEN'S IDENTITIES

The neoliberal welfare state is often associated with a period starting in 1975 and continuing throughout the 1980s.⁵⁵⁵ This period introduced greater neutrality into the tax policy discourse, meaning that everyone had to be treated in exactly the same manner.⁵⁵⁶ During this period, women began to be rendered invisible by a neutral discursive approach. This period was also characterized by an increased reliance on the market and the rise of the citizen responsible for his own fate. Government spending decreased and social welfare programmes were seen as encouraging dependency.⁵⁵⁷ Individual accountability started with an attachment to the labour market. For example, entry into the labour force was an eligibility criterion for many social programmes.⁵⁵⁸ The choice of working or not working for women belonged only to those who could afford it. Programmes were also more targeted at the fight against poverty.⁵⁵⁹

Many changes occurred concerning tax expenditures during this period. In 1984, the CCED was amended after it was judged to be discriminatory against men by the Human Rights Tribunal.⁵⁶⁰ This change gave rise to the provision that still exists now, where the deduction is only available to the spouse with the lower income. The 1983 budget

⁵⁵⁵ Rose, *supra* note 14 at 34.

⁵⁵⁶ O'Connor, Orloff & Shaver, *supra* note 2 at 54, 61.

⁵⁵⁷ Jenson, *supra* note 43 at 30, 32.

⁵⁵⁸ Simon-Kumar, *supra* note 206 at 446.

⁵⁵⁹ Jenson, *supra* note 43 at 36.

⁵⁶⁰ *Bailey v. M.N.R.*, (1980) 1 C.H.R.R.D./193 [*Bailey*].

documents were quite clear that the differentiation between men and women was to be removed from the ITA:

A further change to the child care expense deduction is proposed in response to a ruling by the Canadian Human Rights Tribunal that the measure discriminates in favour of women. The budget proposes to remove this discrimination and will require the spouse with the lower income to claim the deduction.⁵⁶¹

The deduction was slowly moving towards a more apparent gender-neutrality, even though the legislator suggested the spouse with the lowest income should benefit from the deduction, which they probably expected to be women.

A second important income tax reform took place in 1988.⁵⁶² The most important aspect of which concerned personal income tax, where all personal exemptions were repealed and replaced by tax credits. Only one exemption remained a deduction in the ITA: the CCED, since, within the coming years, this was supposed to be reconsidered and re-examined within the larger context of child care provision.

The year 1992 is another major point in this period. In this year, the Child Tax Benefit was introduced in the ITA, and the existing credits relating to children (the child tax credit and the refundable child tax credit), as well as family allowance, were abolished. The CTB included a monthly amount paid to the mother, a working income supplement

⁵⁶¹ Canada, Department of Finance, *Budget Papers 1983* (April 19, 1983) at 30, Supplementary Information and Notice of Ways and Means of the Budget; See also Canada, Department of Finance, *Budget Speech 1983* (April 19, 1983) at 13 (Hon. Marc Lalonde, Minister of Finance). For more information, see Canada, Department of Finance, *Budget in Brief 1983* (April 19, 1983) at 11.

⁵⁶² Canada, Department of Finance, *White Paper on Tax Reform*, *supra* note 81.

(WIS) of \$500 for low-income working families, and a supplementary amount if the child was disabled. There was also a supplement to the CTB for children under 7 years of age.⁵⁶³

For the purpose of my analysis, I considered the discourse between 1975 and 1995, but focused more on the discourse from 1980 to 1992, which corresponded more closely to the literature on the neoliberal influence.

5.1 State, Market, Family Relationships: The Discourse on STEs Limits the Possibility for Talks of a Different Responsibility Mix

The discourse around the responsibility mix remained the same during the neoliberal welfare state period, as it still favoured monetary payments rather than offering services. But this was also intrinsically related to the use of STEs. STEs only provided for the purchase of services from the market. The market was relied upon to offer services, and tax law was used to help taxpayers purchase these services. The naming of the Ministry of Finance, which was at that time called the Ministry of Finance and Privatization, speaks for itself. There was a strong acceptance that the market should be the principal tool for distributing welfare.

Therefore, discussions that were not centred on the market for welfare provision, and instead focused on the provision of services by the state, happened outside of the realm of the discourse over STEs. Those who criticized the CCED for not providing child care

⁵⁶³ 1992, c. 48, subs. 12(1).

spaces wanted to withdraw the deduction, or amend it and create a national programme for child care. It was hard to discuss the responsibility mix solely in terms of STEs.

There were several attempts to create a national programme but none were successful. As child care and women's employment became a growing concern, the Liberal government under Trudeau created two inquiry commissions: the Royal Commission on Equality in Employment (the Abella Commission⁵⁶⁴), which was created in 1983, and the Task Force on Child Care created in 1984, which led to the Cooke Report⁵⁶⁵ in 1986. This last report recommended that the federal government take charge of a national child care programme.⁵⁶⁶ Before the report was completed, a Conservative government was elected (in 1984) and the report was largely ignored, and then replaced by a report from the Special Committee on Child Care,⁵⁶⁷ created in 1985, which placed tax measures at the forefront of the issue of child care.⁵⁶⁸ The provision of services was not a priority, and reliance on STEs - and therefore on the market - was confirmed during the neoliberal welfare state period.

Not only was there a marked reliance on the market when talking about STEs, but the state also relied more and more on families being responsible for caring for children. The

⁵⁶⁴ Abella, *supra* note 245.

⁵⁶⁵ Canada, Task Force on Child Care, *supra* note 246.

⁵⁶⁶ Bergeron, *supra* note 2 at 117, 118.

⁵⁶⁷ Canada, House of Commons, *Minutes of Proceedings and Evidence of the Special Committee on Child Care, Respecting Order of Reference Dated Thursday, October 9, 1986 on Child Care, Including the Final Report to the House* (Ottawa, Queen's Printer, 1987).

⁵⁶⁸ Bergeron, *supra* note 2 at 117, 118.

following excerpt from a discussion on the CCED in the House of Commons shows this aspect of the discourse:

There are people who need child care facilities, and we know this. There are many single parents and many two-parent families who need double incomes to exist today, and we recognize that. The cost of raising children and the cost of housing is expensive. The inflation rate is between 3.9 and 4.1 per cent, depending on where one lives in the country. Therefore, it is very costly. *The care of youngsters is up to the parents. I am quite willing to help those in need.* [my emphasis]⁵⁶⁹

This excerpt not only shows that the care of children was primarily the responsibility of the family, but also, that the state's responsibility was limited to those who were neglected by the market. The state was willing to help those it considered vulnerable by favouring a policy of privatizing services with increased help for those in need.

Women did not escape this discursive change concerning vulnerability. Some wanted to see a greater range of services from the state to help women. Increasingly, when women were mentioned, it was usually in the context of the fight against poverty. For example, in discussing the use of money transfers, an MP offered the following criticism, invoking women's poverty to support his argument:

I have heard statistics over the last few months which indicate that the gap between the rich and the poor is growing, that the number of people living in poverty is increasing. A great percentage of those who are poor are women. They are often single parents and have to stay home to look after the children. As a result of the loss of the other parent and the loss of income, they end up in poverty. If the Government were concerned about poverty, it would look at the situation in which poor single parents find themselves. The Government would see that it is

⁵⁶⁹ *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 14 (17 August 1988) at 18459 (Hon. Barbara Jane Sparrow).

possible to move people from poverty to a decent standard of living. Many of these women, given training, the opportunity for job experience and social support, could move from below the poverty line to a reasonable standard of living. This has been demonstrated through special training programs which offer the income support, counseling and social support people need to make a success of the training programs.⁵⁷⁰

Even when the responsibility mix was criticized and more services were asked for, the discourse was focused on vulnerability, need, and poverty.

The use of tax expenditures defined the boundaries of the discourse in terms of the responsibility mix. The discourse could not mention service provision, or greater involvement by the state, without the discussion moving outside the realm of the ITA. Though there were talks of a national child care programme at the beginning of this period, they were quickly abandoned. The failure to put in place such a programme, along with the report by the Special Committee on Child Care ultimately encouraging the use of tax expenditures for child care provision, instead of providing such services, also confirms a position of disinvestment by the state in favour of the market. The greatest reliance on STEs, and the confirmation that child care should be subsidized through tax expenditures, was evidence of the willingness of the state to favour the market in matters of welfare provision. The discourse did not encourage this type of intervention unless a person was in a vulnerable situation and could not provide for his/her needs through the market.

⁵⁷⁰ *House of Commons Debates*, 33rd Parl, 2nd Sess, Vol 1 (16 October 1986) at 446 (Mr. Cyril Keeper).

Stratification: The Discourse Focuses on the Normative Structure and Tendency Towards Greater Neutrality

In terms of stratification, the neoliberal period is marked by a different discursive approach to equality. While in the previous period equal opportunity was predominant, in this period it was increasingly replaced by a willingness to remove any differential treatment from the legislation. This apparently greater gender-neutrality was strongly reflected in the discourse. During this period, equality was equated with treating everybody in exactly the same manner.

Due to this requirement the CCED was amended in 1984 in order to remove the gender differentiation it contained. The CCED was available to mothers and to fathers, if they met certain requirements, such as being unmarried or separated, or if the wife was incapable of caring for the children because of physical or mental infirmity, or because of being incarcerated. The amendment to the CCED was a rapid response by Parliament to the decision by the Human Rights Tribunal in *Bailey v. The Minister of National Revenue*, which considered gender differentiation as being discriminatory against men.⁵⁷¹ The decision concerned the case of two men, who were left by their wives and so responsible for their children, but who could not benefit from the CCED as they did not meet the requirements.

The Tribunal considered the analysis in terms of the CCED being a tax expenditure (although these explicit terms were not used in the decision).

⁵⁷¹ *Bailey, supra* note 560.

In considering section 63, we have seen that its purpose is to facilitate the entry of women into the labour force by removing a deterrent to women in this regard, a child care expenditure being an extraordinary personal expense that is a prerequisite to earning income once the decision has been made to work. Thus, the basic policy premise to section 63 is to further equality of opportunity to a group, women, perceived as being in a disadvantageous economic position. However, the provision is extended to men in limited circumstances, and thus although its thrust is directed primarily in aid of women, the objective is not to differentiate adversely simply on the basis of gender. That is, section 63 cannot be looked upon simply as an 'affirmative action' type of approach, because its scope is not limited just to women. The limitations are imposed upon male taxpayers because of the traditional view (undoubtedly, if unfortunately, based upon present fact) that the married female taxpayer generally earns less income than her husband. If the higher income taxpayer (usually the husband at present) could take the deduction, more revenue would be lost to the federal treasury, due to the progressive tax rate. Thus, by directing the deduction in favour of the female taxpayer, section 63 seeks not only to assist women in entering the labour force, but to achieve this without the loss of more tax revenue than is necessary to this limited main purpose.

However, it would appear section 63 could easily be modified such that the deduction could be taken by any person (who otherwise meets the qualifying criteria) but where there are two spouses who are not separated, it would be taken by the spouse with the lower income. [...] Therefore, a deserted spouse supporting a child could also take the deduction. This would remove the present discrimination inherent to section 63 with respect to deserted husbands. In any event, it does not seem necessary, even if the present approach of section 63 (placing limitations upon the male taxpayer in obtaining the deduction) is maintained, to include the present particular limitation upon the deserted husband.⁵⁷²

The Tribunal considered the fact that mothers were the ones who were responsible in most situations for making the economic choice of working or not. However, the decision was not written out in terms of care. The decision balanced the deterrent for women to

⁵⁷² *Ibid.* at 106-107.

enter the labour market and the budgetary implications of the CCED. The decision was limited to the economic and monetary implications of the deduction.

In response to this decision, the legislature proposed amendments to the CCED in the 1983 budget:

A further change to the child care expense deduction is proposed in response to a ruling by the Canadian Human Rights Tribunal that the measure discriminates in favour of women. The budget proposes to remove this discrimination and will require the spouse with the lower income to claim the deduction. In cases where the lower income spouse is infirm, in an institution, or registered as a full-time student in a designated educational institution, the higher-income spouse will be permitted to claim a portion of the deduction.⁵⁷³

Women were no longer seen to possess distinct characteristics or responsibilities. During this period, the taxpayer was gender-neutral and the discourse completely avoided any reference to either gender, or even more so, to any characteristics or activities that were associated with gender.

According to the literature, care and unpaid work was no longer considered in the welfare state discourse. This was however, not totally true for the tax policy discourse. For example, the supplement to the Child Tax Credit was introduced in 1988 and provided an additional \$200 tax credit for children. It benefited children 6 years of age and under, and was reduced by 25% of the cost of care claimed for the child. Therefore, it targeted

⁵⁷³ Canada, Department of Finance, *Budget Papers 1983, Supplementary Information and Notices of Ways and Means Motions on the Budget, Tabled in the House of Commons by the Honourable Marc Lalonde*, (April 19, 1983) at 29.

parents who did not incur child care expenses. The 1988 budget was a recognition of care taking place at home:

To assist families with low and middle incomes, and to recognize the contribution made by the parent who cares for the child at home, a new \$200 supplement in respect of children six years and under will be added to the refundable child tax credit.⁵⁷⁴

Because everyone had to be treated in the same manner under the ITA, the care of children and unpaid work was largely ignored in the discourse. Just like in the preceding period, most credits and tax benefits were discussed in terms of covering the expenses related to children, but not as a recognition of the work done at home. The change in the discourse relating to the CCED was an example of this. At its introduction, the tax policy objectives of the child care expenses deduction were to compensate for increased non-discretionary expenses, and to enable women to participate in the labour market. There was also an admission of the social responsibility of caring for children.

In the neoliberal period, these objectives were modified by the discourse as it increasingly became a work-related expense. The CCED was an expense incurred in order to earn income, just like any other deduction in the normative structure of the ITA.

The change in the discourse happened over the course of the 1988 tax reform, during which personal exemptions (the child care expenses deduction was initially among them) were modified into tax credits. At this moment, the White Paper on the tax reform⁵⁷⁵

⁵⁷⁴ Canada, Department of Finance, *Budget Papers 1988, Securing Economic Renewal* (February 10, 1988) at 9.

⁵⁷⁵ Canada, Department of Finance, *White Paper on Tax Reform*, *supra* note 81.

indicated that the child care expenses deduction would remain a personal exemption, and would not be modified in the same way as other exemptions. The reason given for this difference in treatment was that a working group would in time revise the provisions related to the care of children. This examination however, never took place, and in the months following the reform the discourse changed to introduce the policy objectives of the CCED as being a work-related expense, meaning it was no longer seen as providing appropriate care for children to enable the participation of women in the labour market.⁵⁷⁶

The main objective of the CCED was to cover an expense incurred to earn income:

However, we believe the real nature of this [child care expenses] is an expense. It is a cost incurred in order to enable the person to go out and earn income, and therefore it is properly reflected as an expense deducted in calculating the amount of income. That is the way it has been, and there was no change in -.⁵⁷⁷

The CCED was more than ever being discussed in terms of the normative structure of the ITA, and not in terms of being a subsidy from the government.

This may be what inspired Elizabeth Symes in her challenge to the CCED, and in regarding it as an expense to incur income. This clearly was consistent with the discursive approach of the government at the time. But the fact that the CCED was perceived and talked about in terms of the normative structure did not make the limitation in the ITA discriminatory according to the Supreme Court. Again, with a constitutional challenge to a technical provision, there needed to be evidence that women paid more in

⁵⁷⁶ For example : *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 15 (25 August 1988) at 18858 (Hon. Alfonso Gagliano); *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 15 (25 August 1988) at 18857- 18858 (Hon. Tom Hockin (Minister of State (Finance))).

⁵⁷⁷ *Standing Committee on Finance and Economic Affairs* (August 16, 1988) at 174:25 (Mr. Short).

child care expenses than men, and not that they were more responsible for the upbringing of the children. Because of the normative structure, the debate turned again to monetary disbursement and, as was the case in *Symes*, moved further away from the caring activities themselves.

Even though gender, care, and unpaid work were absent from the discourse, there was some willingness on the part of Parliament to recognize care work done at home. This approach was however not universal, and targeted families with lower incomes. It was therefore not a recognition of the care, because only those who cared and lived in a low-income family were eligible for the supplement. It was rather assistance provided to low-income families in which one parent stayed at home to care for the children. In addition, the credit targeted families where the parents used informal child care services for which they could not get a receipt to qualify for the CCED. In this particular case, the supplement was criticized for being insufficient:

As I have said many times in this House, I think any mother at home struggling to raise children will not feel that \$200 recognizes the value of her work. She would much prefer a more generous child tax credit that is refundable. As well, the \$200 for those parents who use informal baby-sitting arrangements is a big laugh when we think how much it costs per year for baby-sitting arrangements. Even if it is not licensed care, it is still expensive, and \$200 is almost an insult.⁵⁷⁸

However, no one questioned the fact that the Child Tax Benefit was paid to the mother. Nevertheless, there was less emphasis on the importance of sending the cheque to the mother in the discourse than in the previous welfare state period. Unpaid work was not

⁵⁷⁸ *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 15 (25 August 1988) at 18886 (Ms. Margaret Mitchell).

totally absent from the tax policy discourse. The contribution was however symbolic and certainly not universal. Although the discourse considered that care was covered by tax policy, it seemed that the real target was people in need and in poverty.

Social Rights: STEs Are Used More for Targeting and to Provide Means-Tested Benefits

As previously discussed, the literature defines this era as one of individual accountability and responsibility in terms of earning income. Because the individual was now responsible for his own economic well-being, the ideal citizen was the citizen-worker. It was not surprising that social rights were often awarded in relation to participating in the market, and that poverty appeared in the tax policy discourse for that period. Therefore, women's participation in the labour market was now a choice that only belonged to women who could afford not to work.⁵⁷⁹ The poor could not rely on social programmes and so they were encouraged to work. Gender became more and more invisible in the discourse around STEs.

5.3.1 Decommodification

The welfare state under neo-liberalism tended towards more targeted and means-tested measures.⁵⁸⁰ By the late 1970s, and especially in the early 1980s, in a period of high inflation and economic recession, the discourse in favour of universal programmes faded in order to promote the implementation of programmes targeted at people with lower

⁵⁷⁹ Jenson, *supra* note 43 at 36.

⁵⁸⁰ See for example the criticism of this targeting made by Ms. Margaret Mitchell: *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 1 (5 October 1986) at 384. On the targetting of different measures: *House of Commons Debates*, 32nd Parl, 1st Sess, vol 18 (1 December 1982) at 21183 (Ms. Margaret Mitchell); *House of Commons Debates*, 32nd Parl, 1st Sess, vol 19 (20 December 1982) at 21745 (Mr. Lyle S. Kristiansen).

incomes. This was when STEs and the ITA came into play, as they were useful instruments for the implementation of means-tested programmes.

The universal programmes of the Glorious 30 were based on an attachment to a traditional family, and so were tied to measures such as family allowance, health care, and Old Age Security. STEs were not used to offer universal, non-means tested programmes. During the neoliberal period, payments through tax benefits to higher-income families were perceived as being very problematic in the discourse over fiscal policy. Taxpayers with incomes above the average were transposed in the discourse as people who did not want to receive such benefits. Universalism during this period did not mean benefits for all, it meant benefits for all who needed them. This erosion of universalism could be seen, for example, in the family allowance programme which was of particular concern to women. Family allowance was originally a universal payment made to all mothers. However, the universality of this programme started being compromised as early as 1973, when the payments became taxable in the hands of the spouse with the highest income.⁵⁸¹ This meant that couples with one high income received only a percentage, after tax, of family allowance, while those not paying tax received the full benefit. Part of the family allowance was therefore returned to the state through taxation.

An even more striking example of the erosion of universalism occurred during the period of high inflation in the early 1980s. During 1983 and 1984, family allowance payments stopped being indexed according to the rules that had existed so they could be limited to a

⁵⁸¹ 1973-74, c. 44.

6% and 5% indexation, even if inflation was much higher during that period. Thus, each family allowance payment was worth less in relative dollars during those two years. This was a significant cut to a universal programme. The child tax credit, which targeted low-income families, was used to compensate for this cut in “universal” family allowance, and was one of the measures that continued to be indexed according to the general rules. It was increased by \$50 to compensate low-income families for the cuts in the family allowance programme. The dominant discourse encouraged cuts in programmes for families, where the family income was higher, in order to target low-income families.⁵⁸² The following passage from a debate in the House of Commons demonstrates this tendency in the discourse:

The Liberal Party's philosophy consists in protecting our country's and our society's resources in order to help those who are most in need of government assistance. Since family allowances have been limited to an increase of 6 per cent, child tax credits will be increased by \$50 as of 1982, to compensate for the resulting loss of income to low-income Canadians. This means they would suffer no loss of income as a result of the indexing ceiling on family allowances. Similarly, since old age security pensions will also be subject to a ceiling of 6 per cent, people receiving the guaranteed income supplement and therefore having no other income, will benefit from full indexation, because, although all Canadians are being asked to make sacrifices, the Liberal Party does not want the burden to fall heaviest on low-income groups. That is why people receiving the supplement will benefit from full indexation of both the supplement and the basic old age security pension.⁵⁸³

⁵⁸² See for example: *House of Commons Debates*, 32nd Parl, 1st Sess, vol 17 (29 June 1982) at 18935 (Mr. Jean-Claude Malépart).

⁵⁸³ *House of Commons Debates*, 32nd Parl, 1st Sess, vol 17 (29 June 1982) at 19023-19024 (Hon. Herb Breau).

As this excerpt shows, resources were limited and needed to be used to help those who needed it most. In the discourse, lower-income families were not to be penalized by the scarceness of resources.⁵⁸⁴

Universalism was seen as a programme in which everyone had access to the extent that they met the eligibility criteria (often means-tested measures). This excerpt from a debate in the House of Commons is evidence of this new narrow conception of universalism:

Mr. Collenette: No, there is no way of changing it, as far as I am concerned. The basic universality is intact, but there can be some targeting within that universality.⁵⁸⁵

Thus, the very definition of universalism seemed to be re-examined during this period. Universalism was no longer desired or valued. It was seen as irresponsible. The 1985 budget was clear. The government wanted to target more:

The proposed increase in the child tax credit will provide increased support to low-income families, while benefits for higher-income families will be reduced. This will ensure that current inequities in the distribution of benefits — whereby benefits increase with income over certain income ranges — will be corrected by 1989.⁵⁸⁶

Although this definition was questioned, the discourse was not ready to abandon the concept. Universalism still had to be defended, even if the definition of this concept was gradually eroding.

⁵⁸⁴ *House of Commons Debates*, 32nd Parl, 1st Sess, vol 17 (6 July 1982) at 19049 (Ms. Aileen Nicholson).

⁵⁸⁵ *House of Commons Debates*, 32nd Parl, 1st Sess, vol 18 (2 December 1982) at 21242 (Hon. David M. Collenette).

⁵⁸⁶ Canada, Department of Finance, *Budget Papers 1985* (May 23, 1985) at 43.

In the context of this attack on universality, and the targeting of tax expenditures, it was not surprising that the tax policy discourse integrated women only when they were in a position of vulnerability; when they were low-income individuals, or single mothers, or if the family income was insufficient. Here is an example of this trend in the discourse:

What about family allowances? It is interesting to consider that three out of every five working women in this country live below the poverty level, as evidenced in a recent report tabled by the government, and depend on family allowances to assist them in these difficult times. They are struggling to raise a family of one, two or three. They found out, too, that there was good news in the budget for them. They found out that they will not receive the same increases that they normally would next year. I admit the very poor will get a slight increase next year; they will gain 93 cents a week. The very poor will be able to purchase two thirds of a litre of milk extra a week thanks to this budget. That is the kind of progressive legislation which this government is prepared to introduce.⁵⁸⁷

As was discussed earlier, personal exemptions were modified to become tax credits during this period. Again, the White Paper on Tax Reform explained that the objective of this amendment was to target people with lower incomes:

Tax credits also support the objectives we set in the February 1986 budget - to target assistance more effectively to those with lower incomes and reduce the after-tax value of transfer payments to those with higher incomes. Converting exemptions to credits does just that, while maintaining universal access to family allowance and old age security payments.⁵⁸⁸

⁵⁸⁷ *House of Commons Debates*, 32nd Parl, 1st Sess, vol 17 (29 June 1982) at 18907 (Mr. Nelson Riis).

⁵⁸⁸ Canada, Department of Finance, *White Paper on Tax Reform*, *supra* note 81 at 16. See also 160-162.

Redistribution during the 1988 tax reform was directed towards targeted benefits⁵⁸⁹ and was less universal, except with regard to maintaining a certain kind of universality of programmes for low-income taxpayers.

The coup de grace was given to the universalism of measures to encourage targeted social benefits. Programmes paid directly to women (such as Family Allowance and the Child Tax Credit), were subject to the same targeting:

As a consequence of this Bill, only one-third of all Canadian mothers receiving Family Allowances will get a smaller increase than anticipated for their child benefits in the coming two years. I want to emphasize the fact that this Bill permits an increase in all Family Allowances for the next year. Indexation has not been eliminated completely; the principles of universality and indexation are maintained. Furthermore, we have acted to ensure that all families in the low income range and younger families in the middle income range will not be adversely affected by this two-year measure. The previous Minister of Finance stated this clearly in his June budget, and I also explained in an insert which was mailed with the Family Allowance cheques at a later date that the Child Tax Credit in 1982, which is to be received early next year, will be fully indexed to the cost of living.⁵⁹⁰

This again is evidence of the erosion of the definition of universalism. The family allowance programme was no longer “purely” universal because the payments received were now taxable, and the child tax credit was only available to low-income families in order to compensate for the cuts in family allowance payments.

⁵⁸⁹ For example: *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 13 (4 July 1988) at 17023-17024 (The Hon. Michael Wilson, Minister of Finance).

⁵⁹⁰ *House of Commons Debates*, 32nd Parl, 1st Sess, vol 18 (1 December 1982) at 21176 (Hon. Monique Bégin, Minister of National Health and Welfare).

5.3.2. *The Capacity To Form and Maintain An Autonomous Household*

In the Keynesian welfare state period, women were talked about. They were kept in their traditional role of carer and being responsible for unpaid work at home, but women were also present in the discourse because they wanted to enter the labour market. During the neoliberal welfare state period, women had to fight to keep a place in the tax policy discourse, where they were increasingly threatened by concepts such as “children” and “family”.⁵⁹¹

This period introduced greater gender-neutrality around STEs, as anything related to gender was absent from the discourse. Women lost ground, but they were still sometimes talked about as the second earner in the couple, sometimes as the ones who cared for children, or as the consequential beneficiaries of some tax policies. One thing was sure; the woman was no longer a target, nor a consideration, for the implementation of tax policies. For example, there was no talk of women staying at home. While in the previous period, the woman at home had been the standard, it had now become a taboo. If one wanted to talk about unpaid work or child care, phrases such as “the man or woman who wants to stay home”, or other neutral formulations, were now the norm. Responsibility for unpaid work at home and child care were no longer positioned as being in the realm of women’s responsibility. The taxpayer had become an ungendered being. Only a few still dared to talk about women, such as Margaret Mitchell, who in the next passage criticized the effects of the attack on universality, on women:

⁵⁹¹ For example: *House of Commons Debates*, 34th Parl, 2nd Sess, vol 8 (6 April 1990) at 10317 (Ms. Edna Anderson); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 4 (18 November 1991) at 4940 (Hon. J.W. Bud Bird).

Mrs. Mitchell: The Family Allowance cheque is of particular significance to women. Increasingly in today's world homemakers and mothers who are in the home full-time or during a good part of their lives receive no recognition, and recognition today is usually in the form of remuneration, unlike it might have been in previous generations. About the only thing they get is a card on Mother's Day and the Family Allowance cheque. To reduce the cost of living by discontinuing the indexing of Family Allowance cheques is a slap in the face to the women of Canada and to full-time mothers. The Liberals in effect are telling mothers that they are not important. In other words, mothers are the ones who can be made to pay for inflation in Canada today. They are telling mothers that they can buy second-hand clothes for their kids at lower cost because they are not going to maintain indexing to keep up with the real cost of living. This is what the Liberals are saying to many mothers and families. It is a callous Liberal Government that says that. There are many other ways the Government could have saved money, and indeed brought money into the coffers, other than by taking this means in a period of recession.⁵⁹²

However, this was an exception, and during the 1980s discussions about women happened mostly when they were in a vulnerable position. They were either in a low-income family, single-parents, or the second income earner needed to support the family. In the discourse women worked for purely economic reasons to provide for their families. This passage from a House of Commons debate revealed the discourse of vulnerability surrounding women when they limited indexation to family allowance, and compensated for this by increasing the Child Tax Credit available to low-income taxpayers:

I suggest Hon. Members go back and look at the speeches made by the Minister of National Health and Welfare (Miss Begin) when she was debating the Bill which would bring about a tax benefit at the end of the year for families. It was called the Child Tax Credit. Her plea at that time was that those receiving this Child Tax Credit were the same as those who received Family Allowances. At that time she said that they were the vulnerable ones. These people include housewives and

⁵⁹² *House of Commons Debates*, 32nd Parl, 1st Sess, vol 18 (1 December 1982) at 21184 (Ms. Margaret Mitchell).

mothers, single parents or others, in Canada. The Minister and other Members went on to say that this may be the only cheque that these people can cash if they are not single parents. The Government now says that it wants to cut back on these cheques. When we debated the Child Tax Credit two years ago they were the vulnerable ones. Today they are expendable.⁵⁹³

When women were mentioned in the discourse, it was mostly when they were vulnerable. I feel therefore that another example of how women are depicted during that period is appropriate. In the next passage, the member was discussing a change to the eligible dependent exemption for single-parents with a dependent child. The modification changed the eligibility of a child, to being up to the age of 18, instead of 21, which it was before the proposed amendment.

And that is not all, Mr. Speaker. When the head of the family dies, the mother takes over, she works outside and earns an income, but if her 18-year-old son is a full-time university student she cannot claim him as the equivalent of a spouse. These are new changes imposed by the Minister of Finance in his tax reform.

I find that totally unacceptable because, in the case of a family with a dependent child at school, there should at least be exceptions for those attending school on a full-time basis or for those who are staying at home and are without work. Those people, those families, are almost forced to make living arrangements outside the home to be able to get welfare. I think that the Minister of Finance and the Conservative Government have adopted an approach which is totally unjust and insensitive, which disregards the situation of families and which makes things even more difficult, particularly for single parents because women who are heads of families can claim the equivalent of married for a child under 18. They are heavily penalized however when the child reaches 18 because they can no longer claim that exemption.

⁵⁹³ *House of Commons Debates*, 32nd Parl, 1st Sess, vol 20 (8 February 1983) at 22602-22603 (Mr. Benno Friesen).

Furthermore, if the child is responsible enough to earn some money and his income exceeds \$500, his mother's tax advantage is eroded.⁵⁹⁴

Towards the end of the neoliberal period - at the end of the 80s - women were essentially made invisible by the concept of the "family", an economic unit with all members working for the good of the group. Towards the end of the previous period, and the beginning of neo-liberalism, tax benefits based on family income had been introduced (that is to say, benefits were calculated on the income of both members of the couple). For example, the Child Tax Credit was calculated based on family income, and the CCTB introduced in 1992 was also calculated based on family income. Family allowance was also taxable in the hands of the spouse with the higher income.

Even the vulnerable women were losing ground in the discourse over fiscal policy. The closer to the years 1990-1993, the more the discourse becomes child-oriented. The whole discourse at the beginning of the 1990s was oriented around the fight against child poverty. It no longer addressed the issue of the parents of children who were poor. The discourse became child-oriented as the Government of Canada ratified the *United Nations Convention on the Rights of the Child* in 1991.⁵⁹⁵ The Canadian Prime Minister Brian Mulroney had also chaired the World Summit for Children in 1990.⁵⁹⁶ Those two events clearly influenced the discourse. From the early 1990s, only children were

⁵⁹⁴ *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 15 (25 August 1988) at 18874-18875 (Hon. Raymond Garneau); See also, for example: *House of Commons Debates*, 32nd Parl, 1st Sess, vol 6 (30 January 1981) at 6758 (Mr. Mark Rose, Mr. René Cousineau).

⁵⁹⁵ *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS at 3.

⁵⁹⁶ World Summit for Children, UN, New York, 29-30 September 1990.

featured in the discourse. These were the people that society should protect and the discourse had little regard for their parents, and even less for their mothers.

When women were still visible, it was more as a consequence of tax policy than as a target of policy objectives. In this passage from the 1992 budget, women were not specifically the target of the measure, there was no talk of incentives to work; women were benefiting from the deduction:

The maximum child care expense deduction will be increased by \$1,000 — to \$5,000 for each child under age seven and to \$3,000 for other eligible children. This will benefit 600,000 taxpayers, 75 per cent of whom are women in the work force.⁵⁹⁷

Care had been considered the responsibility of women in the Keynesian period. It was now simply a private matter, not a gendered matter. For example, the CCED was initially designed to compensate for increased non-discretionary expenses when a mother worked. The objective of that provision was also (1) to help facilitate the entry of women into the labour market, and (2) to consider the societal responsibility for the education and care of children. As explained in Chapter 4, the two last propositions, though stated in the *White Paper*, were not accepted in the discourse.

In the *White Paper on Tax Reform* in 1988, the deduction was said to be under study as the legislator was rethinking the benefits related to care. It was for this reason that it was not immediately converted into a tax credit as with other personal exemptions:

⁵⁹⁷ Canada, Department of Finance, The Budget Speech 1992 (February 25, 1992) at 14-15.

The possibility of converting the current tax deduction for child care expenses into a credit has been considered but a decision has been deferred pending final development of the federal government's policy on child care. Accordingly, the proposals in this paper do not alter the existing tax deduction.⁵⁹⁸

The CCED was supposed to be examined in parallel with the creation of a national child care programme. But only a few months after the White Paper, the discourse in relation to the CCED changed. The deduction was no longer considered to have a social objective or to encourage women into the labour market. It was then described as a reimbursement for the expenses incurred in order to earn income, for example, in the same manner as travel expenses. In the following excerpt, the Minister of State (Finance) explained why personal exemptions had been converted into a tax credit in the 1988 reform and not the CCED:

We have in tax reform an approach which is quite different philosophically from what he is suggesting when it comes to credit. We have eliminated deductions for things such as the married exemption, child tax exemption, family allowances and so on, and turned them into credits. The Minister of Finance (Mr. Wilson) has explained many times the reason for this. In this particular case the Hon. Member is essentially saying that expenses incurred to earn income should be reflected in a credit, not as a deduction. It is a technical point, really, but that is not what we are doing in tax reform. When you incur expenses to earn income, including the expense of child care, they should be deductions, not credits. That is really what is behind what we are doing here. (...) The Hon. Member was striving for consistency in his motion but the point is that if we adopt the motion we would be inconsistent with the whole philosophy of credits as compared to deductions for expenses in earning income, of which child care is one.⁵⁹⁹

⁵⁹⁸ Canada, Department of Finance, *White Paper on Tax Reform*, *supra* note 81.

⁵⁹⁹ *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 15 (25 August 1988) at 18857-18858 (Hon..Tom Hockin, Minister of State (Finance)). See also: Standing Committee on Finance and

While the discourse around the CCED was always at the boundary between a discourse focused on tax expenditures and another focused on the normative framework, the deduction finally moved it towards a purely technical analysis of the tax law. Thus, using such a discourse-oriented approach made it easier to ignore the criticism that the deduction benefited higher income taxpayers more, or that low-income taxpayers could not benefit from the deduction. In normative terms, the system had to be progressive and based on the taxpayer's ability to contribute to income tax. Thus, if a taxpayer did not benefit from a deduction because he had no income tax, there was no problem in terms of the ability to pay. According to the 1986 statistics, around 50.3% of women were employed as opposed to 69.6% of men.⁶⁰⁰ Their average earnings represented 57.2% of that earned by men for the same year.⁶⁰¹ Women represented 13.2% of the total population in the low income after tax bracket, and the percentage of female lone-parents in this bracket was 48.8%.⁶⁰² In terms of a gendered approach, the rejection in the discourse that low-income taxpayers did not benefit from the deduction as being a viable argument, was problematic, since women still earned less than men, and many single mothers lived below the poverty line.

Care was no longer discussed when it occurred at home and was delivered by a parent. When child care was not a necessary expense in order to earn income, then it fell within the private sphere of the family. In the discourse child care was no longer a responsibility

Economic Affairs, August 16, 1988, Mr. Short, p. 174:25. For the criticism of this approach, see: *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 15 (25 August 1988) at 18858 (Hon. Alfonso Gagliano).

⁶⁰⁰ Ferrao, *supra* note 211 at 5 (Table 1).

⁶⁰¹ Williams, *supra* note 109 at 13 (Table 7).

⁶⁰² *Ibid.* at 20-21 (Tables 12-13).

attributed to women. In fact, the allusion to child care and unpaid work being executed by women disappeared almost completely in the tax policy discourse.⁶⁰³ Here is an example:

We are living in a world where the dynamics of social life are changing. The number of one-breadwinner families decreases each year. There are millions of women and men who prefer to see at least one parent available to the children for more time than they have available at present.⁶⁰⁴

Unless they were in a vulnerable position, women were mostly absent from the discourse, and the responsibilities related to care became less valued and discussed. Women were now part of the family unit, which was considered as a perfect and equal economic unit. The balance of power within the family was no longer a consideration. While in the previous period, the family was conceptualized as a unit with an imbalance of power and responsibilities (the man earned an income, the woman took care of the children and performed unpaid work at home), the current period no longer considered the possibility of an imbalance within the family unit. Thus, the fiscal policy discourse no longer tried to “protect”, or to promote, any one part of this unit over another. The family worked in the best interest of the group and also distributed income equally. When a family earned sufficient income there was no more risk of vulnerability within it. If a family member was, or became vulnerable, this was a private issue. The state was committed to providing a minimum for families; the rest was out of its sphere of action.

⁶⁰³ See for example : *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 14 (17 August 1988) at 18459 (Hon. Barbara Jane Sparrow).

⁶⁰⁴ *House of Commons Debates*, 32nd Parl, 1st Sess, vol 20 (8 February 1983) at 22610 (Mr. Chuck Cook).

Care was usually addressed in gender-neutral formulations. The discourse wanted to get away from attributing traditional roles to women, and it tended to go the other way. So when care was not simply a gender-neutral activity, it was an activity attributed to men. Policies to give greater consideration to care and unpaid work existed because men also benefited from them. Care was no longer a specifically female domain. The discourse was so desperate to avoid references to traditional roles that it did the reverse. The same member later stated that:

There is another phenomenon in the dynamics of social life that is changing. Many men would prefer to be a house husband and stay home to fill that traditional role.⁶⁰⁵

The literature often states the need to avoid policies necessarily attributing the responsibility for child care and unpaid work to women, because it could have increased discrimination in the workplace.⁶⁰⁶ Displacing the burden of care and unpaid work within the family could have contributed to enhancing gender equality. But here, the discourse tended to encourage a shift in responsibilities. However, it did not recognize the reality. In fact, this reality caused a problem for legislative neutrality and was a cause for discomfort. This created an important risk in that the targeted population would not have benefited from the tax provision because it was disregarded in the policy implementation of these provisions.

⁶⁰⁵ *House of Commons Debates*, 32nd Parl, 1st Sess, vol 20 (8 February 1983) at 22610 (Mr. Chuck Cook).

⁶⁰⁶ Kershaw, *supra* note 308 at 2.

The most important break in the discourse occurred when the Child Tax Benefit was introduced in 1992. This was the moment when family allowance was abolished to make way for this means-tested Child Tax Benefit, which was fully integrated within the ITA. This moment led directly to the next period influenced by social investment strategies, which will be discussed in the next chapter.

The discourse dealt with STEs as a tool to fight child poverty, which at least recognized their role as being similar to welfare programmes. The poverty of parents was completely removed from the discourse. Moreover, the naming of the benefit was very important. The government terminated the Family Allowances programme to introduce a programme called the “Child Tax Benefit”. The child was now in the foreground and the parents were forgotten. A significant criticism by the opposition parties should also be noted. The Conservative government of the day wanted this Bill passed quickly and the time given to debating this measure was not only limited but also premature.⁶⁰⁷ In analyzing the discourse, it seems that there was a willingness to avoid any possibility of a strong counter-argument taking place.

In the tax policy discourse, the relationship between women and the labour market was rather ambivalent in the neoliberal period. As the taxpayer was now a gender-neutral

⁶⁰⁷ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (14 September 1992) at 13042 (Mr. David Walker). See also: *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (14 September 1992) at 13046 (Mr. Francis G. LeBlanc); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (15 September 1992) at 13121 (Mr. Jean-Robert Gauthier); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (15 September 1992) at 13123 (Hon. Ronald Duhamel); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (15 September 1992) at 13132 (Hon. Fred. J. Mifflin); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (15 September 1992) at 13152 (Mr. David Walker).

individual, the reality of women entering the labour market could no longer be avoided. More than just tolerating it, women's participation in the labour market was encouraged, although some resistance to women abandoning their traditional role still persisted. It was probably in terms of their employment that women's place in the discourse was at its most important during this period. For example, in 1984, the report of the Commission on Equality in Employment depicted the lack of child care as a major obstacle to women's participation in the labour market:

The Commission concluded that a major barrier to equality in the workplace for women who are mothers is the absence of affordable childcare of adequate quality.⁶⁰⁸

Unlike the care of children and the unpaid work done at home, which was no longer talked about, the woman as worker, or future worker, was still present in the neoliberal period.⁶⁰⁹ The incentive to work was clearly part of the discursive approach used in the announcement of the National Child Care Strategy in December 1987. In the 1988 Budget Speech, Finance Minister Michael Wilson spoke about it in the following terms:

One of these is the National Child Care Strategy which was announced in December. This initiative will benefit children because many more good quality facilities will become available for their care. We expect 200,000 new spaces to be created in all parts of the country in the next seven years. The initiative is of great importance to Canadian families. It will help to eliminate a barrier facing many women who work, or

⁶⁰⁸ Abella, *supra* note 245 at 7.

⁶⁰⁹ *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 1 (15 October 1986) at 387 (Ms. Margaret Mitchell). See also: *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 1 (16 October 1986) at 407 (Mr. W. Paul McCrossan); *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 15 (25 August 1988) at 18886 (Ms. Margaret Mitchell).

want to work, outside the home. It also increases tax assistance to many who choose to work in the home.⁶¹⁰

The citizen-worker became the perfect citizen. Even if it was a neutral being, and the talk over access to the labour market remained gender-neutral, women who worked were still considered in the discourse. But even in that sphere, the child took more and more space, at the expense of the mother. The discourse, however, became increasingly focused on people at risk, such as single parents (there was less talk about single moms) and low-income or poor families.⁶¹¹

Tax benefits were offered to workers to encourage them to work. From time to time, there was talk of a national child care programme, but without much concrete action before the end of the 1980s. Especially at the end of this period, when discussions were most acute over the creation of a national child care programme, the relationship with women's participation in the labour force was lost, and women were again absorbed into the family:

The federal government has, as part of the national strategy on child care, implemented two major initiatives on child care. In this regard families now have access to enhanced tax assistance for pre-school aged children through an enriched child care expense deduction which was doubled to \$4,000 per child in 1988 and a new \$200 supplement to the child tax credit. Taken together, these measures assist almost two

⁶¹⁰ *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 10 (10 February 1988) at 12842 (The Hon. Michael Wilson, Budget Speech). The National Child Care Strategy was abandoned following the 1988 tax reform and the adoption in 1992 of the CCTB.

⁶¹¹ *House of Commons Debates*, 32nd Parl, 1st Sess, vol 6 (30 January 1981) at 6758 (Mr. Mark Rose; Mr. René Cousineau); *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 14 (21 July 1988) at 18459 (Hon. Barbara Jane Sparrow).

million families. In addition, a child care initiatives fund has also been established...⁶¹²

As an illustration, in 1992 women claimed almost twice the amount of the child care expenses deductions that were available to men.⁶¹³ The creation of this programme was also mostly supported by the desire to see equal opportunity for all children, and to provide an educational service that would give children of all social strata the same opportunities in life. Those discussions ended and the national child care strategy was replaced by the Child Tax Benefit in 1992.

5.4 Conclusion

In the neoliberal period, the use of the market was encouraged in order to buy services, and the tax law was used to subsidize services provided by the market. The help was targeted at taxpayers who, for different reasons, could not take advantage of these services. The state intervened mainly to overcome market failures.

This period was one in which the citizen was a worker. The woman was considered as a taxpayer who worked and had the obligation to do so if she was in an economically vulnerable situation. In this period, women began to be made invisible, firstly because of the increasing neutrality in the ITA. Equality amounted to treating all taxpayers in exactly the same manner. This was reflected in not attributing the responsibility for child care and unpaid work to women. But later, the woman was also made invisible by the family

⁶¹² *House of Commons Debates*, 34th Parl, 2nd Sess, vol 8 (6 April 1990) at 10317 (Ms. Edna Anderson).

⁶¹³ Women were allowed child care expenses deduction in a total of \$1,174,499,000 in 1992 while men were allowed a total of \$405,829 : Canada Revenue Agency's statistic for 1992, Table 11, p. 210.

unit. This notion of “family income” became more apparent with the introduction of more tax credits based on family income. Family income was used to calculate the eligibility for benefits which were now “means-tested”. The balance of power within the family was not an issue. Each member of that economic unit was supposedly working in the best interest of the group, and the imbalance of power that may have existed within the family was no longer discussed.

Finally, this period also corresponded to a shift in the definition of universalism. Programmes were increasingly based on family income, with benefits decreasing gradually as family income increased. Programmes were targeted at low-income families. Most troubling was that the discourse did not understand this change as an attack on universality, but as a new approach to universality. Before the neoliberal period, universal programmes had been conceived of as benefiting everyone equally. During the neoliberal period, universal programmes meant a programme that benefited everyone who met the means-tested requirements. When programmes were “means-tested”, the benefits were usually based on family income. These programmes were still considered to be universal in the discourse and the term continued to be used.

Women lost ground in the tax policy discourse. But, as I shall demonstrate in the next chapter, they lost much less than in the following period.

CHAPTER 6 SOCIAL INVESTMENT STRATEGIES: THE INVISIBLE WOMAN

The period of social investment strategies targeted investment in children, human capital and making work pay.⁶¹⁴ During this period, the state did not spend. It invested. The state participated in this investment, but the expectations placed on individuals were high. Individuals were not only encouraged to invest in their capital through work, education, and training, but they were also encouraged to invest in their future by saving for retirement. Furthermore, the individual was expected to contribute to the future of his children.⁶¹⁵ Children were at the centre of social investment strategies. Work was omnipresent and expectations were high when it came to women entering and remaining in the labour market.⁶¹⁶

For the purpose of data coding, the analysis showed that the characteristics associated with the social investment welfare state started to occur quite strongly in the tax policy discourse around 1992. Therefore, this chapter analyzes the discourse from that date until 2012.

During this period, family allowance (as well as the two tax credits for children) was replaced by the CTB, which was included in the ITA in 1992.⁶¹⁷ The CTB was modified in 1998 to become the Canada Child Tax Benefit (CCTB), which became a basic means-tested benefit, and the CCTB National Child Benefit Supplement (which was also means-

⁶¹⁴ Jenson, *supra* note 43 at 27; See also Jenson, *supra* note 39.

⁶¹⁵ Jenson, *supra* note 43 at 27, 30.

⁶¹⁶ Jenson, *supra* note 39 at 26.

⁶¹⁷ 1992, c. 48, subs. 12(1).

tested but only available to low-income working families). Finally, the Caregiver tax credit was also introduced in 1998.⁶¹⁸

The Universal Child Care Benefit (UCCB) was also introduced, providing a monthly payment of \$100 to all mothers with children under seven years of age. The UCCB was given to the spouse with the lower income.⁶¹⁹ However, following an amendment to the ITA in 2010, a taxpayer who was not married, or without a common-law spouse, at the end of the year, was able to allocate this income to a wholly dependent person for whom the credit could be claimed.⁶²⁰ Thus, the UCCB was added to the income of the dependent (often a child of a single parent).

In 2007, the non-refundable child tax credit was reintroduced. This was an indexable amount of \$ 2,000 per child of 18 years of age or younger, and in 2011 another provision was introduced for caregivers: “family caregiver for infirm relative”.

The discourse concerning tax policy was strongly affected by the notion of social investment strategies. There were few amendments to the tax provisions during this period, but the discussions around the provisions under study were clearly affected by the discursive approaches to social investment. However, it should be noted that the discourse gradually changed after the Conservative government of Stephen Harper was elected in January 2006. There was a distancing from what the literature calls social

⁶¹⁸ 1999, c. 22, subsec. 31(2), applicable to 1998 et seq.

⁶¹⁹ Subs. 56(6) of the ITA.

⁶²⁰ Par. 56(6.1)a) of the ITA.

investment strategies. One of the major discursive changes became how STEs sought to further promote the traditional family, while the discourse of the neoliberal period, and the social strategies period before 2006, had encouraged two-income families. The discourse starting in 2006 encouraging the traditional single-earner family also completely avoided mentioning women as the ones having the traditional stay-at-home role. The discourse remained facially neutral in terms of gender, but encouraged a traditional family structure over any other arrangements.

Social benefits were not very popular during the social investment period. Redistribution through tax law became “tax cuts for hard-working families”, or tax relief, and were no longer considered as welfare measures. I will show in more detail in this chapter how social investment strategies were modified in the mid-2000s.

State, Market, Family Relationships: Relying on the Family for the Care of Relatives

During the social investment strategies period, STEs were considered less and less as a redistribution mechanism. The discourse was more oriented towards expenses and the normative structure, while avoiding the welfare aspect of it.

In terms of tax expenditures, the responsibility mix remained the same. The use of tax law was proof of this desire for redistribution through payments allowing access to services in the market. Again, the market was heavily relied on in terms of STEs. The state still relied heavily on the market for child care provision. However, there was an attempt at providing a country-wide child care service in 2004, when Paul Martin’s Liberal government announced the creation of a national child care programme. This

programme included the transfer of \$5 billion to the provinces, scheduled to take place over the following five years to create 250,000 new child care places. This interest in a child care programme, which was also considered an early learning programme, was consistent with social investment strategies. However, Stephen Harper's minority Conservative government, elected in 2006, had promised the Universal Child Care Benefit (UCCB) in the run up to the election. As a result, the Liberal government's national programme was abandoned. At the federal level, child care was subsidized via transfers to the provinces, via the CCED and the UCCB which was added to the list of benefits for child care. After this, no serious action was taken over a national child care programme.⁶²¹ This divestment was heavily criticized by the opposition parties who talked of a policy of ABC: "anything but child care".⁶²²

The UCCB is an example of how the state relies on the family for caring for relatives. Tax credits were also used to reduce the tax burden of families who cared for dependents.⁶²³ In 1998, the new caregiver tax credit was introduced for people caring for seniors and relatives with disabilities.⁶²⁴ In addition, in 2011, a Family Caregiver Tax Credit was introduced into the law. The tax credits acknowledged women's caring work

⁶²¹ One previous attempt was the National Child Care Strategy, discussed in Chapter 5.

⁶²² *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (21 March 2007) at 31 (Hon. Karen Redman); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (21 March 2007) at 41 (Ms. Peggy Nash). *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 154-155 (Ms. Susan Kadis); *House of Commons Debates*, 39th Parl, 1st Sess, vol. 141 (26 March 2007) at 37 (Hon. Stéphane Dion, Leader of the Opposition); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 176-177 (Mr. Michael Savage).

⁶²³ *House of Commons Debates*, 41st Parl, 1st Sess, vol 146 (6 October 2011) at 1965 (Mr. Parm Gill); *House of Commons Debates*, 41st Parl, 1st Sess, vol 146 (17 October 2011) at 2087 (Mr. Terence Young).

⁶²⁴ Par. 118(1)c.1) of the ITA.

but if they had no income, they could not benefit as they were non-refundable tax credits. Women still spend more time caring for seniors and for children than men.⁶²⁵ Tax credits were still used to compensate the family who cared for dependents by allowing them to purchase services, or simply by offering an amount to compensate for the care.

In terms of redistribution, the state wanted to invest more, but only for a category of the poor that it considered to be deserving: the working poor. Thus, the poor who received social assistance, for example, did not benefit as much from the redistribution through STEs. This was reflected by the changes in the CCTB in 1998. This means-tested benefit was increased, allowing provincial governments to cut back on welfare payments. According to the dominant discourse, it allowed the provinces to cut benefits and reinvest in a range of services for the most needy. These services had already suffered important cuts when the CAP was abolished in 1995. An increase in the benefits offered to the poorest was not favoured, as it would have encouraged them to remain dependent on government payments. Thus, the poorest saw no change in their payments, but low-income working families saw an increase in income.

This excerpt from the 1998 budget demonstrates the intention of helping people who work rather than helping welfare recipients:

The Canada Child Tax Benefit will provide a national benefit to all eligible families with children. As part of the NCB System, social assistance payments made by provinces and territories will be adjusted

⁶²⁵ Anne Milan, Leslie-Anne Keown & Covadonga Roble Urquijo, "Families, Living Arrangements and Unpaid Work" in Statistics Canada, *Women in Canada : A Gender-Based Statistical Report*, Minister of Industry, 2010, Table 8, p. 24.

in accordance with the increase in the CCTB. The provinces and territories will then reinvest the savings from social assistance to improve benefits and services to all low-income families with children whether they are on social assistance or working. Provinces are currently finalizing their reinvestment plans and are considering a variety of reinvestments, including provincial income benefits, earned income supplements, extension of medical and dental benefits to low-income working families, and increased support for child care.⁶²⁶

The introduction of the UCCB was another example of how the poorest of the poor were no longer a priority in the discourse. In 2006, the CCTB supplement paid to low-income families was reduced and replaced by the UCCB payment of \$100 per month to all families with children. Here, while others may have gained from the new UCCB, the poorest lost a portion of their benefit in order to receive \$100 per month, while families with slightly higher incomes, and one-earner couples, were winners in the transaction:

With the creation of the UCCB, Budget 2006 proposes to phase out the existing CCTB under-7 supplement as of June 30, 2006, for children under the age of 6. The current under-7 supplement will remain in place until June 30, 2007, for children who turn 6 before that date. This two-stage phase-out will ensure that once the UCCB is in place, all families currently receiving the supplement will be at least as well off as they were under the current system, and that most families will receive significantly more benefits.⁶²⁷

People with higher incomes benefited from this change, while the law gave with one hand to the poorest, it took away part of their benefits with the other.

⁶²⁶ Canada, Department of Finance, Budget 1998, *The Budget Plan 1998: Building Canada for the 21st Century* (February 24, 1998) at 109-110.

⁶²⁷ Canada, Department of Finance, *Budget Plan 2005*, at 101-102 & 219-220.

Starting in 2006, a clear preference for cash payments was expressed by the Conservative government.⁶²⁸ The state divested itself from the supply of services, the creation of child care spaces, or of a child care programme.⁶²⁹ This appeared to be one of the departures from the social investments strategies that started happening after 2006.

Choice for families was now a strong discursive priority in the discourse, as shown in the next excerpt:

As a result, the previous government ploughed every penny of taxpayer dollars into publicly funded daycare, while stubbornly refusing to accept that there might be any other options. We as a government campaigned on a different approach. We as a government believe that money is best kept in the hands of parents who can decide what the best care option is for their children. It is simply a matter of philosophy; would parents rather be given a choice or would they rather have the government tell them how best to care for their child? I and my colleagues believe that choice should and must rest with parents.⁶³⁰

The responsibility of creating spaces was now up to employers and community organizations. In 2007, tax incentives were put in place to encourage them to create child care spaces in the workplace.⁶³¹ An investment tax credit of 25% was offered to

⁶²⁸ *House of Commons Debates*, 39th Parl., 1st Sess., Vol 141 (24 April 2006) at 17 (Mr. James Lunney); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (26 March 2007) at 37 (Right Hon. Stephen Harper, Prime Minister and Hon. Stéphane Dion, Leader of the Opposition).

⁶²⁹ *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 40-41 (Mr. Rod Bruinooge); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 44-45 (Hon. Jason Kenney, Parliamentary Secretary to the Prime Minister (Multiculturalism)); *Standing Committee on Finance* (26 October 2010) at 55 (Mr. Ted Menzies).

⁶³⁰ *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 36-37 (Mr. Rod Bruinooge).

⁶³¹ *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (24 April 2006) at 32-34 (Mr. Mike Lake). Canada, News Release, *Canada's New Government to Table First Budget on May 2, 2006* (April 24, 2006). Canada, Department of Finance, *The Budget Speech 2006, Focusing on Priorities* (May 2, 2006) at 9. *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 101-102 (Hon. Bill Graham, Leader of Opposition and Right Hon. Stephen Harper, Prime

employers (up to \$10,000 per child care space created) who created a child care space at work.⁶³² Community organizations were also leveraged to create more child care spaces and this responsibility was delegated more and more to the provinces.⁶³³

In 2006, the OECD noted the market-determined fee structure of daycare services in Canada, and the high-parental contribution of an average of just under 50 % of the cost (not including the province of Quebec).⁶³⁴ This was almost twice as much as the European average. Canada's spending on early education and childhood programmes was 0,2% of the Gross Domestic Product, which at the time represented half the average of the OECD countries.⁶³⁵ Therefore, parental responsibility was higher in Canada than in other countries, which meant the impact of an inadequate tax deduction would be greater. The market was still one of the important sources of child care services, and the Parliamentary Secretary to the Minister of Finance reminded the House of Commons that: "The childcare expense deduction is not a benefit. It is an expense deduction".⁶³⁶

Minister); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 94-95 (Hon Diane Finley, Minister of Human Resources and Social Development); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 126-127 (Hon. Maria Minna); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 135 (Mr. Art. Hanger).

⁶³² Subsections 127(5) and 127(9) of the ITA. These two provisions were amended by the second 2006 budget execution bill, in 2007.

⁶³³ *House of Commons Debates*, 39th Parl, 1st Sess, vol 141, No, 128 (26 March 2007) at 37 (Right Hon. Stephen Harper, Prime Minister).

⁶³⁴ Organisation for Economic Cooperation and Development (OECD), Directorate for Education, *Early Childhood Education and Care Policy : Canada Country Note*, (2006) 97 at 8.

⁶³⁵ *Ibid.*

⁶³⁶ *House of Commons Debates*, 35th Parl, 2nd Sess, No 104 (21 November 1996) at 6532 (Hon. Douglas Peters (Parliamentary Secretary to Minister of Finance)).

Tax expenditures were no longer conceived of as welfare measures, but were instead seen as tax cuts or a reduction of the tax burden for working families. Thus, STEs were no longer perceived of as an aid or contribution by the state to acquire services from the market. They were conceptualized in terms of the technical structure of the law, which means the capacity to contribute to tax. This trend was present throughout the three periods under study. However, it was pronounced during the neoliberal period, and even more so under the social investment welfare state. This discursive approach was still problematic for women. The discourse did not consider that the responsibility for child care or domestic work usually fell into the hands of women.⁶³⁷ Other features such as statistically lower incomes, or participation in more part-time jobs with precarious work conditions, were not considered in the development of tax policies. According to OECD data in 2006, the gap between the median income of women and men in Canada was more than 20%.⁶³⁸ The Statistics Canada data are equally troubling. The employment income of a young woman (25-29 years) without a high school diploma represented 67 cents for every dollar earned by a young man.⁶³⁹ The impact of not discussing these benefits in terms of what they really were - welfare benefits - meant that the poorest were ignored, including the women who were represented among them. If a taxpayer had no tax to pay, she was not an actor in tax policy implementation. But for the CCTB, none of the STEs under study were talked about in terms of being welfare benefits.

⁶³⁷ In 2010, women were spending almost twice as much time on unpaid care of a child than men: Milan, Keown & Roble Urquijo, *supra* note 625, Table 6, p. 20.

⁶³⁸ OECD Family database, LMF1.5: Gender pay gaps for full-time workers and earnings differentials by educational attainment (www.oecd.org/els/social/family/database).

⁶³⁹ Statistics Canada, *Gains et revenus des Canadiens durant le dernier quart de siècle, Recensement de 2006* (Ottawa, Department of Industry, 2008) at 21.

Stratification: No More Equality for Mothers but Equality of Opportunity for their Children

During the social investment strategies period, the discourse promoted equality of opportunity.⁶⁴⁰ Thus the discourse focused on the importance of giving children equal opportunities at the beginning of their lives.⁶⁴¹ This was constantly reflected in the discourse over fiscal policy, especially around children. The CCED and the CCTB became measures to promote the equality of opportunity for children. The following excerpt from the 1998 budget speech is a good example:

Mr. Speaker, we have just been discussing the role of education in assuring equality of opportunity. But let us be very clear. The capacity to learn does not begin in school. It is dependent on the caring and nurturing provided the smallest infant. The fact is, equality of opportunity means a good start in life.⁶⁴²

This is very consistent with the literature on social investment strategies. Focus on children, and on their future, was a constant during that period. The main actor in the discourse became the child; the concept of responsibility for care was no longer of central

⁶⁴⁰ See for example: Canada, Department of Finance, *Budget Speech 1998*, (February 24, 1998) at 9. *House of Commons Debates*, 36th Parl, 1st Sess, No 193 (10 March 1998) at 4616 (Mr. Paul Szabo); *House of Commons Debates*, 41st Parl, 1st Sess, No 050 (21 November 2011) at 677 (Ms. Lynne Yelich); *House of Commons Debates*, 41st Parl, 1st Sess, No 050 (21 November 2011) at 3313, 3316 (Hon. Scott Brison); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 176-177 (Mr. Michael Savage).

⁶⁴¹ Canada, Department of Finance, Budget 1998, *The Budget Plan 1998: Building Canada for the 21st Century* (February 24, 1998) at 109-111. Canada, Department of Finance, The Budget Speech 2006, *Focusing on Priorities* (May 2, 2006) at 3. *Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance*, Evidence number 12, (May 12, 1999) at 9 (Ms. Michelle Dockrill); Canada, Department of Finance, Budget Plan 1999, *Building Today for a Better Tomorrow* (February 16, 1999) at 20. *House of Commons Debates*, 38th Parl, 1st Sess, No 227 (31 May 2005) at 6447 (Hon. Ken Dryden, Minister of Social Development).

⁶⁴² Canada, Department of Finance, *Budget Speech 1998*, (February 24, 1998) at 23.

importance – a responsibility that was still more incumbent on women.⁶⁴³ This trend actually started in the neoliberal period, in the early 1990s. What mattered now in a daycare programme was not women, not the capacity to enter the labour market, but the capacity for children to learn. Thus, the discourse over the CCED, or child care, was becoming ever more polarized and increasingly distant from the issue of women.

Those arguing in favour of the creation of a child care programme increasingly directed the discourse towards the equality of opportunity offering the same learning and development opportunities to all children. During this period, the CCED was either considered as discriminating against families who provided care at home, or as a necessary measure promoting the equality of opportunity for children.⁶⁴⁴ This kind of argument was well reflected in the discourse:

Mr. Speaker, the position of the Reform Party is that we ought to raise the spousal exemption to be equivalent to the basic personal exemption so that there are no second class citizens in this country, and that we should take the discriminatory child care tax deduction and turn it into a refundable credit available to all parents regardless of their child care choices.

Yesterday the minister for the status of women said that we should actually increase the child care tax deduction to increase the unfairness against single income families. Is this the lead the government is giving

⁶⁴³ Canada, Department of Finance, Budget 1998, *The Budget Plan 1998: Building Canada for the 21st Century* (February 24, 1998) at 23. Canada, Department of Finance, *Budget in Brief 1998* (February 24, 1998) at 23. Canada, Department of Finance, *Budget Speech 1998*, (February 24, 1998) at 23. Women spent almost twice as much time caring for children than men in 2010: Milan, Keown & Roble Urquijo, *supra* note 625, Table 6, p. 20.

⁶⁴⁴ For example: *House of Commons Debates*, 36th Parl, 1st Sess, No 192 (9 March 1999) at 12628 (Hon. Jason Kenney); Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance, Evidence Number 2 (April 20, 1999) at 18 (Mr. Paul Szabo).

the finance committee, to increase the unfairness against single income families?⁶⁴⁵

The CCTB and the CCTB supplement for low-income families, or the caregiver tax credit, were seen as a measure for valuing care. However, they were discussed in terms of compensating for the cost of raising children, or for caring for a dependent, and not for compensating for the time, energy, and loss of income opportunity for carers.⁶⁴⁶ The criticisms of these monetary payments to families were that the provision of services would have provided for more equality of opportunity for children, and would have maximized their learning potential.⁶⁴⁷

This period was very active in terms of the constant criticism of the CCED. There were discussions and unsuccessful motions presented in order to make the CCED available for all parents with children as a way of recognizing care performed at home. The CCED was severely criticized for being discriminatory against one-earner couples, who could not benefit from it, as opposed to two earner-couples. The criticisms were important enough for the creation of a Sub-Committee on Tax Equity for Canadian Families With

⁶⁴⁵ *House of Commons Debates*, 36th Parl, 1 Sess, No 192 (9 March 1999) at 12628 (Hon. Jason Kenney).

⁶⁴⁶ *House of Commons Debates*, 35th Parl, 1st Sess, No 54 (21 April 1994) at 6593-6594 (Mr. David Walker); House of Commons, Standing Committee on Finance, *For the Benefit of our Children: Improving Tax Fairness*, (June 1999). *House of Commons Debates*, 41st Parl, 1st Session No 030 (17 October 2011) at 2049 (Mr. Brent Rathgeber); *House of Commons Debates*, 41st Parl, 1st Sess, No 050 (21 November 2011) at 3315 (Hon. Scott Brison).

⁶⁴⁷ *House of Commons Debates*, 39th Parl, 1st Sess, No 010 (26 April 2006) at 43 (Hon. Hedy Fry). *House of Commons Debates*, 39th Parl, 1st Sess, No 008 (24 April 2006) at 151-152 (Ms. Chris Charlton); *House of Commons Debates*, 39th Parl, 1st Sess, No 022 (12 May 2006) at 72 (Mr. Mario Laframboise); *House of Commons Debates*, 40th Parl, 3rd Sess, No 091 (1 November 2010) at 30 (Ms. Chris Charlton); *House of Commons Debates*, 40th Parl, 3rd Sess, No 091 (1 November 2010) at 106 (Hon. Ken Dryden). *House of Commons Debates*, 40th Parl, 3rd Sess, No 091 (1 November 2010) at 129 (Hon. Carolyn Bennett); *House of Commons Debates*, 40th Parl, 3rd Sess, No 091 (1 November 2010) at 142 (Ms. Irene Mathyssen).

Dependent Children of the Standing Committee on Finance in 1999, which was charged with studying this issue.

The discursive response of the government was to position the CCED as an expense to earn income, just as any other employment expense, thus being part of the normative structure of the ITA, as illustrated by the passage below. The Member of Parliament speaking judged that the opposing party proposing the motion to make the CCED available to everyone considered the deduction as being a welfare provision to compensate for care.⁶⁴⁸

The main defence of the child care expense deduction is that it's not particularly related to child care per se, but it's an employment expense, the cost of going to work—much like, I suppose, the specialized mechanic who has mechanics' tools has a cost. But of course they can't deduct the cost of those tools.

The defenders of that particular provision have called it an employment expense, but obviously you see it quite differently.⁶⁴⁹

But the message was ambiguous as the government considered it to be an expense in order to earn income, however, at the same time qualified it as a spending tool, similar in nature to a STE.⁶⁵⁰

⁶⁴⁸ *Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance*, Evidence Number 3 (April 21, 1999) at 5 (Mr. Munir Sheikh, Assistant Deputy Minister, Tax Policy Branch, Department of Finance); *House of Commons Debates*, 35th Parl, 1st Sess, No 104 (3 March 1995) at 10349-10350 (Mr. David Walker, Parliamentary Secretary to the Minister of Finance); *Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance*, Evidence Number 8 (May 10, 1999) at 41-43 (Ms. Michelle Dockrill).

⁶⁴⁹ *Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance*, Evidence Number 13 (May 12, 1999) at 7-8 (Mr. Paul Forseth).

There was a legislative response to the criticism that the CCED did not benefit families who did not buy child care services. The UCCB was introduced to promote child care performed at home. Until 2010, the families favoured by the UCCB were couples with children in which only one of the parents worked - the traditional family. In this case, the benefit was added to the income of the spouse with the lowest income. If that spouse had no income, the UCCB was not taxable if it was less than the personal exemption, which was \$11,032 in 2013.⁶⁵¹ Only the other spouse lost a portion of the credit for the dependent spouse because that credit was calculated on the dependent spouse's income for the year. The lowest-income couples with children in households in which both parents worked benefited less. If the income of the second earner was more than the personal exemption, tax was paid on the UCCB. Up to 2010, single-parents were penalized because income-splitting was impossible for them. The UCCB benefit had to be included in the single-parent's income without the possibility, as couples had, of it being taxed based on the income of the lowest earner. The situation changed in 2010 when the legislators allowed single-parents to include the UCCB benefit for one of their children's income. It made the payment no longer subject to tax if it was lower than the personal exemption, but the single-parent lost part of the eligible dependent tax credit, which was based on the child's income for the year. Starting in 2010, single-parents were treated the same as one-earner couples. The benefit derived from the UCCB was the same, or higher, for a couple with children where only one parent worked earning

⁶⁵⁰ *Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance*, Evidence Number 9 (May 10, 1999) at 24 (Mr. Paul Kershaw - Dr. Kershaw was then a Ph.D student at the University of British Columbia).

⁶⁵¹ Paragraph 118(1)c) ITA

\$500,000, than for the single mother earning \$35,000. The decision to stay at home or work, however, was considered a choice at the discretion of the family.⁶⁵² The ITA promoted choice, but the argument of choice was often used as a discursive formula to promote a traditional family model.⁶⁵³ Nevertheless, the discourse after 2006, gave greater consideration to care provided at home along with unpaid work.⁶⁵⁴ Though women as carers were never mentioned in the discourse, the provisions that were implemented always favoured a more traditional family with only one-earner in the couple. The discourse was split with the traditional family and the two-earner family on opposite sides. There was little cross-over conversation between the two sides of the argument.

Social Rights: STEs Are Tax-Relief for the Hard-Working Families

During the social investment strategies period, the tax policy discourse did not try to decommodify the worker, but to commodify him with incentives to work. The poor who received social assistance were no longer considered as being deserving. Economic independence was encouraged by promoting work through lowering the welfare wall. Universalism was not a desirable goal in the discourse and the focus was therefore on the working poor.

⁶⁵² *House of Commons Debates*, 35th Parl, 1st Sess, No 54 (21 April 1994) at 6593 (Hon. Pierrette Ringuette-Maltais).

⁶⁵³ *Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance*, Evidence Number 14 (May 13, 1999) at 38 (Mr. Paul Szabo); *Standing Committee on Finance* (October 4, 2006) at 64 (Mr. Thierry St-Cyr).

⁶⁵⁴ *Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance*, Evidence Number 9 (May 10, 1999) at 34 (Mr. John Herron); *Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance*, Evidence Number 11 (May 11, 1999) at 4, 20 (Mr. Paul Forseth).

6.3.1. *Decommodification*

The social investment strategies period was a time of great concern about the welfare wall. People who received social assistance were entitled to a range of services and the reimbursement of expenses (optometrist, dentist) incurred. There was a fear that this would create a dependence on the social system, and therefore be less of an incentive to work. Thus, it was not surprising that more benefits were related to an attachment to the labour market. Although the discourse was directed towards children and child poverty, the increase in benefits went to low-income working families, instead of going to the very poor. However, the targeting that was linked to the labour market (to hard-working families) may have left some women in the cold. In 1996 and 2006, female lone-parent families represented 52.9% and 28.9% respectively, of the people on low-income after tax cut-off.⁶⁵⁵ Women represented 16.2% and 10.9% of those on low-income after tax cut-off.⁶⁵⁶

This period was focused on access to work, so it was therefore more sensitive to unconventional working schedules. For example, the maximum age of eligibility for child care expenses was increased to 16, in order to allow parents to deduct child care expenses for their children while they worked night shifts. This excerpt from the 1996 budget expressed this consideration:

The increase in the age limit for the child care expense deduction responds to concerns raised mainly by single parents who must be away

⁶⁵⁵ Williams, *supra* note 109 at 21 (Table 13).

⁶⁵⁶ *Ibid.* at 20 (Table 12).

from home at night for their work (airline attendants, nurses and other shift workers).⁶⁵⁷

A few measures were also widened during this period to allow access to study and training. Training during the social investment strategies period was encouraged. For example, the CCED was expanded to allow for one parent to benefit from the deduction, even if the other parent had a lower income, while the first parent studied. From 1996, if both parents were students (or if a single parent studied), the deduction was applied against all income and not just earned income, which was the case with the general wording of the deduction:

The eligibility for the child care expense deduction (CCED) is broadened by allowing single parents who are in full-time attendance at school to claim the CCED against all types of income. This measure will also apply to two-parent families when both are fulltime students. As well, parents who are completing high school will be allowed this deduction for the first time.⁶⁵⁸

The discourse expressed a desire to see parents take responsibility for their future.

Talks about reducing the tax burden on families were starting to emerge from the discourse. For this reason, it was more difficult to discuss universalism, as the tax expenditures were considered to be tax cuts instead of social welfare measures. Again, tax cuts usually benefit higher-income and middle-class families. Universalism was no longer part of the discourse. In the neoliberal period, universalism had been important enough that tax expenditures were still justified using that concept. Even if it was an

⁶⁵⁷ Canada, Department of Finance, *Budget Plan 1996* (March 6, 1996) at 159.

⁶⁵⁸ *Ibid.* at 72 and 158-159.

eroded definition of universalism, policies were still aligned with that broader concept of universalism. It was not until the very end of that period, and the beginning of social investment strategies, that universality disappeared. This is an example of the depiction of universalism in the social investment strategies period:

The second point I would like to stress in terms of this budget is the child benefit plan. I know a number of members opposite have railed at this particular change because they feel that it may spell the end to universality of social programs.

Some of us do not think that is such a bad thing. The reason is that in a world of limited governmental resources, it is important that we try to target those resources to the people who need them and this child tax benefit plan change is an attempt to do that.⁶⁵⁹

This era was one in which vulnerable groups - such as children in families with low-income, the poor - were targeted.⁶⁶⁰

Targeted Tax Relief

Each of this government's budgets has provided targeted tax relief in priority areas to achieve key social and economic objectives. Actions in these areas could not wait as the potential benefits outweighed the associated fiscal costs.

⁶⁵⁹ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 7 (31 March 1992) at 9116 (Mr. Garth Turner). See also: *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (15 September 1992) at 13134 (Mr. John R. Rodriguez).

⁶⁶⁰ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 7 (31 March 1992) at 9061 (Hon. Mary Collins, Associate Minister of National Defence and Minister Responsible for the Status of Women); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (11 March 1992) at 8024 (Ms. Deborah Grey); *Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance (1999)*, Evidence Number 6 (April 27, 1999) at 2 (Ms. Marta Morgan, Director, Children's Policy, Social Policy, Strategic Policy, Department of Human Resources Development). The 2006 Budget is entitled: "Focussing on Priorities".

There have been more than 40 major targeted tax relief actions, including support provided for students, charities, persons with disabilities, and children in families with low incomes.⁶⁶¹

Targeting became so fashionable in the discourse that the increasing use of the family income for the calculation of tax benefits was justified by the increased efficiency of such calculations in targeting families in need.⁶⁶² This excerpt from a debate in the House of Commons is an example:

This new system is intrinsically a lot fairer. It is not based on individual income; it is based on family income. This is what Canadians have been telling us for years. It is targeted at those who need it the most. We have taken a look at the total system and we will target those people with lower and middle incomes. The assistance will be focused on the low and the middle income.⁶⁶³

Certainly, well-off families benefiting from tax expenditures seemed to be an aberration during this period. In 1992, universalism, even the expanded definition of the neoliberal era, was seriously questioned, as shown in this debate:

Mr. Garth Turner (Halton-Peel): Mr. Speaker, in many of the town hall meetings and other public meetings I have had in my riding my constituents consistently over the last couple of years have been asking me: "Can the government please take an initial step to end universality of social programs?" People have said that it makes little sense to them that the government provides social programs or provides cheques to families only to turn around and tax it back.

⁶⁶¹ Canada, Department of Finance, Budget Plan 1999, *Building Today for a Better Tomorrow* (February 16, 1999) at 122-123.

⁶⁶² *Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance*, Evidence Number 3 (April 21, 1999) at 21 (Mr. Munir Sheikh, Assistant Deputy Minister, Tax Policy Branch, Department of Finance).

⁶⁶³ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 9 (1 June 1992) at 11196 (Hon. Barbara Jane Sparrow, Parliamentary Secretary to Minister of National Health and Welfare).

It seems in a common sense mode for a lot of people in my riding that the government should change this. Yet the Government of Canada has been on record as saying that social programs or universality has been a sacred trust.

I am wondering if the member can address that. Does she see this move in this new program to a more common sense attitude toward social programs, in other words a targeting of precious government resources to those who need them and perhaps an end to this concept that we must be all things to all people?

Mrs. Sparrow: Mr. Speaker, I want to thank my colleague for actually putting a very straightforward question: Can the government be all things to all people.

With regard to the precious revenues that we do have, there is only one taxpayer in Canada. Whether he or she is paying the municipal tax, the provincial tax or the federal tax, that taxpayer is the one who appears to get nailed.

What we are doing in this particular child benefit package is combining many family benefits into one monthly cheque that is non-taxable. It will be based solely on last year's tax return.

The hon. member is quite right that those in need, those who do need assistance from the government will receive it. It is actually over \$76,000 a year on total income that it will be completely phased out. Those under \$50,000 will lose nothing. Those over \$50,000 will be slowly phased out, directly proportional to the income for that year.⁶⁶⁴

Resources were limited, and social programmes that provided benefits to the rich were considered as a waste of resources in the dominant discourse.⁶⁶⁵ Efficiency and targeting were the watchwords and were in opposition to universalism during this period.⁶⁶⁶

⁶⁶⁴ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 9 (9 June 1992) at 11626-11627 (Mr. Garth Turner and Hon. Barbara Jane Sparrow, Parliamentary Secretary to Minister of National Health and Welfare).

⁶⁶⁵ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 9 (9 June 1992) at 11640 (Hon. J. W. Bud Bird); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (11 March 1992) at 8028 (Hon.

6.3.2 *Capacity to Form and Maintain an Autonomous Household*

During the social investment strategies period, women completely disappeared from the discourse. The desire to target a particular group was rather frowned upon. The dominant discourse ignored the specific responsibilities of women and adopted a gender-neutral approach - gender was no longer referred to.

Between 1995 and 1999, there were quite a few discussions in the House of Commons about allowing all families with children to benefit from the CCED. As I already mentioned there were propositions by the Reform Party that all families with children should benefit from the CCED (which would be converted into a tax credit), notwithstanding the fact that no expenses were incurred, and that one spouse remained at home to care for children. In the debates, women were never alluded to.⁶⁶⁷ This was so much the case that when a member gave an example of a parent staying at home, it was the story of a man who decided to sacrifice work to care for his children:

The tax policies are discriminatory. I will use my sister for an example. My sister is a schoolteacher in Invermere. She has three small girls who are just starting elementary school. Her husband James decided to put his career on hold. He stayed at home with the three girls while my sister went off to teach. They felt it was very important that one parent

Pierre Blais, Minister of Consumer and Corporate Affairs and Minister of State (Agriculture); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (26 February 1992) at 7637 (Hon. Benoit Bouchard, Minister of National Health and Welfare); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (26 February 1992) at 7653, 7656 (Mr. Al Johnson); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (26 February 1992) at 7666 (Mr. Greg Thomson); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (28 February 1992) at 7786 (Mr. Peter L. McCreath, Parliamentary Secretary to Minister of State (Finance and Privatization)).

⁶⁶⁶ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (11 March 1992) at 8024 (Ms. Deborah Grey).

⁶⁶⁷ *House of Commons Debates*, 35th Parl, 2nd Sess, No 99 (7 November 1996); *House of Commons Debates*, 35th Parl, 2nd Sess, No 104 (21 November 1996); *House of Commons Debates*, 36th Parl, 1st Sess, No 198 (March 17, 1999).

be at home until the girls started school, so James put his career on hold and my sister went to work. He made personal sacrifices that we should be commending him for and not penalizing him under our current tax act. That is exactly what we are doing. There is no question about it.⁶⁶⁸

And this tangent was not only adopted by the party who presented the Motion. Other parties also refused to discuss the gender-related effects of the law. One Liberal M.P. said:

I hope that in this debate I can offer some constructive suggestions with respect to the motion at hand. I will diligently attempt to stay away from gender politics and all of the nonsense that goes with it.⁶⁶⁹

Another example of the neutrality of the discourse came from a sitting member of the Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance. This Member of Parliament felt he must correct one of the speakers over the roles of men and women:

Mr. Paul Szabo: I want to just comment on the very last page of your brief. I agree totally with your point about “choices/needs of women to stay at home as primary caregivers or to enter the paid work force must be equally valued and facilitated”. I assume you would concede that it could be a woman or a man as either caregiver or worker. Choice is good.

Ms. Margot Young: Absolutely, but I also think it's important to recognize the sociological reality that it is currently disproportionately women who do this.⁶⁷⁰

⁶⁶⁸ *House of Commons Debates*, 36th Parl, 1st Sess, No 198 (17 March 1999).

⁶⁶⁹ *House of Commons Debates*, 36th Parl, 1st Sess, No 198 (17 March 1999) at 1650 (Mr John McKay).

⁶⁷⁰ *Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance*, Evidence Number 8 (May 10, 1999) at 21 (Mr. Paul Szabo and Ms Margot Young, Research Associate, Canadian Centre For Policy Alternatives).

Another example was a petition filed by a Conservative MP in 2005 to remove the female presumption in child care.⁶⁷¹ The presumption indicated that when the child lives with both parents, the mother is presumed to be primarily responsible for the child. In the presentation of the petition, the member said: “The act should be gender neutral in this case and leave it up to the parents to decide to whom the benefit should be paid”.⁶⁷² The motion was not adopted, but the discourse was becoming far from that of the Keynesian period, where the importance of family allowance being paid to women was clearly emphasized. This trend towards neutrality was maintained throughout the social investment strategies period (1992) and continues today.⁶⁷³

As it was increasingly difficult to speak of women, the discourse at the beginning of this period (1991-1996) mainly focused on children. This change of focus on actors started in 1989, with a motion that was tabled in the House of Commons and then adopted. It called for the elimination of child poverty in Canada by the year 2000. The existence of this motion was recalled regularly in the following years.⁶⁷⁴ This change of focus and attention towards children was also caused by Canada signing and ratifying the United

⁶⁷¹ According to the definition of “eligible individual” at para g) at section 122.6 of the ITA “where a qualified dependant resides with the dependant’s female parent, the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant is presumed to be the female parent”. Sections 6201 and 6302 of the Income Tax Regulations specifies exceptions to the presumption and factors to be analyzed to determine which of the parents primarily fulfils the responsibility for the care and upbringing of the qualified dependant.

⁶⁷² *House of Commons Debates*, 38th Parl, 1st Sess, No 151 (16 November 2005) at 9745-9746 (Mr. David Chatters).

⁶⁷³ Canada, Department of Finance, *Budget Plan 1996* (March 6, 1996); Canada, Department of Finance, *Budget Speech 1996* (March 6, 1996); Canada, Department of Finance, *Budget 1998, The Budget Plan 1998: Building Canada for the 21st Century* (February 24, 1998).

⁶⁷⁴ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (15 September 1992) at 13121 (Mr. Jean-Robert Gauthier).

Nations *Convention on the Rights of the Child* in December 1991. Fiscal measures were introduced or modified for “Enriching benefits for family with children”, which was a logical result of the ratification of the Convention.⁶⁷⁵ Both the Convention and the World Summit for Children took an important place in the discourse, and gradually, the child moved to its centre.⁶⁷⁶ The introduction in 1992 of the Canada Child Tax Benefit followed two parliamentary reports, one from a Senate Committee entitled “Child Poverty: Towards A Better Future”, and another from a House subcommittee entitled “Canada’s children: Our Future”.⁶⁷⁷

Welfare programmes and STEs were oriented towards children at risk and the needy, and they became a priority in the discourse. Tax redistribution policies were aimed at this goal. Now the ITA was to meet the needs of children.⁶⁷⁸

My colleague, the Minister of National Health and Welfare, has been consulting Canadians on how best to meet the needs of children in Canada.⁶⁷⁹

And fiscal policies were built for families and children:

⁶⁷⁵ Canada, Department of Finance, *Budget Speech 1992* (February 25, 1992) at 14.

⁶⁷⁶ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 9 (1 June 1992) at 11195 (Hon. Barbara Jane Sparrow, Parliamentary Secretary to the Minister of National Health and Welfare); *House of Commons Debates*, 35th Parl, 2nd Sess, No 7 (6 March 1996) at 377 (Hon. Paul Martin, Minister of Finance).

⁶⁷⁷ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (26 February 1992) at 7636-7637 (Hon. Benoit Bouchard, Minister of National Health and Welfare).

⁶⁷⁸ Canada, Department of Finance, *Budget Speech 1992* (February 25, 1992) at 14, 15. House of Commons, Standing Committee on Finance, *For the Benefit of our Children: Improving Tax Fairness*, (June 1999).

⁶⁷⁹ Canada, Department of Finance, *Budget Speech 1992* (February 25, 1992) at 14, 15.

Hon. Monique Vézina (Minister of State (Employment and Immigration) and Minister of State (Seniors)): Mr. Speaker, I would like to repeat that the new approach taken to our social programs in the latest budget stresses this government's commitment to setting a priority on families and children. We can say that starting with this budget and this recommendation, families will have an additional \$2 billion to spend in the next five years, which means \$500 million for the current year.⁶⁸⁰

But the child, as an actor in the discourse, in turn lost ground. It was soon to be replaced by the poor or vulnerable child and the fight against child poverty.⁶⁸¹ Children were no longer poor because their parents were poor. Poverty now belonged to the children:

I point out to my hon. friend that we have made very substantial progress in these areas, particularly in respect of children, and we continue to devote the energies and the interests of the government toward that end.

Witness, for example, the decision of the minister of health to focus more and more of the government's resources on children at risk and children in poverty, as announced by the Minister of Finance in the last budget. That I think is an important contribution toward social justice and fairness in Canada.⁶⁸²

In 1997, the government repeated the discourse directed at children, in implementing the Child Benefit System which included the CCTB and WIS:

⁶⁸⁰ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (11 March 1992) at 7980 (Hon. Monique Vézina, Minister of State (Employment and Immigration) and Minister of State (Seniors)).

⁶⁸¹ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (10 March 1992) at 7930 (Ms. Albina Guarnieri and the Hon. Monique Vézina, Minister of State, Employment and Immigration and Minister of State, Senior); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (11 March 1992) at 7988 (Ms. Margaret Mitchell); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (11 March 1992) at 8281 (Hon. Benoit Bouchard, Minister of Health and Welfare); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (14 September 1992) at 13100 (Ms. Sheila Finestone). *House of Commons Debates*, 35th Parl, 2nd Sess, No 104 (21 November 1996) at 6529 (Hon. Douglas Peters, Secretary of State, International Financial Institutions); Canada, Department of Finance, Budget 1998, *The Budget Plan 1998: Building Canada for the 21st Century* (February 24, 1998) at 109-111.

⁶⁸² *House of Commons Debates*, 34th Parl, 3rd Sess, Vol 7 (17 March 1992) at 8357 (Right Hon. Brian Mulroney, Prime Minister).

“Towards a National Child Benefit System

Our children are our most precious resource and ensuring their health is our greatest responsibility. We also know that an important determinant of the health of our children is the income they have to live on, as well as the services at their disposal. The question is, what are we doing about it? The answer, for too many children and their families, has been not nearly enough. We know that. We say that.

Child poverty is an issue on which the country is coming together. Canadians believe the challenge must be addressed. The Prime Minister has taken a leadership role and he and the premiers, at the First Ministers’ Meeting last June, agreed to make investing in children a national priority. Social services ministers from across Canada are making great progress in identifying how we can move forward together.

We know that the causes of child poverty are many. We know that not all of them can be easily addressed.⁶⁸³

The poor child and the fight against child poverty were present in the discourse regarding tax expenditures policy throughout the 1990s and early 2000s.⁶⁸⁴ For example, in 1998, a member of the Bloc Québécois tabled a motion for the full indexation of the Child Tax Benefit. The discourse was then completely oriented around children and the fight against

⁶⁸³ Canada, Department of Finance, *Budget Speech 1997* (February 18, 1997) at 20 (Hon. Paul Martin).

⁶⁸⁴ *House of Commons Debates*, 36th Parl, 1st Sess, No 53 (5 February 1998) at 3568 (Ms. Elsie Wayne); *House of Commons Debates*, 36th Parl, 2nd Sess, No 1 (12 October 1999) at 9 (Mr. Rick Limoges); Budget 2000, p. 8. *House of Commons Debates*, 36th Parl, 2nd Sess, No 58 (28 February 2000) at 4105-4106 (Hon. Paul Martin, Minister of Finance); *House of Commons Debates*, 37th Parl, 2nd Sess, no 002 (1 October 2002) at 24 (Right Hon. Stephen Harper, Leader of the Opposition); *House of Commons Debates*, 37th Parl, 2nd Sess, No 100 (12 May 2003) at 6107 (Mr. Geoff Regan, Parliamentary Secretary to the Leader of the Government).

child poverty. While the payment was made to mothers, it was only the children who were suffering from this partial indexation.⁶⁸⁵

The “family” also started to take more and more space in the discourse, reaching a peak in the year 2000.⁶⁸⁶ Women were increasingly absorbed into the family and lost their individual identity. If her family was vulnerable, maybe she was too and would find a place in the discourse. If her family was not, she may have been vulnerable for different reasons, but it was then a private matter. The discourse was no longer interested in power relations within the family. Here is an excerpt that particularly illustrated this trend:

We are told that it has to do with the fact that women are automatically the victims. The only women who will no longer receive a cheque are those whose family income is over \$40,000. Try to tell me that they need such an allowance. Family allowances will not solve family communication problems where the woman does not work and the man makes \$70,000 a year and does not give a damn cent to his wife and

⁶⁸⁵ *House of Commons Debates*, 36th Parl, 1st Sess, No 53 (5 February 1998) at 3568 (Ms. Elsie Wayne); *House of Commons Debates*, 36th Parl, 1st Sess, No 81 (26 March 1998) at 5443 (Ms. Suzanne Tremblay).

⁶⁸⁶ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (11 March 1992) at 8000 (The Hon. Suzanne Duplessis, Parliamentary Secretary to the Minister of External Relations and Minister of State (Indian Affairs and Northern Development)); Canada, Department of Finance, Budget 1998, *The Budget Plan 1998: Building Canada for the 21st Century* (February 24, 1998) at 193, 194; *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (11 March 1992) at 7980 (Hon. Monique Vézina, Minister of State (Employment and Immigration) and Minister of State (Seniors)); *House of Commons Debates*, 39th Parl, 1st Sess, vol. 141 (26 March 2007) at 66 (Hon. Carol Skelton, Minister of National Revenue); *House of Commons Debates*, 39th Parl, 1st Sess, No 132 (30 March 2007) at 9-10 (Ms. Diane Ablonczy, Parliamentary Secretary to the Minister of Finance); *House of Commons Debates*, 41st Parl, 1st Sess, Vol 006 (9 June 2011) at 227 (Hon. John McCallum); Canada, Department of Finance, Budget in Brief 2011, *A Low-Tax Plan for Jobs and Growth* (June 6 2011) at 17; *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 36 (Mr. Rod Bruinooog); Canada, Department of Finance, The Budget Speech 2006, *Focusing on Priorities* (May 2, 2006) at 99; *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (24 April 2006) at 140 (Ms. Paule Brunelle); *House of Commons Debates*, 39th Parl, 1st Sess, No 124 (20 March 2007) at 22 (Mr. Lui Temelkovski); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (24 April 2006) at 114 (Mr. Dave Van Kesteren).

children. The bill will not solve that problem. It will continue just as it is now and will even be increased.⁶⁸⁷

The introduction of the CCTB was also a good example, with the amount of the benefit being calculated based on family income.⁶⁸⁸ A representative from the Department of Finance explained that tax law uses the family income for calculating benefits because it was the best way to target those who needed it most:

Mr. Paul Forseth: Is it somewhat correct to say that taxes are based on individual income, yet, when we get into the business of children, the return of benefits is based on a family? That's where we get into some trouble.

Mr. Munir Sheikh: That is right. While it may seem inconsistent that you base your taxes on individual income and your benefits on family income, I don't think, since we're talking about benefits and tax, that there is any inconsistency in this. One may, as a matter of value judgment or policy view, say that they should probably be based on both. That view can be taken, but technically or analytically, I would say, one can have a system in which taxes are based on individual income and benefits are based on family income.

⁶⁸⁷ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (14 September 1992) at 13054 (Mr. Jean-Guy Hudon, Parliamentary Secretary to President of the Queen's Privy Council for Canada and Minister Responsible for Constitutional Affairs); See also this passage of the *House of Commons Debates* when Ms. Mary Clancy notes that one of her colleague laughed when she mentioned: "I know of women in every one of those neighbourhoods that I cited here today who have saved the baby bonus cheques sometimes for years to get out of violent situations, miserable situations, to save their lives and protect themselves. That is just one aspect." *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (15 September 1992) at 13129-13130.

⁶⁸⁸ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (26 February 1992) at 7657-7658 (Mr. Allan Koury); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 7 (31 March 1992) at 9061 (Hon. Mary Collins, Associate Minister of National Defence and Minister Responsible for the Status of Women); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 9 (1 June 1992) at 11171 (Mr. Pierre H. Vincent, Parliamentary Secretary to Deputy Prime Minister and Minister of Finance); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 9 (1 June 1992) at 11196 (Hon. Barbara Jane Sparrow, Parliamentary Secretary to Minister of National Health and Welfare); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 9 (9 June 1992) at 11640 (Hon. Bud Bird); *Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance (1999)*, Evidence Number 6 (April 27, 1999) at 2 (Ms. Marta Morgan, Director, Children's Policy, Social Policy, Strategic Policy, Department of Human Resources Development).

The rationale for that, which lies behind what we have—and I'm not here to justify or agree with the rationale, I'm just providing information as to why we have this—is that an individual-based tax system implies that when a spouse goes to work, he or she would face their own tax rate, that their tax rate would not be dependent on what the partner is doing, so that in a sense there is some independence in making economic and social decisions. That is the rationale for an individual-based tax system.

Why do we then have a family-based benefit system? The family-based benefit system starts from the rationale that if the government is to provide benefits and if it is to finance that benefit by raising taxes, then the cost of that benefit can be contained and the benefit targeted to the most needy if it is based on family income rather than on individual income. So to maximize the “benefit” of the benefits being provided at the least cost, you would pursue, as the current tax system does, a family-based benefit system. The two approaches are quite consistent, because the objective is to contain cost and provide the most benefits for those who need them.⁶⁸⁹

In terms of equality, it takes us back to the familialist policies of the Keynesian welfare state, during which benefits had been distributed in terms of an attachment to the family. This calculation of the benefit based on family income did not consider power relations within the family.

In the social investment strategies period, the manner in which different groups may have been affected by the income tax was not really discussed. The emphasis was on the different types of family and how they were affected differently by tax expenditures. The discourse began to define tax expenditures as a long-term investment rather than as government spending. The government did not spend. It invested:

⁶⁸⁹ *Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance (1999)*, Evidence Number 3 (April 21, 1999) at 21 (Mr. Paul Forseth and Mr. Munir Sheikh, Assistant Deputy Minister, Tax Policy Branch, Department of Finance).

What we have also demonstrated as well is that, by focusing on the children of low income families, we are investing in the future, since everyone is aware that poverty consistently leads to situations that are harmful to society. Poverty is unacceptable in itself, for the people experiencing it, but it is an extremely heavy burden for society as well.

Thus, when we invest in the children of poor families, we are strengthening the social fabric of our society, and therefore are making what might be called an investment in the future, rather than a social expenditure, for poverty can kill every spark of promise there is in an individual. I believe that everyone can see that poor children start off with a strike against them. They have more school problems, and more need of the health care system. Knowing that the poor are always more liable to end up unemployed and dependent on social programs, we must therefore make sure that fewer children start off life on the wrong foot.⁶⁹⁰

Here is another example from the 1999 federal budget:

Investing in children is one of the best investments a government can make. The Canada Child Tax Benefit (CCTB) is the primary federal instrument for providing financial assistance to families with children and delivering federal investments to build the National Child Benefit system. This budget contains two measures aimed at fostering equality of opportunity for children. It sets out the design of the commitment in the 1998 budget to provide an \$850-million increase in the CCTB payments to low-income families. It also provides \$300 million to extend benefit enhancements to modest- and middle-income families.⁶⁹¹

The government invested in the adults of tomorrow to help them become productive members of society.⁶⁹²

⁶⁹⁰ *House of Commons Debates*, 35th Parl, 2nd Sess, No 146 (18 March 1997) at 9152 (Hon. Pierre S. Pettigrew, Minister of Human Resources Development).

⁶⁹¹ Canada, Department of Finance, Budget Plan 1999, *Building Today for a Better Tomorrow* (February 16, 1999) at 126.

⁶⁹² *House of Commons Debates*, 38th Parl, 1st Sess, No 105 (31 May 2005) at 6447 (Hon. Ken Dryden, Minister of Social Development); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141, No, 128 (26 March 2007) at 66 (Hon. Carol Skelton, Minister of National Revenue); Canada, Department of Finance, *News Release 2007-051* (June 22, 2007).

After the election of Stephen Harper's minority Conservative government in 2006, the discourse, while remaining completely gender-neutral, reintroduced the traditional family model. While wanting to encourage "hard-working families" (the new actor emerging in the 2000s), the dominant discourse now encouraged measures that favoured a family in which one spouse worked and the other stayed at home.⁶⁹³ In 2007, the amount for a dependent spouse was increased to be equivalent to the basic exemption on initial earnings within a tax year available to all taxpayers. The argument for this increase was that one-earner couples were at a disadvantage because they did not benefit twice from the tax exemptions, as opposed to two-earner couples. The discourse encouraged marriage and measures favouring couples with only one income-earner. Here is an excerpt from a debate in the House of Commons in which the Hon. Stockwell Day, the Minister of Public Safety, explained the government's decision to increase the amount of the credit for the dependent spouse:

Another thing of historic proportions that happened in this budget [2007] is that the so-called marriage penalty has finally been eliminated. The process by which a working spouse would be graded at one level of taxation, a spouse who is working in the home, which is also full time if not overtime, was not given the same benefit as two individuals living together under the same roof. We and families have been asking for years why we have that marriage penalty. We took that out and we raised the spousal benefit. It is the first time in history that

⁶⁹³ Canada, Department of Finance, Budget Speech 2007, *Aspire to a Stronger, Safer, Better Canada* (March 19, 2007) at 13. *Standing Committee on Finance* (May 16, 2007) at 3 (Hon. Jim Flaherty, Minister of Finance); Canada, Department of Finance, Budget Plan 2007, *Aspire to a Stronger, Safer, Better Canada* (March 19, 2007) at 227-228; For a criticism of the dominant discourse: *House of Commons Debates*, 39th Parl, 1st Sess, No 022 (12 May 2006) at 29 (Ms. Olivia Chow); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (24 April 2006) at 127-128 (Hon. Maria Minna).

has happened at the federal level. Thirty-five million dollars will go to B.C. just because of that adjustment alone.⁶⁹⁴

Starting in 2006, the “hard-working family” became the new actor in the discourse. “Hard work” was to be rewarded with jobs paying more through the cutting of taxes for working families. STEs were no longer a government subsidy, but a tax relief for taxpayers. This constituted a very important discursive change regarding tax expenditures. The representation of tax expenditures as an investment continued to be present in the discourse. But in the early 2000s, especially in the second half of this decade, tax expenditures were talked about in terms of tax cuts.⁶⁹⁵ As of 2006, it was the dominant qualification of tax expenditures in the discourse, as this example shows:

As we explained at the all-party briefing on this measure, these tax credits are intended to ensure that the tax burden on amounts spent for the various activities is reduced. If you have no tax burden, then you don't need the tax reduction.⁶⁹⁶

Since the poor do not pay taxes, it was not surprising that they were completely forgotten. Tax expenditures were now reserved for taxpayers, who needed to see their tax burden reduced. When someone highlighted the fact that the poorest did not benefit from these

⁶⁹⁴ *House of Commons Debates*, 39th Parl, 1st Sess, No 124 (20 March 2007) at 67 (Hon. Stockwell Day, Minister of Public Safety).

⁶⁹⁵ *House of Commons Debates*, 39th Parl, 1st Sess, vol. 141 (26 March 2007) at 39 (Hon. Jim Flaherty, Minister of Finance); Canada, Department of Finance, News Release, No 2007-026 (March 27, 2007); Canada, Department of Finance, News Release, No 2007-028 (March 29, 2007). Canada, Department of Finance, Budget Plan 2010, *Leading the Way on Jobs and Growth* (March 4, 2010) at 8, 49, 203. *House of Commons Debates*, 41st Parl, 1st Sess, Vol 006 (9 June 2011) at 216 (Mr. Ray Boughen); *House of Commons Debates*, 41st Parl, 1st Sess, vol 146 (17 October 2011) at 2024 (Ms. Susan Truppe, Parliamentary Secretary for Status of Women); *Standing Committee on Finance*, (1 November 2011) at 5 (Hon. Jim Flaherty, Minister of Finance); *House of Commons Debates*, 41st Parl, 1st Sess, No 050 (21 November 2011) at 3307 (Hon. Shelly Glover, Parliamentary Secretary to the Minister of Finance).

⁶⁹⁶ *Standing Committee on Finance* (1 November 2011) at 11 (Mr. Gérard Lalonde, Director, Tax Legislation Division, Department of Finance).

“tax cuts”, the answer was that if a taxpayer did not pay taxes, they did not qualify for tax relief programmes:

He does make a point about the lowest-income people, but if they are not paying taxes, of course they will not benefit directly from this program. However, they do benefit when we lower the GST, because even the lowest-income people pay lower GST.⁶⁹⁷

Poverty was neglected in order to talk about work:

Mr. Speaker, certainly, we will consider any good ideas that come our way. However, keep in mind these are tax credits that were implemented by this government because we believe in lowering taxes and leaving money in the pockets of the people who earn it. We will continue to advance that point of view because we have faith in the hard work, the ingenuity and the industriousness of every Canadian.⁶⁹⁸

In 2007, the budget even introduced a Working Families Tax Plan, proposing tax cuts for hard-working families.⁶⁹⁹ From that moment, the “hard-working family” was at the centre of the discourse over tax expenditures.⁷⁰⁰

Hard-working families are the backbone of this country and Canada's new government recognizes this.⁷⁰¹

⁶⁹⁷ *House of Commons Debates*, 41st Parl, 1st Sess, vol 146 (6 October 2011) at 1978 (Mr. James Lunney).

⁶⁹⁸ *House of Commons Debates*, 41st Parl, 1st Sess, No 029 (7 October 2011) at 2030 (Hon Pierre Poilievre).

⁶⁹⁹ Standing Committee on Finance (May 16, 2007) at 3 (Hon. Jim Flaherty); Canada, Department of Finance, Budget Speech 2007, *Aspire to a Stronger, Safer, Better Canada* (March 19, 2007) at 13.

⁷⁰⁰ See also : *House of Commons Debates*, 39th Parl, 1st Sess, No 124 (20 March 2007) at 76 (Ms. Ruby Dhalla); Canada, Department of Finance, Budget Plan 2010, *Leading the Way on Jobs and Growth* (March 4, 2010) at 47; *House of Commons Debates*, 39th Parl, 1st Sess, vol. 141 (26 March 2007) at 15 (Hon.. Steven Blaney); *House of Commons Debates*, 39th Parl, 1st Sess, vol. 141 (26 March 2007) at 39 (Hon. Jim Flaherty, Minister of Finance); *House of Commons Debates*, 39th Parl, 1st Sess, vol. 141 (26 March 2007) at 66 (Hon. Carol Skelton, Minister of national Revenue); *House of Commons Debates*, 39th Parl, 1st Sess, No 132 (30 March 2007) at 9-10 (Ms. Diane Ablonczy, Parliamentary Secretary to the Minister of Finance).

Tax expenditures were therefore conceived of as tax cuts promoting the Canadian economy. Tax cuts are always very popular with taxpayers. The classification of STEs as tax cuts limited the debate: who could be against further tax cuts? It also limited the conversation about their objectives and their targets. As Brooks, Li and Philipps argued:

[...] tax expenditures have proliferated in recent years because they are cast as tax cuts, they appear to be dealing with a social problem without government interference, and their cost and design features are not subject to annual budget scrutiny or performance review. However, a careful review of tax expenditures suggests that, like the results of any spending reform exercise, some should be repealed as not serving the government's spending priorities; other should be redesigned, probably as refundable tax credits, to serve their objectives more efficiently and equitably; and other should be repealed and replaced with more efficient and equitable spending programs.⁷⁰²

As women were not an identified actor in the policy discourse around STEs, they could not be well-targeted in policy implementation.

Tax law was used to reduce the burden on taxpayers who paid taxes, and other mechanisms were used for redistribution to everyone, including low-income individuals:

Mr. Speaker, unfortunately, this is an area that the NDP has had historic challenges understanding. When we reduce the tax burden on middle-class Canadians, job creators and corporations, that helps grow the

⁷⁰¹ *House of Commons Debates*, 39th Parl, 1st Sess, No 124 (20 March 2007) at 37 (Mr. Brian Storseth).

⁷⁰² Brooks, Li & Philipps, *supra* note 5 at 1:23.

economy. It empowers individuals financially and allows them to make the best decisions for themselves.

The less tax that people pay to the government, the more the economy will grow. The faster the economy grows, the strength of that growth helps people in low income situations. It helps the government invest in priority social programs that benefit all Canadians, including those with low incomes. It helps Canadians deal with the socio-economic challenges the member alluded to.

It is important to have a strong economy to protect Canadians and our environment. That is what tax credits do.⁷⁰³

Again, individuals (male or female) did not work. It was the families who were working and individuals were absorbed back into this economic unit once again. Women and the power relations within the family were absent from the discourse, and so was the possibility of creating a dependency of women within the family by introducing familialist measures. However, the CCTB and UCCB were still being paid to the mother, but this idea was also completely absent from the discourse.

During this period, and more particularly after the mid-2000s, work was the solution to every problem.⁷⁰⁴ It was the solution to fighting child poverty, and poverty in general. Work was encouraged in order to discourage dependency on social programmes. The main barrier to the labour market was no longer the fact of having children to care for, or the need for affordable child care services. That aspect had been, for all practical purposes, removed from the dominant discourse. The main obstacle to participation in the labour market had now become the dependence on social programmes (such as social

⁷⁰³ *Standing Committee on Finance* (2 November 2011) at 3110 (Mr. Steven Fletcher).

⁷⁰⁴ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (27 February 1992) at 7738 (Ms. Barbara Greene).

assistance and the benefits associated with it). In the discourse, the urgency was to allow welfare recipients to enter the labour market. Making work pay better became the aim, and the children in low-income working families were now the target of the tax expenditure discourse.⁷⁰⁵ Working involved additional costs (such as child care), but also the loss of certain benefits. Measures were thus created to offset these costs for workers.⁷⁰⁶ The discourse, thus, focused heavily on the “welfare wall” and the “welfare trap”, representing the loss of benefits associated with entry into the labour market, which could be higher than the income generated by working.⁷⁰⁷ For now, welfare appeared in

⁷⁰⁵ Canada, Department of Finance, *Budget Plan 1996* (March 6, 1996) at 17. Canada, Department of Finance, *Budget Plan 1997, Building the Future for Canadians* (February 18, 1997) at 107-108. Canada, Department of Finance, *Budget 1998, The Budget Plan 1998: Building Canada for the 21st Century* (February 24, 1998) at 109-110. Canada, Department of Finance, *Budget Plan 1999, Building Today for a Better Tomorrow* (February 16, 1999) at 180. Canada, Department of Finance, *Budget Plan 2000, Better Finances, Better Lives* February 28, 2000) at 2. Canada, Department of Finance, *The Budget Plan 2003* (February 18, 2003) at 92-95.

⁷⁰⁶ *House of Commons Debates*, 35th Parl, 1st Sess, No 104 (3 March 1995) at 10340-10350 (Mr. David Walker, Parliamentary Secretary to Minister of Finance); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 6 (26 February 1992) at 7656 (Mr. Al Johnson); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (15 September 1992) at 13127 (Mr. Peter L. McCreath, Parliamentary Secretary to Minister of State (Finance and Privatization)); Canada, Department of Finance, *Budget Plan 1996* (March 6, 1996) at 68, 69 and 153-154. Canada, Department of Finance, *Budget Speech 1996* (March 6, 1996) at 15, 16. *Sub-Committee on Tax Equity for Canadian Families With Dependent Children of the Standing Committee on Finance*, Evidence Number 6 (April 27, 1999) at 8 (Ms. Marta Morgan, Director, Children’s Policy, Social Policy, Strategic Policy, Department of Human Resources Development).

⁷⁰⁷ Canada, Department of Finance, *Budget Plan 1999, Building Today for a Better Tomorrow* (February 16, 1999) at 126-128. Canada, Department of Finance, *Budget Plan 2000, Better Finances, Better Lives* February 28, 2000) at 2. Canada, Department of Finance, *The Budget Plan 2003* (February 18, 2003) at 92-95; Canada, Department of Finance, *Budget Speech 2003* (February 18, 2003) at 7-8. Canada, Department of Finance, *Budget Speech 2007, Aspire to a Stronger, Safer, Better Canada* (March 19, 2007) at 8. *House of Commons Debates*, 37th Parl, 2nd Sess, No 062 (18 February 2003) at 3731 (Hon. John Manley, Deputy Prime Minister of Finance); *House of Commons Debates*, 38th Parl, 1st Sess, vol 9 (2 October 1997) at 424 (Hon. Pierre S. Pettigrew, Minister of Human Resources Development).

the discourse as more profitable and attractive to taxpayers than integration into the labour market. The discourse wished to create programmes to counter this idea⁷⁰⁸:

Some families on social assistance are better off than families where parents work in low-paying jobs. For example, parents who leave welfare to enter the workforce lose child allowances under social assistance (which can be \$3,000 or more for a two-child family) as well as access to benefits such as subsidized drugs and dental care. Families must also pay a range of taxes they would otherwise not have to pay. This loss is only partially offset by the Working Income Supplement (WIS) under the Child Tax Benefit and provincial measures that assist low-income working families.

The drop in services and support encountered by parents who leave social assistance for a job is unfair. It creates a barrier that keeps families on welfare. Parents should not be put in the position of having to penalize their children in order to take a job. By working together to reform child benefits, governments can create a fairer system and take an important step in combating child poverty.⁷⁰⁹

Poor people and single parents needed incentives to get them back into the work force.⁷¹⁰

Thus, without creating child care programmes, – the absence of which was considered a major obstacle to women entering the labour market⁷¹¹ – measures were created to encourage work. However, taxpayers were eligible for these measures only when worker status was acquired.⁷¹² Workers were deserving and worthy of the support of the State.⁷¹³

⁷⁰⁸ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (15 September 1992) at 13129 (Hon. John McDermid, for the Minister of Finance).

⁷⁰⁹ Canada, Department of Finance, *Budget Plan 1997, Building the Future for Canadians* (February 18, 1997) at 105.

⁷¹⁰ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 9 (9 June 1992) at 11638-11639 (Ms. Shirley Maheu); Canada, Department of Finance, *Budget Speech 1996* (March 6, 1996) at 15 et 16.

⁷¹¹ Abella, *supra* note 245.

⁷¹² Canada, Department of Finance, *Budget Plan 1996* (March 6, 1996). *House of Commons Debates*, 34th Parl, 3rd Sess, vol 9 (1 June 1992) at 11196 (Hon. Barbara Jane Sparrow, Parliamentary Secretary to Minister of National Health and Welfare).

Opposition parties were very critical of an approach they saw as creating two categories of poor: the deserving and undeserving poor.⁷¹⁴

These measures, that provided a monetary incentive for workers were still criticized because they provided little assistance to single mothers, or couples where both parents had to work. Here is an example of this kind of criticism:

Mr. Speaker, the hon. member who just spoke referred in his remarks to the needs of children. He particularly mentioned the high priority needs of single parents raising children on their own, most of them single mothers.

When he talked about those needs did he not mention the need for child care? Does he not realize that this is a burning need for most parents, that when both parents are forced to be in the work force they need reliable licensed child care? Even greater is the need of single mothers for child care.

The child benefits program that he is talking about gives a special incentive, a special bonus, which is really a two-tiered philosophy that is rather regressive. The good working poor will get an extra bonus if they go to work but those who are forced to stay on welfare will not.

In particular the single mother will have very little opportunity to get off welfare and seek employment, even in the minimum wage jobs that are probably the only ones available. A mother cannot go to work if she does not have reliable child care for her children. Why did he not take this into account and what does he feel about this?⁷¹⁵

⁷¹³ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 9 (9 June 1992) at 11644 (Hon. J. W. Bud Bird).

⁷¹⁴ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 7 (31 March 1992) at 9064 (Ms. Dawn Black); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 7 (31 March 1992) at 11662 (Ms. Margaret Mitchell).

⁷¹⁵ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 7 (31 March 1992) at 11662 (Ms. Margaret Mitchell). See also *House of Commons Debates*, 34th Parl, 3rd Sess, vol 7 (31 March 1992) at 11676 (Mr. Brian L. Gardiner).

The role of the CCED, for example, was no longer a social measure for achieving societal goals, such as equality for women by enabling economic independence. Although the CCED was still described in the discourse over fiscal policy as a spending tool (hence the nature of tax expenditures), its objectives were integrated into the discourse as part of the normative framework of the ITA, just like in the neoliberal period.

Gender was missing from the discourse regarding integration into the labour market and was not important in tax policy implementation. When women were present, they were cast in a vulnerable position, either by being social assistance recipients, poor single mothers, or the head of a very low-income family.⁷¹⁶ Integration of women into the labour market in general was no longer a priority except to the extent the policy purportedly involved getting women, like other taxpayers, out of their economically vulnerable positions.

⁷¹⁶ *House of Commons Debates*, 34th Parl, 3rd Sess, vol 9 (9 June 1992) at 11627 (Mr. Dennis Mills and Hon. Barbara Jane Sparrow, Parliamentary Secretary to Minister of National Health and Welfare); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 9 (9 June 1992) at 11634 (Mr. Dennis Mills); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 7 (31 March 1992) at 9061 (Hon. Mary Collins, Associate Minister of National Defence and Minister Responsible for the Status of Women); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (23 June 1992) at 12708 (Mr. Marc Harb); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (15 September 1992) at 13160 (Mr. Jim Karpoff); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 10 (16 September 1992) at 13242 (Mr. Ken James, Parliamentary Secretary to Minister of Labour); *House of Commons Debates*, 34th Parl, 3rd Sess, Vol 7 (17 March 1992) at 8794 (Ms. Beryl Gaffney); *House of Commons Debates*, 34th Parl, 3rd Sess, vol 7 (31 March 1992) at 9064 (Ms. Dawn Black); Canada, Department of Finance, Budget Speech 2007, *Aspire to a Stronger, Safer, Better Canada* (March 19, 2007) at 8. *House of Commons Debates*, 41st Parl, 1st Sess, vol 146 (6 October 2011) at 1940 (Mr. Rodney Cuzner).

After 2006, there was a huge reluctance on the part of the Conservative government for institutionalized child care.⁷¹⁷ Clearly, this was not a goal that the government wanted to promote. In response to other parties, who wished to encourage the creation of a national child care and education programme for children, the government provided a choice-oriented discourse. Within this framework, the decision to keep children in daycare, or stay at home, was purely a matter of choice. Parents (the mothers are never alluded to) had the right to decide whether they wanted to stay at home, or work and send their children to daycare.⁷¹⁸ Policies encouraged this choice without discriminating against one type of care over another.⁷¹⁹ This choice was illusory according to opposition parties,

⁷¹⁷ *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (24 April 2006) at 17 (Mr. James Lunney).

⁷¹⁸ *Standing Committee on Finance*, (19 September 2006) at 63 (Ms. Diane Ablonczy).

⁷¹⁹ *Standing Committee on Finance* (26 October 2010) at 48 (Mr. Paul Szabo); *House of Commons Debates*, 39th Parl, 1st Sess, No 022 (12 May 2006) at 73-74 (Mr. Daniel Petit); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 36-37, 40-41 (Mr. Rod Bruinoooge); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 183 (Hon. Jim Flaherty, Minister of Finance); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (24 April 2006) at 32-33 (Mr. Mike Lake); Canada, Department of Finance, *The Budget Plan 2006, Focusing on Priorities* (May 2, 2006) at 47, 99-102. Canada, Department of Finance, *The Budget Speech 2006, Focusing on Priorities* (May 2, 2006) at 8-9. *House of Commons Debates*, 39th Parl, 1st Sess, No 022 (12 May 2006) at 26 (Mr. Mike Allen); *House of Commons Debates*, 39th Parl, 1st Sess, No 022 (12 May 2006) at 118 (Mr. Ken Epp); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 44-45 (Hon. Jason Kenney, Parliamentary Secretary to the Prime Minister (Multiculturalism)); *House of Commons Debates*, 39th Parl, 1st Sess, No 022 (12 May 2006) at 109-110 (Hon. Pierre Poilievre, Parliamentary Secretary to the President of the Treasury Board); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (24 April 2006) at 37 (Mr. Bruce Stanton); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (24 April 2006) at 94-95 (Hon. Diane Finley, Minister of Human Resources and Social Development); *House of Commons Debates*, 39th Parl, 1st Sess, No 022 (12 May 2006) at 20 (Hon. James Moore, Parliamentary Secretary to the Minister of Public Works and Government Services and Minister for the Pacific Gateway and the Vancouver - Whistler Olympics); *Standing Committee on the Status of Women* (25 March 2010) at 10 (Hon. Helena Guergis, Minister of State (Status of Women)); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 166-167 (Mr. Leon Benoit).

since if child care spaces were not created, or child care was not subsidized, there was no real choice for families in which both parents wanted to enter the labour market.⁷²⁰

This reluctance of the ruling party was sometimes expressed strongly in the discourse. This was the case in this rather long excerpt from the Standing Committee on Finance, where a speaker for the Child Care Advocacy Association, lobbying for the creation of child care spaces, was attacked by a Conservative MP:

Mr. Rick Dykstra: Great.

I came with answers. I guess it's some good advice I got from my father, that if you're going to ask a question, make sure you have some answers. Since literally hundreds of thousands of dollars have been granted to your organization by the previous government, from all different.... Approved in March 2005, \$454,000; in 2004, \$29,000; in February 2003, \$300,000; in August 2000, \$260,000; from HRDC in 2004-05, \$160,000.... I'd love to see clear accountability of exactly how many child care spaces the hundreds of thousands of dollars taxpayers have given to your organization have created.

Ms. Monica Lysack: I would hate to see you be confused about the purpose of different grants, and of course there are—

Mr. Rick Dykstra: I thought your purpose was to create child care spaces in this country.

⁷²⁰ *Standing Committee on the Status of Women* (25 March 2010) at 10 (Hon. Anita Neville); *Standing Committee on Finance* (19 September 2006) at 51-55 (Ms. Judy Wasylycia-Leis); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 40-41 (Ms. Denise Savoie); *House of Commons Debates*, 39th Parl, 1st Sess, No 022 (12 May 2006) at 29 (Ms. Olivia Chow); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 74-75 (Ms. Ruby Dhalla); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 129-131 (Mr. Paul Szabo);); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (6 April 2006) at 166 (Mr. Leon Benoit); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (24 April 2006) at 43 (Hon. Hedy Fry). *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (24 April 2006) at 121 (Hon. Robert Thibault); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (24 April 2006) at 126-127, 130-131 (Hon. Maria Minna); *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (24 April 2006) at 135, 136 (Mr. Art Hanger). *House of Commons Debates*, 39th Parl, 1st Sess, vol 141 (24 April 2006) at 136 (Ms. Dawn Black).

Ms. Monica Lysack: That's not our purpose.

Mr. Rick Dykstra: Oh, it's not. Would you like to see child care spaces created?

Some hon. members: Oh, oh!

Ms. Monica Lysack: Our purpose is to support that vision.

The Chair: Let us get on with the question if we could, please.

Madam Lysack, you have a moment to answer the question.

Ms. Monica Lysack: Thank you very much.

No, it is not in fact our organization's mandate and never was our claim that we would actually create spaces. We support a public policy dialogue, give voice to those—particularly women—who do not have access to early learning and child care spaces as they're trying to achieve their own economic equality.

Mr. Rick Dykstra: I appreciate your acknowledging this: that no spaces have been created.⁷²¹

The attacks then continued for several minutes, having nothing to do with the issues being considered by the subcommittee. While the committee was charged with evaluating care measures, the member was attacking the group's objectives and funding. There was a clear unwillingness to encourage care outside the home after 2005.

The parents entitled to claim the CCED received an economic benefit through tax savings. Unfortunately, the benefit did not result in an inflow of income, and if it did, it occurred at the end of the year, long after the expense had been incurred. The parent

⁷²¹ *Standing Committee on Finance* (19 September 2006) at 51-55 (Mr. Rick Dykstra, The Chair, Mr. Brian Pallister, and Ms. Monica Lysack, Executive Director, Child Care Advocacy Association of Canada).

received no immediate help to meet this important expense. For low-income parents, the lack of immediate liquidity for these expenses was undoubtedly an important barrier to the labour market. For taxpayers subjected to the basic rate of 15% (taxpayers with income less than \$42,707⁷²²), the deduction provided a “return” not exceeding \$1,050 for a child under 7 years of age (the maximum deduction was \$7,000 multiplied by 15%). In 2009, according to the household survey from Statistics Canada, reporting households had an average child care expense of \$3,780⁷²³, which meant an average deduction of \$567 for taxpayers who earned less than \$42,407. Not considering who was responsible for care or women’s situation when elaborating STEs, can lead to difficulty in accessing work and putting them in a vulnerable situation.

6.4 Conclusion

After 1992, women practically disappeared from the discourse. They were replaced in the context of fiscal policy by a genderless taxpayer, and could not be distinguished from other citizen-workers. Although at the beginning of the period, women were erased in favour of children and vulnerability, an important discursive change took place in the 2000s, which was intensified after the 2006 elections. Children were still present but the main actor in the discourse was now the hard-working family. Women had been completely absorbed into the family. And vulnerability deserved the state’s consideration only if the poor were deserving poor; if they were workers.

⁷²² For 2012.

⁷²³ Statistics Canada, *Les habitudes de dépenses au Canada - 2009* (no 62-202-X) at Table 1.

Jenson fears that the shift in focus from women to children had a negative impact on women's rights.⁷²⁴ She also argues that the social investment approach focused on the role of women as mothers and on how, because of that, it was expected that they should contribute to the well-being of society.⁷²⁵ As noted by several researchers, social investment policies did not have equality as a goal in itself, but more as a means to an end.⁷²⁶

After the elections in 2006, tax expenditures were not intended as a tool of redistribution but as a way of lowering taxes for taxpayers. This change in approach was related to tax expenditures, and so influenced the discourse, since these measures were no longer considered as social welfare measures, thus distorting their goals.

⁷²⁴ Simon-Kumar, *supra* note 206 at 33.

⁷²⁵ *Ibid.* at 31.

⁷²⁶ *Ibid.* at 35.

CONCLUSION

This thesis questions the premise of the neutrality of STEs. As shown in the first chapter, STEs are similar in nature to welfare provisions. This kind of social measure would not normally be pressured towards being neutral in order to target society's most vulnerable groups. Tax law is being pressured towards an apparent gender-neutrality because of tax theory, which guides the discussion around STEs. However, tax theory should be interested in the technical structure of the law, but, not with tax expenditures. The concept of vertical and horizontal equity, and the principle that everyone should be treated equally under tax law, leaves little room for gender distinctions.

However, STEs have been introduced in legislation that was designed to be neutral. The clash between the two worlds – tax theory and welfare provision - can therefore be problematic for women. The introduction of STEs in tax law has given them a greater apparent gender-neutrality. This does not mean that the real effects of STEs are necessarily gender-neutral. The discursive approach related to tax theory can “neutralize” the welfare aspects of STEs and eliminate their redistribution aspects.

I sought to identify whether the tax policy discourse contained assumptions about women that could affect their relationship to STEs, and also whether this discourse had the potential to create an identity for this group.

To answer this question, a thematic discourse analysis was conducted to study how women are represented in the discourse concerning STEs, using the literature on the welfare state to define discursive periods, as well as the themes for the analysis.

The analysis identified two trends in the changing role of women in fiscal policies. The introduction of STEs in tax law limits the range of the discursive approach, and with it the possibility of introducing social objectives. Within this restrictive approach to discussing the role of STEs, many assumptions about women were found during the three periods of the welfare state identified.

It is at the end of the Keynesian period, in the 1970s, that the use of STEs increased. The introduction of these new welfare benefits into the tax law created a discursive confusion. These measures were mainly introduced to take into account the ability to pay tax, which may be reduced when taxpayers have dependents at home. This discursive approach limited the ability of the debate to address social policy, equality, or even the possibility of encouraging the entry of women into the labour market. It assigned no value to the activity of caring and unpaid work. Working mothers posed a problem in terms of the technical structure of the law by creating new non-discretionary household expenditures. In the discourse, these new expenditures had to be considered under tax law. The discourse therefore talked about women, but the conversation happened in economic terms and in relation to the ability to contribute to tax. The entry of women into the labour market was a reality in the discourse, but it was still the subject of great reluctance. Women were encouraged to remain in their traditional role at home, unless they had no choice but to work in order to support their families. It recognized however the issues of power that arose in the traditional family. Women were represented as being dependent on their spouse, and for this reason certain benefits were paid to them directly, such as family allowance, tax credits for children, and the CCED.

During the neoliberal period, equality meant that everyone should be treated in exactly the same manner and it clearly influenced the conversation around STEs. Unpaid work and care were no longer a gendered matter, they had simply become a private matter. The discourse avoided any reference to gender, and women were replaced in tax policy by children at-risk, or they were simply integrated into the perfect economic unit that constituted the family. Family income was increasingly used to target families at risk. Universalism was not encouraged and STEs were a very effective tool for implementing means-tested benefits. Tax expenditures, for example the CCED, became a purely technical deduction incurred for the purpose of earning income. There was no longer any distinction between the deduction for child care and a deduction for the tools of a mechanic. Social objectives, even if they had been incidental in the preceding period, disappeared within the neoliberal approach.

During the social investment strategy period, the discourse positioned itself more in terms of the normative framework. STEs were not welfare benefits; they were tax-cuts or tax-relief for low-income working families. During this period, the working poor were the focus of fiscal policy. The discourse was concerned by the welfare wall and wanted to encourage welfare recipients to enter the labour market, and those who worked to remain in the work force. STEs proved to be the perfect mechanism to target the low-income working population. Where were women in this period? They were completely invisible and ignored in the discourse; they were replaced by investment in the future of children.

However, following the election of the minority Conservative government under Stephen Harper in 2006, the discourse underwent an important change; it moved away from the

characteristics identified in the literature attributable to the social investment period. From this point onwards, STEs were developed to support the one-income earner family. Although the traditional family model was again encouraged, women were never identified in the discourse as the possible member of the family responsible for the children, or for unpaid work. However, statistically, it was still the responsibility of women. The discourse returned to the family of the Keynesian period, with one significant alteration: women had disappeared.

All over the periods under analysis, the tax law, as an institution, was an instrument of power. It had the potential of imposing characteristics of gender identity. The willingness to introduce more neutrality in tax law and STEs were used as a veil to support the introduction or the amendments of the ITA. However, this apparent neutrality hid assumptions and values that were carried throughout all the periods under study.

Although gender-neutrality was one of the focuses in the dominant discourse, STEs carried strong assumptions about women. These assumptions were reflected in the implementation of STEs. In the Keynesian period, when women were dependents of the family and of their breadwinner spouse, STEs like the exemption for dependent spouse were introduced. Also, other STEs were accounting for the fact of that dependence on the family by ensuring the payments of the benefits went to the mothers. In the neoliberal period, the women were valued if they acted like men; if they integrated into the labour market. Therefore, she was not an actor of tax policy making. The citizen-worker was. Finally, since 2006, though the discourse still hides behind gender-neutrality, the ITA, as an institution, values women in their traditional roles through valuing the traditional one-

earner family. The benefits are thus shaped to favour one-earner couples by introducing benefits such as the UCCB, benefits for caregivers or increasing the amount of the dependent spouse credit. Thus, there is a potential of creating identities through tax law even if it is perceived as a neutral instrument.

Perhaps STEs should no longer be the preferred means for redistribution; the discourse over fiscal policy also contained assumptions about the nature of tax expenditures. They were not considered part of the welfare state, and the discourse remained focused on the normative aspect of tax theory, rather than on the redistribution or social aspect of STEs. In being approached as tax cuts or tax-relief, the discourses lost touch with their objectives. The discourse forgot that these measures belonged to fiscal welfare. The discourse depicted these measures as aiming to compensate for the increase in non-discretionary spending, and to reflect the ability to contribute to tax. Thus, a taxpayer with a low income who did not receive a deduction or a tax credit did not present a problem in terms of normative tax analysis. If a taxpayer did not pay tax, it is logical that he also did not enjoy any deductions. This limited view of the role of STEs therefore not only made them ineffective for redistribution, but also, reduced the potential to expand the social objectives of these measures.

Although I initially assumed that political affiliations could influence the content of the discourse, I realized, using the methodology mentioned above, that various sides of the political spectrum are nonetheless constrained by the discourse. I could cite as an example the discourse around the CCED during the neoliberal period and in the years after. The deduction was talked about more and more in terms of the technical structure

of the law and less in terms of women's integration to the labour market and as a tax expenditure. This discursive approach was common to all parties and was also evidenced in the arguments of Elizabeth Symes before the tribunals. Another example of a discursive trend shared by all parties' affiliation could be noted in Chapter 6 of the thesis when all parties stopped referring to women - or that which is associated to gender - in the discourse. This is consistent with the theoretical approach and Foucault's work who argued that the discursive practices produced by institutions over different periods make it almost impossible to derive from them.⁷²⁷

This thesis contributes to tax law research in two ways. It draws a parallel between tax theory and welfare state theory. STEs should be analyzed according to the criteria applicable to the welfare state because they are part of fiscal welfare. Normative tax theory limits the potential of the discourse in terms of redistribution and social goals. This may place women in a position of vulnerability as they have less income than men, and may benefit less from the measures once they are introduced into tax law.

This thesis has also demonstrated the inaccuracy of the assumption that tax law is gender-neutral. Throughout the years under analysis, the fiscal policy narrative contains important assumptions about women. This thesis, however, covers only part of the equation: how power can create knowledge. Future research should explore the other side of the equation, that is to say how women have been influenced in their decisions by STEs.

⁷²⁷ Hook, *supra* note 139 at 522.

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ANNEXE 1 : SECTION 63 OF THE ITA

Child care expenses

63. (1) Subject to subsection 63(2), where a prescribed form containing prescribed information is filed with a taxpayer's return of income (other than a return filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for a taxation year, there may be deducted in computing the taxpayer's income for the year such amount as the taxpayer claims not exceeding the total of all amounts each of which is an amount paid, as or on account of child care expenses incurred for services rendered in the year in respect of an eligible child of the taxpayer,

(a) by the taxpayer, where the taxpayer is described in subsection (2) and the supporting person of the child for the year is a person described in clause (i)(D) of the description of C in the formula in that subsection, or

(b) by the taxpayer or a supporting person of the child for the year, in any other case,

to the extent that

(c) the amount is not included in computing the amount deductible under this subsection by an individual (other than the taxpayer), and

(d) the amount is not an amount (other than an amount that is included in computing a taxpayer's income and that is not deductible in computing the taxpayer's taxable income) in respect of which any taxpayer is or was entitled to a reimbursement or any other form of assistance,

and the payment of which is proven by filing with the Minister one or more receipts each of which was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number, but not exceeding the amount, if any, by which

(e) the lesser of

(i) $\frac{2}{3}$ of the taxpayer's earned income for the year, and

(ii) the total of all amounts each of which is the annual child care expense amount in respect of an eligible child of the taxpayer for the year

exceeds

(f) the total of all amounts each of which is an amount that is deducted, in respect of the taxpayer's eligible children for the year, under this section in computing the income for the year of an individual (other than the taxpayer) to whom subsection 63(2) applies for the year.

Income exceeding income of supporting person

(2) Where the income for a taxation year of a taxpayer who has an eligible child for the year exceeds the income for that year of a supporting person of that child (on the assumption that both incomes are computed without reference to this section and paragraphs 60(v.1) and 60(w), the amount that may be deducted by the taxpayer under subsection 63(1) for the year as or on account of child care expenses shall not exceed the lesser of

(a) the amount that would, but for this subsection, be deductible by the taxpayer for the year under subsection 63(1), and

(b) the amount determined by the formula

$$A \times C$$

where

A is the total of all amounts each of which is the periodic child care expense amount in respect of an eligible child of the taxpayer for the year, and

C is the total of

(i) the number of weeks in the year during which the child care expenses were incurred and throughout which the supporting person was

(A) a student in attendance at a designated educational institution or a secondary school and enrolled in a program of the institution or school of not less than 3 consecutive weeks duration that provides that each student in the program spend not less than 10 hours per week on courses or work in the program,

(B) a person certified in writing by a medical doctor to be a person who

(I) was incapable of caring for children because of the person's mental or physical infirmity and confinement throughout a period of not less than 2 weeks in the year to bed, to a wheelchair or as a patient in a hospital, an asylum or other similar institution, or

(II) was in the year, and is likely to be for a long, continuous and indefinite period, incapable of caring for children, because of the person's mental or physical infirmity,

(C) a person confined to a prison or similar institution throughout a period of not less than 2 weeks in the year, or

(D) a person who, because of a breakdown of the person's marriage or common-law partnership, was living separate and apart from the taxpayer at the end of the year and for a period of at least 90 days that began in the year, and

(ii) the number of months in the year (other than a month that includes all or part of a week included in the number of weeks referred to in subparagraph (i)), each of which is a month during which the child care expenses were incurred and the supporting person was a student in attendance at a designated educational institution or a secondary school and enrolled in a program of the institution or school that is not less than 3 consecutive weeks duration and that provides that each student in the program spend not less than 12 hours in the month on courses in the program.

Taxpayer and supporting person with equal incomes

(2.1) For the purposes of this section, where in any taxation year the income of a taxpayer who has an eligible child for the year and the income of a supporting person of the child are equal (on the assumption that both incomes are computed without reference to this section and paragraphs 60(v.1) and 60(w)), no deduction shall be allowed under this section to the taxpayer and the supporting person in respect of the child unless they jointly elect to treat the income of one of them as exceeding the income of the other for the year.

Expenses while at school

(2.2) There may be deducted in computing a taxpayer's income for a taxation year such part of the amount determined under subsection 63(2.3) as the taxpayer claims, where

(a) the taxpayer is, at any time in the year, a student in attendance at a designated educational institution or a secondary school and enrolled in a program of the institution or school of not less than 3 consecutive weeks duration that provides that each student in the program spend not less than

(i) 10 hours per week on courses or work in the program, or

(ii) 12 hours per month on courses in the program;

(b) there is no supporting person of an eligible child of the taxpayer for the year or the income of the taxpayer for the year exceeds the income for the year of a supporting person of the child (on the assumption that both incomes are computed without reference to this section and paragraphs 60(v.1) and 60(w); and

(c) a prescribed form containing prescribed information is filed with the taxpayer's return of income (other than a return filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) for the year.

Amount deductible

(2.3) For the purpose of subsection 63(2.2), the amount determined in respect of a taxpayer for a taxation year is the least of

(a) the amount by which the total of all amounts, each of which is an amount paid as or on account of child care expenses incurred for services rendered in the year in respect of an eligible child of the taxpayer, exceeds the amount that is deductible under subsection 63(1) in computing the taxpayer's income for the year,

(b) $\frac{2}{3}$ of the taxpayer's income for the year computed without reference to this section and paragraphs 60(v.1) and 60(w),

(c) the amount determined by the formula

$$A \times C$$

where

A is the total of all amounts each of which is the periodic child care expense amount in respect of an eligible child of the taxpayer for the year, and

C is

(i) if there is a supporting person of an eligible child of the taxpayer for the year,

(A) the number of weeks, in the year, in which both the taxpayer and the supporting person were students who would be described in paragraph (2.2)(a) if that paragraph were read without reference to subparagraph (ii), and

(B) the number of months in the year (other than a month that includes all or part of a week included in the number of weeks referred to in clause (A)), in which both the taxpayer and the

supporting person were students described in paragraph (2.2)(a), and

(ii) in any other case,

(A) the number of weeks, in the year, in which the taxpayer was a student who would be described in paragraph (2.2)(a) if that paragraph were read without reference to subparagraph (ii), and

(B) the number of months in the year (other than a month that includes all or part of a week included in the number of weeks referred to in clause (A)), in which the taxpayer was a student described in paragraph (2.2)(a),

(d) the amount by which the total calculated under subparagraph 63(1)(e)(ii) in respect of eligible children of the taxpayer for the year exceeds the amount that is deductible under subsection 63(1) in computing the taxpayer's income for the year, and

(e) where there is a supporting person of an eligible child of the taxpayer for the year, the amount by which the amount calculated under paragraph 63(2)(b) for the year in respect of the taxpayer exceeds $\frac{2}{3}$ of the taxpayer's earned income for the year.

Definitions

(3) In this section,

“annual child care expense amount”

“annual child care expense amount”, in respect of an eligible child of a taxpayer for a taxation year, means

(a) \$10,000, where the child is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year, and

(b) where the child is not a person referred to in paragraph (a),

(i) \$7,000, where the child is under 7 years of age at the end of the year, and

(ii) \$4,000, in any other case;

“child care expense”

“child care expense” means an expense incurred in a taxation year for the purpose of providing in Canada, for an eligible child of a taxpayer, child care services including baby sitting services, day nursery services or services provided at a boarding school or camp if the services were provided

(a) to enable the taxpayer, or the supporting person of the child for the year, who resided with the child at the time the expense was incurred,

(i) to perform the duties of an office or employment,

(ii) to carry on a business either alone or as a partner actively engaged in the business,

(iii) [Repealed, 1996, c. 23, s. 173(1)]

(iv) to carry on research or any similar work in respect of which the taxpayer or supporting person received a grant, or

(v) to attend a designated educational institution or a secondary school, where the taxpayer is enrolled in a program of the institution or school of not less than three consecutive weeks duration that provides that each student in the program spend not less than

(A) 10 hours per week on courses or work in the program, or

(B) 12 hours per month on courses in the program, and

(b) by a resident of Canada other than a person

(i) who is the father or the mother of the child,

(ii) who is a supporting person of the child or is under 18 years of age and related to the taxpayer, or

(iii) in respect of whom an amount is deducted under section 118 in computing the tax payable under this Part for the year by the taxpayer or by a supporting person of the child,

except that

(c) any such expenses paid in the year for a child’s attendance at a boarding school or camp to the extent that the total of those expenses exceeds the product obtained when the periodic child care expense amount in respect of the child for the year is multiplied by the number of weeks in the year during which the child attended the school or camp, and

(d) for greater certainty, any expenses described in subsection 118.2(2) and any other expenses that are paid for medical or hospital care, clothing, transportation or education or for board and lodging, except as otherwise expressly provided in this definition,

are not child care expenses;

“earned income”

“earned income” of a taxpayer means the total of

(a) all salaries, wages and other remuneration, including gratuities, received by the taxpayer in respect of in the course of, or because of, offices and employments,

(b) all amounts that are included, or that would, but for paragraph 81(1)(a) or subsection 81(4), be included, because of section 6 or 7 or paragraph 56(1)(n), (n.1), (o) or (r), in computing the taxpayer’s income,

(c) all the taxpayer’s incomes or the amounts that would, but for paragraph 81(1)(a), be the taxpayer’s incomes from all businesses carried on either alone or as a partner actively engaged in the business, and

(d) all amounts received by the taxpayer as, on account of, in lieu of payment of or in satisfaction of, a disability pension under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act;

“eligible child”

“eligible child” of a taxpayer for a taxation year means

(a) a child of the taxpayer or of the taxpayer’s spouse or common-law partner, or

(b) a child dependent on the taxpayer or the taxpayer’s spouse or common-law partner for support and whose income for the year does not exceed the amount used under paragraph (c) of the description of B in subsection 118(1) for the year

if at any time during the year, the child

(c) is under 16 years of age, or

(d) is dependent on the taxpayer or on the taxpayer’s spouse or common-law partner and has a mental or physical infirmity;

“periodic child care expense amount”

“periodic child care expense amount”, in respect of an eligible child of a taxpayer for a taxation year, means 1/40 of the annual child care expense amount in respect of the child for the year;

“supporting person”

“supporting person” of an eligible child of a taxpayer for a taxation year means a person, other than the taxpayer, who is

- (a) a parent of the child,
- (b) the taxpayer’s spouse or common-law partner, or
- (c) an individual who deducted an amount under section 118 for the year in respect of the child

if the parent, spouse or common-law partner or individual, as the case may be, resided with the taxpayer at any time during the year and at any time within 60 days after the end of the year.

Commuter’s child care expense

(4) Where in a taxation year a person resides in Canada near the boundary between Canada and the United States and while so resident incurs expenses for child care services that would be child care expenses if

- (a) the definition “child care expense” in subsection 248(1) were read without reference to the words “in Canada”, and
- (b) the reference in paragraph (b) of the definition “child care expense” in subsection 248(1) to “resident of Canada” were read as “person”,

those expenses (other than expenses paid for a child’s attendance at a boarding school or camp outside Canada) shall be deemed to be child care expenses for the purpose of this section if the child care services are provided at a place that is closer to the person’s principal place of residence by a reasonably accessible route, having regard to the circumstances, than any place in Canada where such child care services are available and, in respect of those expenses, subsection 63(1) shall be read without reference to the words “and contains, where the payee is an individual, that individual’s Social Insurance Number”.

ANNEX 2 : PARAGRAPHS 118(1A), B), B.1), C), C.1), D) AND E) OF THE ITA

118. (1) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year, and

B is the total of,

Married or common-law partnership status

(a) in the case of an individual who at any time in the year is a married person or a person who is in a common-law partnership who supports the individual's spouse or common-law partner and is not living separate and apart from the spouse or common-law partner by reason of a breakdown of their marriage or common-law partnership, an amount equal to the total of

(i) \$10,527, and

(ii) the amount determined by the formula

$$\$10,527 + C - C.1$$

where

C is

(A) \$2,000 if the spouse or common-law partner is dependent on the individual by reason of mental or physical infirmity, and

(B) in any other case, nil, and

C.1 is the income of the individual's spouse or common-law partner for the year or, if the individual and the individual's spouse or common-law partner are living separate and apart at the end of the year because of a breakdown of their marriage or common-law partnership, the spouse's or common-law partner's income for the year while married to, or in a common-law partnership with, the individual and not so separated,

Wholly dependent person

(b) in the case of an individual who does not claim a deduction for the year because of paragraph 118(1)(a) and who, at any time in the year,

(i) is

(A) a person who is unmarried and who does not live in a common-law partnership, or

(B) a person who is married or in a common-law partnership, who neither supported nor lived with their spouse or common law-partner and who is not supported by that spouse or common-law partner, and

(ii) whether alone or jointly with one or more other persons, maintains a self-contained domestic establishment (in which the individual lives) and actually supports in that establishment a person who, at that time, is

(A) except in the case of a child of the individual, resident in Canada,

(B) wholly dependent for support on the individual, or the individual and the other person or persons, as the case may be,

(C) related to the individual, and

(D) except in the case of a parent or grandparent of the individual, either under 18 years of age or so dependent by reason of mental or physical infirmity,

an amount equal to the total of

(iii) \$10,527, and

(iv) the amount determined by the formula

$$\$10,527 + D - D.1$$

where

D is

(A) \$2,000 if

(I) the dependent person is, at the end of the taxation year, 18 years of age or older and is, at any time in the year, dependent on the individual by reason of mental or physical infirmity, or

(II) the dependent person is a person, other than a child of the individual in respect of whom paragraph (b.1) applies, who, at the end of the taxation year, is under the age of 18 years and who, by reason of mental or physical infirmity, is likely to be, for a long and continuous period of indefinite duration, dependent on others for significantly more assistance in attending to the dependent person's personal needs and care, when compared to persons of the same age, and is so dependent on the individual at any time in the year, and

(B) in any other case, nil, and

D.1 is the dependent person's income for the year,

Child amount

(b.1) if

(i) a child, who is under the age of 18 years at the end of the taxation year, of the individual ordinarily resides throughout the taxation year with the individual together with another parent of the child, the total of

(A) \$2,131 for each such child, and

(B) \$2,000 for each such child who, by reason of mental or physical infirmity, is likely to be, for a long and continuous period of indefinite duration, dependent on others for significantly more assistance in attending to the child's personal needs and care, when compared to children of the same age, or

(ii) except where subparagraph (i) applies, the individual may deduct an amount under paragraph (b) in respect of the individual's child who is under the age of 18 years at the end of the taxation year, or could deduct such an amount in respect of that child if paragraph (4)(a) and the reference in paragraph (4)(b) to "or the same domestic establishment" did not apply to the individual for the taxation year and if the child had no income for the year, the total of

(A) \$2,131 for each such child, and

(B) \$2,000 for each such child who, by reason of mental or physical infirmity, is likely to be, for a long and continuous period of indefinite duration, dependent on others for significantly more assistance in attending to the child's personal needs and care, when compared to children of the same age,

Single status

(c) except in the case of an individual entitled to a deduction because of paragraph (a) or (b), \$10,320,

In-home care of relative

(c.1) in the case of an individual who, at any time in the year alone or jointly with one or more persons, maintains a self-contained domestic establishment which is the ordinary place of residence of the individual and of a particular person

(i) who has attained the age of 18 years before that time,

(ii) who is

(A) the individual's child or grandchild, or

(B) resident in Canada and is the parent, grandparent, brother, sister, aunt, uncle, nephew or niece of the individual or of the individual's spouse or common-law partner, and

(iii) who is

(A) the individual's parent or grandparent and has attained the age of 65 years before that time, or

(B) dependent on the individual because of the particular person's mental or physical infirmity,

the amount determined by the formula

$$\$18,906 + E - E.1$$

where

E is

(I) \$2,000 if the particular person is dependent on the individual by reason of mental or physical infirmity, and

(II) in any other case, nil, and

E.1 is the greater of \$14,624 and the particular person's income for the year,

Dependants

(d) for each dependant of the individual for the year who

(i) attained the age of 18 years before the end of the year, and

(ii) was dependent on the individual because of mental or physical infirmity,

the amount determined by the formula

$$\$10,358 + \$2,000 - F$$

where

F is the greater of \$6,076 and the dependant's income for the year, and

Additional amount

(e) in the case of an individual entitled to a deduction in respect of a person because of paragraph (b) and who would also be entitled, but for paragraph (4)(c), to a deduction because of paragraph (c.1) or (d) in respect of the person, the amount by

which the amount that would be determined under paragraph **(c.1)** or **(d)**, as the case may be, exceeds the amount determined under paragraph **(b)** in respect of the person.

ANNEX 3 : SECTION 122.6 OF THE ITA***Definitions***

122.6 In this subdivision,

“adjusted earned income”

“adjusted earned income”[Repealed, 1998, c. 21, s. 92(1)]

“adjusted income”

“adjusted income”, of an individual for a taxation year, means the total of all amounts each of which would be the income for the year of the individual or of the person who was the individual’s cohabiting spouse or common-law partner at the end of the year if in computing that income no amount were

(a) included

(i) under paragraph 56(1)(q.1) or subsection 56(6),

(ii) in respect of any gain from a disposition of property to which section 79 applies, or

(iii) in respect of a gain described in subsection 40(3.21), or

(b) deductible under paragraph 60(y) or (z);

“base taxation year”

“base taxation year” in relation to a month means

(a) where the month is any of the first 6 months of a calendar year, the taxation year that ended on December 31 of the second preceding calendar year, and

(b) where the month is any of the last 6 months of a calendar year, the taxation year that ended on December 31 of the preceding calendar year;

“cohabiting spouse or common-law partner”

“cohabiting spouse or common-law partner” of an individual at any time means the person who at that time is the individual’s spouse or common-law partner and who is not at that time living separate and apart from the individual and, for the purpose of this definition, a person shall not be considered to be living separate and apart from an individual at any time unless they were living separate and apart at that time, because of a breakdown of their marriage or common-law partnership, for a period of at least 90 days that includes that time;

“earned income”

“earned income”[Repealed, 1998, c. 21, s. 92(1)]

“eligible individual”

“eligible individual” in respect of a qualified dependant at any time means a person who at that time

- (a) resides with the qualified dependant,
- (b) is a parent of the qualified dependant who
 - (i) is the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant and who is not a shared-custody parent in respect of the qualified dependant, or
 - (ii) is a shared-custody parent in respect of the qualified dependant,
- (c) is resident in Canada or, where the person is the cohabiting spouse or common-law partner of a person who is deemed under [subsection 250\(1\)](#) to be resident in Canada throughout the taxation year that includes that time, was resident in Canada in any preceding taxation year,
- (d) is not described in paragraph 149(1)(a) or 149(1)(b), and
- (e) is, or whose cohabiting spouse or common-law partner is, a Canadian citizen or a person who
 - (i) is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act ,
 - (ii) is a temporary resident within the meaning of the Immigration and Refugee Protection Act , who was resident in Canada throughout the 18 month period preceding that time, or

(iii) is a protected person within the meaning of the Immigration and Refugee Protection Act ,

(iv) was determined before that time to be a member of a class defined in the *Humanitarian Designated Classes Regulations* made under the *Immigration Act*,

and for the purposes of this definition,

(f) where the qualified dependant resides with the dependant's female parent, the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant is presumed to be the female parent,

(g) the presumption referred to in paragraph 122.6 eligible individual (f) does not apply in prescribed circumstances, and

(h) prescribed factors shall be considered in determining what constitutes care and upbringing;

“qualified dependant”

“qualified dependant” at any time means a person who at that time

(a) has not attained the age of 18 years,

(b) is not a person in respect of whom an amount was deducted under paragraph (a) of the description of B in subsection 118(1) in computing the tax payable under this Part by the person's spouse or common-law partner for the base taxation year in relation to the month that includes that time, and

(c) is not a person in respect of whom a special allowance under the Children's Special Allowances Act is payable for the month that includes that time;

“return of income”

“return of income” filed by an individual for a taxation year means

(a) where the individual was resident in Canada throughout the year, the individual's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) that is filed or required to be filed under this Part for the year, and

(b) in any other case, a prescribed form containing prescribed information, that is filed with the Minister.

“shared-custody parent”

“shared-custody parent” in respect of a qualified dependent at a particular time means, where the presumption referred to in paragraph (f) of the definition “eligible individual” does not apply in respect of the qualified dependant, an individual who is one of the two parents of the qualified dependant who

- (a) are not at that time cohabitating spouses or common-law partners of each other,
- (b) reside with the qualified dependant on an equal or near equal basis, and
- (c) primarily fulfil the responsibility for the care and upbringing of the qualified dependant when residing with the qualified dependant, as determined in consideration of prescribed factors.

Deemed overpayment

122.61 (1) Where a person and, where the Minister so demands, the person’s cohabiting spouse or common-law partner at the end of a taxation year have filed a return of income for the year, an overpayment on account of the person’s liability under this Part for the year is deemed to have arisen during a month in relation to which the year is the base taxation year, equal to the amount determined by the formula

$$1/12[(A - B) + C + M]$$

where

A is the total of

- (a) the product obtained by multiplying \$1,090 by the number of qualified dependants in respect of whom the person was an eligible individual at the beginning of the month, and
- (b) the product obtained by multiplying \$75 by the number of qualified dependants, in excess of 2, in respect of whom the person was an eligible individual at the beginning of the month;
- (c) [Repealed, 2006, c. 4, s. 177]

B is 4% (or where the person is an eligible individual in respect of only one qualified dependant at the beginning of the month, 2%) of the amount, if any, by which

(a) the person's adjusted income for the year

exceeds

(b) the greater of \$32,000 and the dollar amount, as adjusted annually and referred to in paragraph 117(2)(a), that is used for the calendar year following the base taxation year;

C is the amount determined by the formula

$$F - (G \times H)$$

where

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

(a) only one qualified dependant, \$1,463, and

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

(i) \$1,463 for the first qualified dependant,

(ii) \$1,254 for the second qualified dependant, and

(iii) \$1,176 for each of the third and subsequent qualified dependants,

G is the amount determined by the formula

$$J - [K - (L/0.122)]$$

where

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

K is the amount referred to in paragraph (b) of the description of B, and

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

H is

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

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

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

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

M is the amount determined by the formula

$$N - (O \times P)$$

where

N is the product obtained by multiplying \$2,300 by the number of qualified dependants in respect of whom both

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

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

O is the amount determined by the formula

$$J - [F/H + (K - L/0.122)]$$

where the descriptions of J, F, H, K, and L are described in the description of C, and

P is 4% (or where the person is an eligible individual in respect of only one qualified dependant included in the description of N at the beginning of the month, 2%) of the amount determined for the description of O,

Shared-custody parent

(1.1) Notwithstanding subsection (1), if an eligible individual is a shared-custody parent in respect of one or more qualified dependants at the beginning of a month, the overpayment deemed by subsection (1) to have arisen during the month is equal to the amount determined by the formula

$$1/2 \times (A + B)$$

where

- A is the amount determined by the formula in subsection (1), calculated without reference to this subsection, and
- B is the amount determined by the formula in subsection (1), calculated without reference to this subsection and subparagraph (b)(ii) of the definition “eligible individual” in section 122.6.

Exceptions

(2) Notwithstanding subsection (1), if a particular month is the first month during which an overpayment that is less than \$20 (or such other amount as is prescribed) is deemed under that subsection to have arisen on account of a person’s liability under this Part for the base taxation year in relation to the particular month, any such overpayment that would, but for this subsection, reasonably be expected at the end of the particular month to arise during another month in relation to which the year is the base taxation year is deemed to arise under that subsection during the particular month and not during the other month.

Non-residents and part-year residents

(3) For the purposes of this section, unless a person was resident in Canada throughout a taxation year,

- (a) for greater certainty, the person’s income for the year shall be deemed to be equal to the amount that would have been the person’s income for the year had the person been resident in Canada throughout the year; and
- (b) the person’s earned income for the year shall not exceed that portion of the amount that would, but for this paragraph, be the person’s earned income that is included because of section 114 or subsection 115(1) in computing the person’s taxable income or taxable income earned in Canada, as the case may be, for the year.

Effect of bankruptcy

(3.1) For the purposes of this subdivision, where in a taxation year an individual becomes bankrupt,

(a) the individual's income for the year shall include the individual's income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy; and

(b) the total of all amounts deducted under section 63 in computing the individual's income for the year shall include the amount deducted under that section for the individual's taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy.

(c) [Repealed, 1998, c. 21, s. 94]

Amount not to be charged, etc.

(4) A refund of an amount deemed by this section to be an overpayment on account of a person's liability under this Part for a taxation year

(a) shall not be subject to the operation of any law relating to bankruptcy or insolvency;

(b) cannot be assigned, charged, attached or given as security;

(c) does not qualify as a refund of tax for the purposes of the Tax Rebate Discounting Act;

(d) cannot be retained by way of deduction or set-off under the Financial Administration Act; and

(e) is not garnishable moneys for the purposes of the Family Orders and Agreements Enforcement Assistance Act.

Annual adjustment

(5) Each amount expressed in dollars in subsection (1) shall be adjusted so that, where the base taxation year in relation to a particular month is after 1998, the amount to be used under that subsection for the month is the total of

(a) the amount that would, but for subsection 122.61(7), be the relevant amount used under subsection 122.61(1) for the month that is one year before the particular month, and

(b) the product obtained by multiplying

(i) the amount referred to in paragraph 122.61(5)(a)

by

(ii) the amount, adjusted in such manner as is prescribed and rounded to the nearest one-thousandth or, where the result obtained is equidistant from 2 such consecutive one-thousandths, to the higher thereof, that is determined by the formula

$$(A/B) - 1$$

where

A is the Consumer Price Index (within the meaning assigned by subsection 117.1(4)) for the 12-month period that ended on September 30 of the base taxation year, and

B is the Consumer Price Index for the 12 month period preceding the period referred to in the description of A.

(5.1) [Repealed, 1998, c. 21, s. 93(2)]

Additions to NCB supplement — July 2005 and 2006

(6) Each amount referred to in the description of F in subsection (1) that is to be used for the purpose of determining the amount deemed to be an overpayment arising during months that are

(a) after June 2005 and before July 2006, is to be replaced with the amount that is the total of \$185 and the amount otherwise determined under subsection (5) for those months; and

(b) after June 2006 and before July 2007, is to be replaced with the amount that is the total of \$185 and the amount otherwise determined, for those months, by applying subsection (5) to the amount determined under paragraph (a).

Agreement with a province

(6.1) Notwithstanding subsection (5), for the purposes of any agreement referred to in section 122.63 with respect to overpayments deemed to arise during months that are after June 2001 and before July 2002, the amount determined under subparagraph (5)(b)(ii) for a month referred to in paragraph (6)(b) is deemed to be 0.012.

Rounding

(7) Where an amount referred to in subsection 122.61(1), when adjusted as provided in subsection 122.61(5), is not a multiple of one dollar, it shall be rounded to the nearest multiple of one dollar or, where it is equidistant from 2 such consecutive multiples, to the higher thereof.

Eligible individuals

122.62 (1) For the purposes of this subdivision, a person may be considered to be an eligible individual in respect of a particular qualified dependant at the beginning of a month only if the person has, no later than 11 months after the end of the month, filed with the Minister a notice in prescribed form containing prescribed information.

Extension for notices

(2) The Minister may at any time extend the time for filing a notice under subsection 122.62(1).

Exception

(3) Where at the beginning of 1993 a person is an eligible individual in respect of a qualified dependant, subsection 122.62(1) does not apply to the person in respect of the qualified dependant if the qualified dependant was an eligible child (within the meaning assigned by subsection 122.2(2) because of subparagraph (a)(i) of the definition “eligible child” in that subsection) of the individual for the 1992 taxation year.

Person ceasing to be an eligible individual

(4) Where during a particular month a person ceases to be an eligible individual in respect of a particular qualified dependant (otherwise than because of the qualified dependant attaining the age of 18 years), the person shall notify the Minister of that fact before the end of the first month following the particular month.

Death of cohabiting spouse

(5) If the cohabiting spouse or common-law partner of an eligible individual in respect of a qualified dependant dies,

(a) the eligible individual shall notify the Minister in prescribed form of that event before the end of the first calendar month that begins after that event; and

(b) subject to subsection (8), for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in that first month and any subsequent month on account of the eligible individual's liability under this Part for the base taxation year in relation to that first month, the eligible individual's adjusted income for the year is deemed to be equal to the eligible individual's income for the year.

Separation from cohabiting spouse

(6) If a person ceases to be an eligible individual's cohabiting spouse or common-law partner,

(a) the eligible individual shall notify the Minister in prescribed form of that event before the end of the first calendar month that begins after that event; and

(b) subject to subsection (8), for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in that first month and any subsequent month on account of the eligible individual's liability under this Part for the base taxation year in relation to that first month, the eligible individual's adjusted income for the year is deemed to be equal to the eligible individual's income for the year.

Person becoming a cohabiting spouse

(7) If a taxpayer becomes the cohabiting spouse or common-law partner of an eligible individual,

(a) the eligible individual shall notify the Minister in prescribed form of that event before the end of the first calendar month that begins after that event; and

(b) subject to subsection (8), for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in that first month and any subsequent month on account of the eligible individual's liability under this Part for the base taxation year in relation to that first month, the taxpayer is deemed to have been the eligible individual's cohabiting spouse or common-law partner at the end of the base taxation year in relation to that month.

Ordering of events

(8) If more than one event referred to in subsections (5) to (7) occur in a calendar month, only the subsection relating to the last of those events to have occurred applies.

(9) [Repealed, 1998, c. 19, s. 142(2)]

Agreement

122.63 (1) The Minister of Finance may enter into an agreement with the government of a province whereby the amounts determined under paragraph (a) of the description of A in subsection 122.61(1) with respect to persons resident in the province shall, for the purpose of calculating overpayments deemed to arise under that subsection, be replaced by amounts determined in accordance with the agreement.

Idem

(2) The amounts determined under paragraph (a) of the description of A in subsection 122.61(1) for a base taxation year because of any agreement entered into with a province and referred to in subsection 122.63(1) shall be based on the age of qualified dependants of eligible individuals, or on the number of such qualified dependants, or both, and shall result in an amount in respect of a qualified dependant that is not less, in respect of that qualified dependant, than 85% of the amount that would otherwise be determined under that paragraph in respect of that qualified dependant for that year.

Idem

(3) Any agreement entered into with a province and referred to in subsection 122.63(1) shall provide that, where the operation of the agreement results in a total of all amounts, each of which is an amount deemed under subsection 122.61(1) to be an overpayment on account of the liability under this Part for a taxation year of a person subject to the agreement, that exceeds 101% of the total of such overpayments that would have otherwise been deemed to have arisen under subsection 122.61(1), the excess shall be reimbursed by the government of the province to the Government of Canada.

Confidentiality of information

122.64 (1) Information obtained under this Act or the *Family Allowances Act* by or on behalf of the Minister of Human Resources and Skills Development is deemed to be obtained on behalf of the Minister of National Revenue for the purposes of this Act.

Communication of information

(2) Notwithstanding subsection 241(1), an official (as defined in subsection 241(10)) may provide information obtained under subsection 122.62(1), 122.62(4), 122.62(5), 122.62(6) or 122.62(7) or the *Family Allowances Act*

(a) to an official of the government of a province, solely for the purposes of the administration or enforcement of a prescribed law of the province; or

(b) to an official of the Department of Human Resources and Skills Development for the purposes of the administration of the *Family Allowances Act*, the *Canada Pension Plan* or the *Old Age Security Act*.

Taxpayer's address

(3) Notwithstanding subsection 241(1), an official or authorized person may provide a taxpayer's name and address that has been obtained by or on behalf of the Minister of National Revenue for the purposes of this subdivision, for the purposes of the administration or enforcement of Part I of the *Family Orders and Agreements Enforcement Assistance Act*.

Offence

(4) Every person to whom information has been provided under subsection 122.64(2) or 122.64(3) and who knowingly uses, communicates or allows to be communicated that information for any purpose other than that for which it was provided is guilty of an offence and is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both that fine and imprisonment.

(5) [Repealed, 1998, c. 19, s. 144(2)]

ANNEX 4 : SECTION 122.7 OF THE ITA – THE WORKING INCOME TAX BENEFIT

Definitions

122.7 (1) The following definitions apply in this section.

“adjusted net income”

“adjusted net income” of an individual for a taxation year means the amount that would be the individual’s income for the taxation year if

(a) this Act were read without reference to paragraph 81(1)(a) and subsection 81(4);

(b) in computing that income, no amount were included under paragraph 56(1)(q.1) or subsection 56(6), in respect of any gain from a disposition of property to which section 79 applies or in respect of a gain described in subsection 40(3.21); and

(c) in computing that income, no amount were deductible under paragraph 60(y) or (z).

“cohabiting spouse or common-law partner”

“cohabiting spouse or common-law partner” of an individual at any time has the meaning assigned by [section 122.6](#).

“designated educational institution”

“designated educational institution” has the meaning assigned by subsection 118.6(1).

“eligible dependant”

“eligible dependant” of an individual for a taxation year means a child of the individual who, at the end of the year,

(a) resided with the individual;

(b) was under the age of 19 years; and

(c) was not an eligible individual.

“eligible individual”

“eligible individual” for a taxation year means an individual (other than an ineligible individual) who was resident in Canada throughout the taxation year and who was, at the end of the taxation year,

- (a) 19 years of age or older;
- (b) the cohabiting spouse or common-law partner of another individual; or
- (c) the parent of a child with whom the individual resides.

“eligible spouse”

“eligible spouse” of an eligible individual for a taxation year means an individual (other than an ineligible individual) who was resident in Canada throughout the taxation year and who was, at the end of the taxation year, the cohabiting spouse or common-law partner of the eligible individual.

“ineligible individual”

“ineligible individual” for a taxation year means an individual

- (a) who is described in paragraph 149(1)(a) or (b) at any time in the taxation year;
- (b) who, except where the individual has an eligible dependant for the taxation year, was enrolled as a full-time student at a designated educational institution for a total of more than 13 weeks in the taxation year; or
- (c) who was confined to a prison or similar institution for a period of at least 90 days during the taxation year.

“return of income”

“return of income” filed by an individual for a taxation year means a return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) that is required to be filed for the taxation year or that would be required to be filed if the individual had tax payable under this Part for the taxation year.

“working income”

“working income” of an individual for a taxation year means the total of

- (a) the total of all amounts each of which would, if this Act were read without reference to section 8, paragraph 81(1)(a) and subsection 81(4), be the individual’s income for the taxation year from an office or employment;
- (b) all amounts that are included, or that would, but for paragraph 81(1)(a), be included, because of paragraph 56(1)(n) or (o) or subparagraph 56(1)(r)(v) in computing the individual’s income for a period in the taxation year; and
- (c) the total of all amounts each of which would, if this Act were read without reference to paragraph 81(1)(a), be the individual’s income for the taxation year from a business carried on by the individual otherwise than as a specified member of a partnership.

Deemed payment on account of tax

(2) Subject to subsections (4) and (5), an eligible individual for a taxation year who files a return of income for the taxation year and who makes a claim under this subsection, is deemed to have paid, at the end of the taxation year, on account of tax payable under this Part for the taxation year, an amount equal to the amount, if any, determined by the formula

$$A - B$$

where

A is

- (a) if the individual had neither an eligible spouse nor an eligible dependant, for the taxation year, the lesser of \$925 and 25% of the amount, if any, by which the individual’s working income for the taxation year exceeds \$3,000, or
- (b) if the individual had an eligible spouse or an eligible dependant, for the taxation year, the lesser of \$1,680 and 25% of the amount, if any, by which the total of the working incomes of the individual and, if applicable, of the eligible spouse, for the taxation year, exceeds \$3,000; and

B is

(a) if the individual had neither an eligible spouse nor an eligible dependant, for the taxation year, 15% of the amount, if any, by which the adjusted net income of the individual for the taxation year exceeds \$10,500, or

(b) if the individual had an eligible spouse or an eligible dependant, for the taxation year, 15% of the amount, if any, by which the total of the adjusted net incomes of the individual and, if applicable, of the eligible spouse, for the taxation year, exceeds \$14,500.

Deemed payment on account of tax — disability supplement

(3) An eligible individual for a taxation year who files a return of income for the taxation year and who may deduct an amount under subsection 118.3(1) in computing tax payable under this Part for the taxation year is deemed to have paid, at the end of the taxation year, on account of tax payable under this Part for the taxation year, an amount equal to the amount, if any, determined by the formula

C - D

where

C is the lesser of \$462.50 and 25% of the amount, if any, by which the individual's working income for the taxation year exceeds \$1,150; and

D is

(a) if the individual had neither an eligible spouse nor an eligible dependant, for the taxation year, 15% of the amount, if any, by which the individual's adjusted net income for the taxation year exceeds \$16,667,

(b) if the individual had an eligible spouse for the taxation year who was not entitled to deduct an amount under subsection 118.3(1) for the taxation year, or had an eligible dependant for the taxation year, 15% of the amount, if any, by which the total of the adjusted net incomes of the individual and, if applicable, of the eligible spouse, for the taxation year, exceeds \$25,700, or

(c) if the individual had an eligible spouse for the taxation year who was entitled to deduct an amount under subsection 118.3(1) for the taxation year, 7.5% of the amount, if any, by which the total of the adjusted net incomes of the individual and of the eligible spouse, for the taxation year, exceeds \$25,700.

Eligible spouse deemed not to be an eligible individual

(4) An eligible spouse of an eligible individual for a taxation year is deemed, for the purpose of subsection (2), not to be an eligible individual for the taxation year if the eligible spouse made a joint application described in subsection (6) with the eligible individual and the eligible individual received an amount under subsection (7) in respect of the taxation year.

Amount deemed to be nil

(5) If an eligible individual had an eligible spouse for a taxation year and both the eligible individual and the eligible spouse make a claim for the taxation year under subsection (2), the amount deemed to have been paid under that subsection by each of them on account of tax payable under this Part for the taxation year, is nil.

Application for advance payment

(6) Subsection (7) applies to an individual for a taxation year if,

(a) at any time after January 1 and before September 1 of the taxation year, the individual makes an application (or in the case of an individual who has, at that time, a cohabiting spouse or common-law partner, the two of them make a joint application designating the individual for the purpose of subsection (7)), to the Minister in prescribed form, containing prescribed information; and

(b) where the individual and a cohabiting spouse or common-law partner have made a joint application referred to in paragraph (a)

(i) the individual's working income for the taxation year can reasonably be expected to be greater than the working income of the individual's cohabiting spouse or common-law partner for the taxation year, or

(ii) the individual can reasonably be expected to be deemed by subsection (3) to have paid an amount on account of tax payable under this Part for the taxation year.

Advance payment

(7) Subject to subsection (8), the Minister may pay to an individual before the end of January of the year following a taxation year, one or more amounts that, in total, do not exceed one-half of the total of the amounts that the Minister estimates will be deemed to be paid by the individual under subsection (2) or (3) at the end of the taxation year, and

any amount paid by the Minister under this subsection is deemed to have been received by the individual in respect of the taxation year.

Limitation — advance payment

(8) No payment shall be made under subsection (7) to an individual in respect of a taxation year

- (a) if the total amount that the Minister may pay under that subsection is less than \$100; or
- (b) before the day on which the individual has filed a return of income for a preceding taxation year in respect of which the individual received a payment under that subsection.

Notification to Minister

(9) If, in a taxation year, an individual makes an application described in subsection (6), the individual shall notify the Minister of the occurrence of any of the following events before the end of the month following the month in which the event occurs

- (a) the individual ceases to be resident in Canada in the taxation year;
- (b) the individual ceases, before the end of the taxation year, to be a cohabiting spouse or common-law partner of another person with whom the individual made the application;
- (c) the individual enrolls as a full-time student at a designated educational institution in the taxation year; or
- (d) the individual is confined to a prison or similar institution in the taxation year.

Special rule re eligible dependant

(10) For the purpose of applying subsections (2) and (3), an individual (referred to in this subsection as the “child”) is deemed not to be an eligible dependant of an eligible individual for a taxation year if the child is an eligible dependant of another eligible individual for the taxation year and both eligible individuals identified the child as an eligible dependant for the purpose of claiming or computing an amount under this section for the taxation year.

Effect of bankruptcy

(11) For the purpose of this subdivision, if an individual becomes bankrupt in a particular calendar year

- (a) notwithstanding subsection 128(2), any reference to the taxation year of the individual (other than in this subsection) is deemed to be a reference to the particular calendar year; and
- (b) the individual's working income and adjusted net income for the taxation year ending on December 31 of the particular calendar year is deemed to include the individual's working income and adjusted net income for the taxation year that begins on January 1 of the particular calendar year.

Special rules in the event of death

(12) For the purpose of this subdivision, if an individual dies after June 30 of a calendar year

- (a) the individual is deemed to be resident in Canada from the time of death until the end of the year and to reside at the same place in Canada as the place where the individual resided immediately before death;
- (b) the individual is deemed to be the same age at the end of the year as the individual would have been if the individual were alive at the end of the year;
- (c) the individual is deemed to be the cohabiting spouse or common-law partner of another individual (referred to in this paragraph as the "surviving spouse") at the end of the year if,
 - (i) immediately before death, the individual was the cohabiting spouse or common-law partner of the surviving spouse, and
 - (ii) the surviving spouse is not the cohabiting spouse or common-law partner of another individual at the end of the year; and
- (d) any return of income filed by a legal representative of the individual is deemed to be a return of income filed by the individual.

Modification for purposes of provincial program

122.71 The Minister of Finance may enter into an agreement with the government of a province whereby the amounts determined under subsections 122.7(2) and (3) with respect to an eligible individual resident in the province at the end of the taxation year shall, for the purpose of calculating amounts deemed to be paid on account of the tax payable of an individual under those subsections, be replaced by amounts determined in accordance with the agreement.