Pensions, Privatization, and Poverty: The Gendered Impact

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Le présent article porte sur les conséquences genrées différentielles de la politique canadienne sur les pensions, ce qui contribue en revanche à la pauvreté des femmes âgées quand elles sont à la retraite. Ce phénomène est surtout lié au fait que la responsabilité de la sécurité économique relève de plus en plus du privé au Canada, où l'on préfère beaucoup laisser le secteur privé et la famille s'occuper du bien-être des citoyens plutôt que de compter sur l'État. Le présent article examine l'effet négatif sur les femmes de la tendance à créer des régimes d'employeur à cotisations déterminées au lieu de régimes de retraite à cotisations déterminées, le recours croissant aux dépenses fiscales pour encourager les épargnes privées de retraite et le fractionnement des revenus de pension. L'analyse se fonde sur des aspects socio-économiques de la vie des femmes et conclut qu'il faut renforcer les régimes de retraite publics, comme la Sécurité de la vieillesse et le Régime de pension du Canada si l'on veut remédier à l'inégalité économique des femmes à la retraite.

This article focuses on the disparate impact of Canadian pension policy on women as compared to men, which in turn contributes to the poverty experienced by elderly women in retirement. The major contributing factor is the increasing privatization of the responsibility for economic security in Canada, with a preference for reliance on the private market or private family rather than on the state to provide for the welfare of its citizens. The article discusses the negative impact on women of issues such as the trend towards the establishment of defined contribution workplace pension plans rather than defined contributions plans, the increasing use of tax expenditures to encourage private retirement savings, and pension income splitting. The analysis takes place against the backdrop of the socio-economic realities of women's lives and concludes that public pensions such as the Old Age Security pension and the Canada Pension Plan must be strengthened if women's economic inequality in retirement is to be redressed.

Introduction

Interest in pension policy is extremely strong, in part because of the declining value of many pension funds due to the 2007–8 global financial crisis and the continuing

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instability of world equity markets.[1] In Canada, for example, the Ontario Teachers' Pension Plan, one of the largest in the country, lost $19.5 billion in 2008.[2] The Canada Federal Pension Plan (CPP) (although fully funded) lost $18.8 billion between June 2008 and December 2008.[3] The Organisation for Economic Co-operation and Development (OECD) has determined that Canada's private pension funds suffered real losses of 21.4 percent in 2008, a troubling statistic given that private pensions play a key role in ensuring that Canadians attain income security in retirement.[4] One result of the anxiety surrounding the declining value of public and private pension plans has been a proliferation of studies and reports about retirement savings in Canada.[5] These reports review current pension policy in Canada (through a variety of lenses) and consider what, if any, changes need to be made. In 2010, the federal government established a public consultation about Canada's retirement income system, inviting a response to questions such as "what is the appropriate role of governments in supporting Canadians to achieve adequate retirement income?" and "does the retirement income system currently have the appropriate mix of public and private support."[6]

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1. For example, the Credit Suisse Global Investment Returns estimated that the global stock market losses between October 2007 and November 2008 totalled US $21 trillion. Susan Thompson, "Global Stock Market Losses Total $21 Trillion," *The Times Online* (11 February 2009), online: The Times <http://business.timesonline.co.uk/tol/business/markets/article5705526.ece>.
2. Ontario Teachers' Pension Plan (OTTP), "Diversification Strategy Fails to Avert Losses: Investment Return -18%; Assets Down to $87.4 Billion," News Release (2 April 2009), online: OTPP <http://www.otpp.com/wps/wcm/connect/otpp_en/home/newsroom/news+releases/2009/diversification+strategy+fails+to+avert+losses>.
3. "Canada's Federal Pension Plan Loses $8.5B," *United Press International* (13 February 2009), online: United Press International <http://www.upi.com/Business_News/2009/02/13/Canadas_federal_pension_plan_loses_85B/UPI-39961234557652/>.
4. See Organization for Economic Co-operation and Development (OECD), "Canada: Highlights from OECD *Pensions at a Glance*," online: OECD <http://www.oecd.org/dataoecd/41/3/44008042.pdf>. As I shall discuss, Canadians are increasingly being encouraged to save for their retirement through private pension plans such as registered pension plans (RPPs) and registered retirement savings plans (RRSPs) rather than relying on the public pensions, namely the Old Age Security pension (OAS), the Guaranteed Income Supplement (GIS), and the Canada/Québec Pension Plan (CPP/QPP).
5. For example, see Keith Ambachtsheer, "The Canada Supplementary Pension Plan (CSPP): Towards an Adequate, Affordable Pension for *All* Canadians" (2008) 265 C.D. Howe Institute Commentary: The Pension Papers [C.D. Howe report]; Ontario, Expert Commission on Pensions, *A Fine Balance: Safe Pensions, Affordable Plan, Fair Rules* (Toronto: Expert Commission on Pensions, 2008) (Chair: Harry Arthurs); Canada, Department of Finance, *Summary Report on Retirement Income Adequacy Research* (Ottawa: Research Working Group on Retirement Income Adequacy of Federal-Provincial-Territiorial Ministers of Finance, 2009) [Mintz report]; Parliament, "Pension Security for Women," written by Hedy Fry in *Report of the Standing Committee on the Status of Women* (2009) [Fry Committee report]; and Monica Townson, *Options for Pension Reform: Expanding the Canada Pension Plan*, Policy Brief, Canadian Centre for Policy Alternatives (April 2010) [Townson report].
6. Department of Finance Canada, *Ensuring the Ongoing Strength of Canada's Retirement Income System*, Consultation Document (Ottawa: Minister of Finance, 2010), online: Department of Finance Canada <http://www.fin.gc.ca/activty/consult/retirement-eng.asp#background>.

My focus in this article is the disparate impact of current Canadian pension policy on women compared to men.[7] Put simply, when one examines statistics on income security in retirement, women are disproportionately worse off financially than men, with 7.6 percent of women having incomes below the low income cut off (LICO), which is colloquially called the poverty line, compared to 3.6 percent of elderly men.[8] My argument is that current Canadian pension policies are a major contributing factor to this income disparity. However, the reasons for why they are so are complex and require consideration of a variety of factors including the socio-economic realities of women's lives, the impact on women of using tax expenditures to encourage us to save for retirement, and Canadian pension policies. As I shall discuss, the trend in Canada is to encourage individuals to save for their retirement through "private" pensions rather than bolstering the more public pensions such as the Old Age Security pension (OAS), the Guaranteed Income Supplement (GIS), and the CPP.

In this article, I review the operation of the three tiers of the Canadian pension system, namely the OAS and the GIS, which form the first tier, the CPP as the second tier, and the registered pension plan (RPP) and the registered retirement saving plans (RRSP), which form the third tier. I then review the operation of the significant tax subsidies that are designed to encourage us to contribute to RPPs, RRSPs (including spousal RRSPs), and the tax-free savings account. These subsidies play a pivotal role in my analysis of the gendered impact of current pension policy. My analysis demonstrates that women are disadvantaged in comparison to men, a disadvantage that contributes to their greater poverty in retirement. This disadvantage is the result of the interaction of a variety of factors including women's lower incomes, women's different work patterns, the gradual demise of the defined benefit plan, and the technical nature of the tax subsidies. Finally, I consider improvements that might be made to redress some of the inequalities generated by our current pension system. My conclusion is that if

7. It should be noted that the impact of pension policies on women has been canvassed in a variety of work, including that of Monica Townson. See, for example, Monica Townson, *Independent Means: A Canadian Woman's Guide to Pensions and a Secure Financial Future* (Toronto: McMillan Canada, 1997); Monica Townson, *Reducing Poverty among Older Women: The Potential of Retirement Incomes Policies* (Ottawa: Status of Women Canada, 2000); Monica Townson, *A Report Card on Women and Poverty* (Ottawa: Canadian Centre for Policy Alternatives, 2010), online: Canadian Centre for Policy Alternatives <http://www.policyalternatives.ca/documents/National_Office_Pubs/women_poverty.pdf>; and Monica Townson, *Pensions under Attack: What's Behind the Push to Privatize Public Pensions* (Ottawa: Canadian Centre for Policy Alternatives, 2001). In addition, most recently, the Fry Committee report, *supra* note 5, made a variety of recommendations designed to improve pension policies for women and the issue of proposed changes to pension legislation on women was canvassed in Faye L. Woodman, "The Fiscal Equality of Women: Proposed Changes to Legislation Governing Private Pension Plans in Alberta, British Columbia, Ontario, and Nova Scotia" (2010) 22 Canadian Journal of Women and the Law 129.
8. Statistics Canada, "Percentage of Persons in Low Income after Tax 1992 Base, Select Years, 1976 to 2008," Table 12, online: Statistics Canada <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11388/tbl/tbl012-eng.htm>.

women's economic inequality in retirement is to be redressed in any meaningful way, we need to bolster the public pensions that women rely on so extensively rather than continuing to rely on strategies that focus on a private responsibility for economic security in retirement.

Socio-Economic Realities of Women's Lives

Before reviewing and critiquing Canadian pension policy and its impact on women, it is important to locate the debates in the current socio-economic realities of women's lives and the ongoing trend to place responsibility for the economic security of retired Canadians on the private sector. The socio-economic realities of women's lives are complex and varied. Women tend to earn less than men and be less wealthy than men. For example, the latest figures show that the average earnings for full-year, full-time workers is $44,600 for women compared to $62,200 for men.[9] This statistic means that women earn 71 cents for every dollar earned by men for full-time, full-year work. When part-time workers are included, the average earnings are $31,100 for women and $45,200 for men, reducing the figure to 68 cents for every dollar earned by men.[10] Moreover, not all women are situated equally within these comparative figures. Women of colour, Aboriginal women, and women with disabilities earn less than other women.[11] Even though more women than ever are participating in the paid labour force, many of them are employed on a part-time basis and indeed women have consistently formed approximately 70 percent of the part-time labour force since the 1970s.[12] Furthermore, women's work patterns differ from those of men in part because women's patterns tend to be more flexible than those of men, with women taking more time out of the paid labour force to raise children and provide caregiving duties. Meanwhile, pension policy has traditionally been predicated on an assumption of full-time work for a continuous period of roughly thirty or more years.[13]

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9. See Statistics Canada, "Average Earnings by Sex and Work Pattern (Full-Time Workers)," Summary Table, online: Statistics Canada <http://www40.statcan.ca/l01/cst01/labor01b-eng.htm> .
10. Statistics Canada, "Average Earnings by Sex and work Pattern (All Earners)," Summary Table, online: Statistics Canada <http://www40.statcan.gc.ca/l01/cst01/labor01a-eng.htm> . There are, of course, exceptions to this general statement with Aboriginal men, for example, earning less than many women. The 2006 census found that the median income for Aboriginal women was $15,654 compared to that of $18,714 for Aboriginal men. See Statistics Canada, "Labour Force Indicators and Median Income, Population Aged 15 Years and Over, by Aboriginal Identity, Canada, 2006," Table 9, online: Statistics Canada <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442/tbl/tbl009-eng.htm> .
11. Deborah Stienstra, "Women and Restructuring in Canada," Fact Sheet (Ottawa: Canadian Research Institute for the Advancement of Women, 2010) at 4.
12. *Ibid*. at 3.
13. See Mary Condon "The Feminisation of Pensions? Gender, Political Economy and Defined Contribution Pensions," in Libby Assassi, Duncan Wigan, and Anastasia Nesvetailova, eds.,

Other relevant socio-economic factors are that more women are living alone, and fewer women are living in relationships with men.[14] Women are living longer than men, and it has been estimated that they need 8 to 10 percent more financial resources than men to maintain their same standard of living in retirement.[15] As already mentioned, over 72 percent of those aged sixty-five or older living below the poverty line are women. It is also important to note that single elderly women are the poorest of the poor in Canada, with 80 percent of unattached women over the age of sixty-five living in poverty.[16] As I shall discuss, women's lower incomes compared to those of men are a significant reason that current pension policies do not benefit them to the same extent as men. There are, of course, some women who earn more than men, but overall women have lower incomes, which in turn lead to lower amounts contributed to pension plans and lower pensions in retirement. While one might assume that women's economic security in retirement may be improving because more women are participating in the labour force and therefore have access to workplace pension plans, such an assumption would be incorrect. Statistics show that while elderly men's income has been slowly increasing, that of women has decreased slightly, although the Standing Committee on the Status of Women (Fry Committee) does see some improvement in the future.[17]

The Privatization Agenda

One of the cornerstones of neo-liberalism and indeed neo-conservatism is a preference for reliance on the private sector, whether it is the private market or private family, rather than the state, to provide for the welfare of citizens. As Lisa Philipps has said, "[the] drive towards privatization in Canada has at its heart one central claim: that private choice is better than public regulation as a mechanism for allocating resources and ordering social affairs."[18] I shall argue

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Global Finance in the New Century: Beyond Deregulation (Basingstoke, UK: Palgrave Macmillan, 2007) 89 at 94.

14. Statistics Canada, "Population by Marital Status and Sex (2007)," Summary Table, online: Statistics Canada <http://www40.statcan.gc.ca/l01/cst01/famil01-eng.htm> .
15. Fry Committee report, *supra* note 5 at 7.
16. *Ibid*. at 3.
17. Figures for income by family type in Canada for 2008 show that non-earning elderly males saw an increase in their income from $29,400 to $33,800 for the period 2006 to 2008, while non-earning elderly females saw a drop in their income from $28,700 to $28,200 during the same period, see Statistics Canada, "Average Total Income by Economic Family Types (2005–2009)," Summary Table, online: Statistics Canada <http://www40.statcan.gc.ca/l01/cst01/famil05a-eng.htm>. See also the Fry Committee report, *supra* note 5 at 3–4.
18. Lisa Philipps, "Tax Law and Social Reproduction: The Gender of Fiscal Policy in an Age of Privatization," in Brenda Cossman and Judy Fudge, eds., *Privatization, Law and the Challenge to Feminism* (Toronto: University of Toronto Press, 2002) 41 at 41.

that Canadian pension policy is increasingly moving away from its public roots towards a system that places increasing emphasis on pensions provided by the private sector. These private pensions include workplace pension plans, known as RPPs, and retirement savings vehicles, such as RRSPs. I choose to refer to these plans as "private" plans for a variety of reasons. In the case of the RPP, it is the private employer, not the public state, that must establish the plan and make contributions on behalf of the employee. It is the employer's choice whether to set up the plan or not. In the case of the RRSP, it is up to private individuals to establish their own plan and choose to make contributions to it. Both of these pensions are dependent on the private market with respect to the rate of return on the contributions and the generation of income by those contributions to provide an adequate pension. Even though tax expenditures are used to encourage taxpayers to contribute to these plans, as I shall discuss, there is no state responsibility for ensuring that these pensions provide adequate funds for the members of the plan in their retirement. Furthermore, as I shall discuss, both of these plans involve risks that are borne by the private individual, including, for example, risk with respect to the funds in the plan.

There is an increasing emphasis by the federal government on a policy that encourages Canadians to contribute to, and rely on, private pensions for their economic security in retirement. For example, Canada relies more extensively than most OECD countries on private pensions and private savings, rather than on the public arm of the pension system, to provide retirement income for its citizens.[19] In Canada, private pensions and other investments provide 41 percent of retirement incomes compared to 20 percent on average in the OECD countries.[20] Furthermore, as Monica Townson has noted, the amount spent on tax subsidies for private pensions in 2010 will exceed the amount spent on the OAS for the 2009–10 fiscal year.[21] Most recently, the federal government has proposed the introduction of the pooled registered retirement pension plan (PRPP), a new private pension that is aimed at those who are self-employed or who work for small businesses that do not provide a pension plan. The PRPP will be administered by the private sector.[22] As I shall argue, this privatization policy has a particularly detrimental impact on women.

19. OECD, *supra* note 4.
20. *Ibid.* It should be noted, that generally, overall poverty rates among seniors are higher in many other OECD countries than in Canada.
21. See Townson report, *supra* note 5 at 1. Monica Townson notes that the net cost to the federal government of tax subsidies for RPPs and RRSPs is projected to be $29 billion in 2010. The net cost is the cost of lost tax revenues from the deduction for contributions to the plans and the sheltering of income in the plans from tax less tax revenues generated by taxing withdrawals from the plans. In contrast, the cost of OAS benefits is estimated to be $27.6 billion.
22. Mark Kennedy, "Flaherty Pitches Private Pension Plan; Finance Minister Shelves Initiative to Enhance CPP," *Ottawa Citizen* (17 December 2010) 1.

Canadian Pensions

The Canadian pension system may be described as a pyramid. At its base is the OAS, a flat-rate monthly amount paid to those over the age of sixty-five, supplemented by the GIS for those who need it.[23] The next level is the CPP and the Québec Pension Plan (QPP), both funded by payroll deductions and intended to provide retirement income to those who have participated in the paid labour force. At the apex of the pyramid, are the two private pension plans, both heavily subsidized by the tax system, the RPP, and the RRSP.

Public Pensions

The OAS, the GIS, and the CPP are referred to as public pensions, in part because the OAS and the GIS are universal and the CPP is a mandatory plan for those participating in the paid labour force.[24] For 2010, the maximum annual OAS benefit was $6,222, with an average benefit of $5,869.[25] The maximum GIS payment for a single person was $7,853, with an average payment of $4,831.[26] Both pensions are subject to a claw back with the OAS claw back starting when income reaches $66,733, and the GIS only being available to those with incomes that are less than $15,720. What is important to note is that those who rely solely on the OAS and the GIS in retirement receive a maximum amount of approximately $14,000 a year—an amount that is significantly below the low income cut off. The before-tax LICO for an individual living in a large metropolitan area (a population of over 500,000) is $22,229 and the figure for a rural area (a population of less than 30,000) is $15,302.[27] Thus, those who rely solely on these pensions for their income security in retirement live in poverty, and women constitute almost 60 percent of the OAS recipients and 63 percent of GIS recipients.[28]

The CPP/QPP is a mandatory contributory pension plan that provides retirement income up to 25 percent of lifetime contributory earnings. For 2010, the maximum annual retirement benefit at age sixty-five is $11,210, while the average amount is $6,061.[29] While the CPP takes women's work patterns into account by allowing women with children under seven years of age to take time out of the labour

23. It should be noted that the OAS is calculated on an individual basis and the GIS on a couple basis.
24. See C.D Howe report, *supra* note 5 at 2; and the Mintz report, *supra* note 5 at 4. Both pensions are also regulated by federal legislation.
25. Human Resources and Skills Development Canada, "The CPP and OAS Stats Book 2010: Statistics Related to Canada Pension Plan and Old Age Security Programs," online: Service Canada <http://www.servicecanada.gc.ca/eng/isp/statistics/pdf/statbook.pdf> at 67.
26. *Ibid*.
27. Statistics Canada, "Low Income Cut-offs (1992 Base) before Tax," Summary Table, online: Statistics Canada <http://www.statcan.gc.ca/pub/75f0002m/2010005/tbl/tbl02-eng.htm>.
28. See Fry Committee report, *supra* note 5 at 13.
29. Human Resources and Skills Development Canada, *supra* note 25 at 76.

force without a loss of benefits and, thus, is viewed by some as a good plan for women, it is not ideal. First, women who choose to work in the home and not in the paid labour force are not eligible to receive the pension in their own right.[30] Second, even though the numbers of men and women receiving the CPP are almost equal, women receive considerably less in amount than men, with an average monthly payment of $409 for women and $582 for men, a difference of almost $2,100 a year.[31] Indeed, the Fry Committee estimates that by the year 2050 women will still only receive approximately 80 percent of the pension received by men.[32] The Fry Committee notes that the predominant reason for the lower payments is that women earn less than men.[33] While women do earn less than men overall,[34] there is a cap on the amount that one can contribute to the CPP, which means that no contributions can be made once one's income reaches approximately $46,000. Therefore, women's low earnings in comparison to men do not totally explain the discrepancy. Other factors such as work patterns that involve time out of the labour force to care for older children and, increasingly, elderly relatives play a role. While there is a limited "dropout" provision that allows contributors to exclude up to 17 percent of months of low or nil income over their lifetime from the pension formula, this provision is of limited benefit to those women who assume extended caregiving responsibilities for family members, such as the elderly.[35]

The average amount received in Canada as the OAS and the CPP by an individual is approximately $16,000, with a maximum of approximately $19,000—amounts that leave the recipients with income below the LICO in a metropolitan area. Consequently, recourse to private pension plans and private savings to provide income security in retirement is essential in order to live above the poverty line. Yet, even though women receive less of the public pensions than men, as noted earlier, they rely on them more than men for their financial well-being in retirement. A key question, then, is what should the balance be between the public and private responsibility for the economic well-being of elderly Canadians? As mentioned, Canada's pension system is one that is more privatized than those of most OECD countries.[36] Given women's reliance on public pensions and their lack of access to, and lower pensions received from, private pensions such as RPPs and RRSPs, Canada needs to bolster its public pillar of the pension system.

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30. It should be noted that while these women can receive a survivor benefit on death of their spouse or CPP credit splitting on separation or divorce, there is no individual entitlement to the pension.
31. See the Fry Committee report, *supra* note 5 at 17.
32. *Ibid*.
33. *Ibid.* at 26.
34. Statistics Canada, *supra* note 9.
35. Fry Committee report, *supra* note 5 at 17. In response to this problem, the Fry Committee recommended that "the government explore the implementation of a caregiver dropout for Canadians who reduce their labour force attachment to care for sick, disabled or elderly persons requiring care, comparable to the current child rearing dropout" (at 35).
36. OECD, *supra* note 4.

Private Pensions and the Tax System

Income tax law is one of the most important political tools that a government has at its disposal. Tax laws are used to direct economic and social behaviour in a myriad of ways. Many of the most important measures used to achieve social policy goals are tax expenditures, and these expenditures are the key incentives used to encourage Canadians to save for their retirement. Tax expenditures are defined as any deviation from the benchmark personal income tax structure. They include measures such as deductions in the computation of income, tax credits, exemptions from tax, and deferral of tax payable. Each year, the federal government publishes a list of the value of all tax expenditures.[37] Tax expenditures are the functional equivalent of direct government expenditures, with one main difference. Instead of being delivered as a direct grant to an individual, tax expenditures are delivered by the tax system. The distinction is significant. While the impact of technical tax provisions tends to be evaluated by reference to criteria such as horizontal and vertical equity, neutrality, and simplicity, different criteria are applied to tax expenditures. As the Law Commission of Canada has said, "[c]ould the objective be better served through the use of some other government policy instrument?"[38] To this question, I would add another: is the measure fair or does it discriminate in an inappropriate manner against some taxpayers and in favour of others? In the pension context, tax expenditures are used to encourage employers to establish and contribute to pension plans and employees to make contributions to those plans. They are also used to encourage individuals to establish pension plans (RRSPs) and, in the case of those in spousal relationships, to set up a RRSP in the name of their spouse. As I discuss later in this article, women have unequal access to these expenditures compared to men for a variety of reasons.

RPPs

The tax subsidization of RPPs is twofold in nature. First, employers and employees who contribute to a RPP are permitted, subject to limits as to the amount, to deduct those contributions in the computation of their income.[39] For example, a taxpayer who pays tax at an average rate of 30 percent and contributes $10,000 to a RPP will save $3,000 in taxes owing in the year of contribution. Second, the income earned by the funds in the RPP is not taxable. These measures

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37. See Department of Finance Canada, *Tax Expenditures and Evaluations 2009* (Ottawa: Department of Finance, 2009), online: Department of Finance Canada <http://www.fin.gc.ca/taxexp-depfisc/2009/taxexp09-depfisc09_eng.pdf> .
38. Law Commission of Canada, *Beyond Conjugality: Recognizing and Supporting Close Personal Adult Relationships* (Ottawa: Minister of Public Works and Government Services, 2001) at 65.
39. *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1, ss. 147.2 and 149(1) (o.1) [*ITA*].

result in a deferral of tax because the contribution is made with pre-tax dollars, and the resulting income is only taxed once it is removed from the plan or received as a pension. If this money had been invested in a non-tax sheltered account, tax would have been payable on the income as it accumulated annually. The value of non-taxation of income earned in a RPP results in a significant tax saving over the years. Furthermore, it is very likely that when the funds are withdrawn from the RPP as a pension, the individual will pay tax at a lower marginal effective tax rate than she or he would have paid tax had the income been taxed as it accumulated. The reason is that one's income in retirement is often less than it was at the time the contribution was made, resulting in a lower marginal effective tax rate on that income. For 2009, the value of the deduction for contributions to private RPPs and the sheltering of income in the plans was estimated to be over $18 billion.[40]

RRSPs

RRSPs are subject to similar tax rules as RPPs with a deduction for contributions to the plan, subject to a limit on the amount, and the sheltering of all income generated in the RRSP from tax. As with RPPs, there is a deferral of tax until the funds are removed from the plan with the advantages described earlier. An individual is also permitted to contribute to an RRSP in their spouse's name.[41] The advantage of contributing to a spousal plan, rather than to one's own plan, is that the individual is providing future retirement income for their spouse and is also splitting income with that spouse. In other words, income that would have been taxed in the individual's hands on realization will be taxed in the hands of the spouse, who may well pay tax at a lower marginal effective tax rate than the individual by reason of their lower income. The general policy underlying spousal RRSPs is to permit individuals to provide retirement income for their spouses who are unable to contribute to a RPP or RRSP on their own behalf. The spousal RRSP is a gendered tax break in that it is used primarily by men to establish RRSPs for their female spouses.[42] For 2009, the value of the tax expenditure for contributions to RRSPs and the sheltering of income from tax was estimated to be $13 billion.

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40. Department of Finance Canada, *supra* note 37 at 17.
41. *ITA*, *supra* note 39 at s. 146. For the purposes of the *ITA*, spouse includes persons married to each other and common law partners living in a conjugal relationship for at least twelve months (s. 248(1)). It should also be noted that the contribution may not exceed the individual's own contribution limit, less any amount contributed to the individual's own plan.
42. There are, of course, exceptions to this statement, such as a lesbian with a high income contributing to a spousal RRSP for her partner who is taking time out of the paid labour force to raise their children.

Other Tax Subsidies Related to Income Security in Retirement

In 2007, the federal government introduced rules that allow spouses to split pension income on retirement.[43] The value of this expenditure is estimated to be $730 million for the 2009 taxation year.[44] The benefit to the couple in which one spouse has a high income and the other little or no income is significant. Given the fact that women tend to earn less than men and have less capital and wealth than men, the couple that will typically benefit is a heterosexual couple with a female spouse who does not work outside the home and has not been able to contribute to a pension plan. The Department of Finance estimated that the tax saving to a couple in which one spouse has pension income of $100,000 and the other no income would be approximately $7,300.[45]

More recently in 2009, the federal government introduced the tax-free savings account (TFSA).[46] While this measure is not limited to retirement savings, it will play a role in allowing individuals to save for their retirement in a tax effective manner. An individual is entitled to contribute up to $5,000 a year to a TFSA, and the income earned by the contributions accumulates on a tax-free basis. Unlike RPPs and RRSPs, there is no deduction for the contribution to a TFSA. The sheltering from tax of all income earned by the plan means that to the extent that a taxpayer has the discretionary funds to invest, she or he would use the shelter of the TFSA before investing in a non-tax preferred plan. Furthermore, one can withdraw funds from a TFSA at any time without tax liability, and if one makes a withdrawal the withdrawn amount can be replaced in the TFSA in a future year. The federal government recognizes that a TFSA can be a retirement planning vehicle, stating "the TFSA complements existing registered savings plans like the Registered Retirement Savings Plans (RRSP)."[47] Unlike the RRSP,

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43. *ITA*, *supra* note 39, s. 60.03, permits the splitting of pension income. Given that the tax unit in Canada is the individual, and we do not permit spouses to file joint returns, permitting the splitting of pension income is somewhat out of step with that policy. Indeed, I suggest that in this neo-conservative era with its focus on the family, the integrity of the individual as the tax unit is under siege, and it is possible that the federal government will move towards permitting spouses to income split all their income. Such a measure would be especially regressive in its impact because it would favour those couples in which one spouse did not work outside the home over those couples in which each spouse has a relatively equal income. The Canadian Broadcasting Corporation (CBC) reported in 2006 that "Finance Minister Jim Flaherty has also confirmed that the Harper government is musing about extending income splitting to all couples—not just seniors. This would mark a major departure from current Canadian tax policy." "Income Splitting: Frequently Asked Questions," *CBC News* (21 November 2006), online: CBC News <http://www.cbc.ca/news/background/personalfinance/income-splitting.html>.
44. Department of Finance Canada, *supra* note 37 at 17.
45. Frances Woolley, "Policy Forum: Liability Without Control—The Curious Case of Pension Income Splitting" (2007) 55 Canadian Tax Journal 603 at 612.
46. *ITA*, *supra* note 39, s. 207.01.
47. See Government of Canada, *Tax-Free Savings Account*, online: Government of Canada <http://www.tfsa.gc.ca/>.

which is a tax-deferred scheme, the TFSA is a tax prepaid scheme. That is, while the RRSP contribution is deductible in the year it is made, there is no deduction for the TFSA contribution. Furthermore, because the TFSA is a tax prepaid scheme, it benefits a taxpayer who expects their marginal effective tax rate to be higher when they withdraw the funds than it was when they made the contribution. There are no figures currently available detailing the gender breakdown in terms of who benefits from the tax break for TFSAs, although one can speculate that because women tend to have lower incomes than men, they may not have as much discretionary income to contribute.

The Gendered Impact of Canadian Pension Policies

Given that Canadians are spending over $31 billion on tax breaks for contributions to RPPs and RRSPs, it is vitally important that these tax subsidies are allocated in a fair and equitable manner. In fact, I argue they operate in an inequitable manner. First, as noted earlier, women rely more on public pensions such as the OAS for their economic security in retirement than men, and yet the government is devoting less money to this pillar of the pension system. Second, tax subsidies are only available to those who pay tax, so a significant number of Canadians, especially women with their lower incomes, are unable to access any of the $31 billion spent on the subsidies.[48] Third, the tax subsidies for RPPs and RRSPs are worth more in terms of taxes saved to those with higher incomes than those with lower incomes. One reason is the nature of the tax subsidy for contributions to RPPs and RRSPs. A tax deduction is worth more in terms of taxes saved to a taxpayer paying tax at a higher marginal effective tax rate than to someone who pays tax at a lower marginal effective tax rate. For example, assume that Bob and Carol each contribute $10,000 to a RRSP. Bob has a higher income and pays tax at an average rate of 40 percent, while Carol has a lower income and pays tax at an average rate of 20 percent. Bob will save $4,000 in taxes otherwise payable, while Carol will only save $2,000, even though they both contributed the same amount to the RRSP. Given that women tend to earn less than men, they are receiving less of the tax subsidy.

RPPs

One problem for women over the years has been their lack of access to workplace pension plans. Only 38 percent of workers in Canada have a workplace

48. While more women than men filed tax returns in 2008 (12,506,340 women compared to 11,661,270 men), the total number of taxable returns was 8,678,310 for men and only 7,797,640 for women. Canada Revenue Agency, "Income Statistics 2010 – 2008 Tax Year," Interim Table 4, online: Canada Revenue Agency <http://www.cra-arc.gc.ca/gncy/stts/gb08/pst/ntrm/pdf/table4-eng.pdf> .

pension plan, a figure that has dropped from 45 percent in 1992,[49] and this decline is expected to continue.[50] For many women, the nature of the work they perform, such as part-time labour and non-unionized work has, in the past, meant that they were excluded from these plans. While women's membership in these plans has been increasing over the years, it still lags slightly behind men. In 2005, of those who were members of workplace pension plans, 52.5 percent were men and 47.5 percent were women, and in 2009 the figures were 50.9 percent for men and 49.1 percent for women.[51] While there has been some improvement for women in terms of access to these plans, we need to be cautious about its significance. The Fry Committee has noted that even by the year 2017, only 33 percent of women will have contributed to a workplace pension plan for fifteen years compared to 36 percent of men.[52]

A second aspect to this issue is the nature of the workplace pension plans that may be provided by employers. The two main types are defined benefit plans (DBPs) and defined contribution plans (DCPs). A DBP is a plan based on a formula that takes into account service and earnings and then provides a flat benefit based on these factors. The employee with a DBP receives a fixed and predictable pension based on the formula, regardless of the rate of return enjoyed by the investments in the plan. A DCP is a capital accumulation plan. Employer and employee contributions are put into a fund that provides a lump sum to be drawn out or converted into an annuity on retirement. Typically, the employee is given options within the plan about how the contributions are invested, although these options vary from plan to plan. The main difference between the two types of plans is related to who bears the risk with respect to the plan's investments and their rate of return.[53] In the case of the DBP, it is the employer who bears that risk, and in the case of the DCP it is the employee. The nature of the risk borne by an employee with a DCP is complex. First, unlike a DBP, there is no safety net for the individual if the value of the investments declines.[54] The employer has no responsibility to maintain adequate funds in the plan to meet future pension liabilities. Second, responsibility for the manner in which the funds in the DCP are invested while in the plan is partially borne by the employee. While

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49. See the Townson report, *supra* note 5 at 2.
50. C.D. Howe report, *supra* note 5 at 5; and Fry Committee report, *supra* note 5 at 25.
51. See Statistics Canada, *Registered Pension Plan (RPP) Members, by Area of Employment, Sector and Type of Plan (Canada)* <http://www40.statcan.gc.ca/l01/cst01/famil120a-eng.htm>.
52. Fry Committee report, *supra* note 5 at 26.
53. For an excellent analysis of the issue of risk and workplace pension plans, see Condon, *supra* note 13; and Mary Condon, "Privatizing Pension Risk: Gender, Law and Financial Markets," in Cossman and Fudge, *supra* note 18 at 128.
54. While there are strict rules requiring defined benefit plans (DBPs) to make up any shortfall in the plan, it is of course possible that a private employer providing a DBP could go bankrupt, thereby affecting the ability of employees to collect their full pension. Despite some high profile instances of this problem, with Nortel being one example, the Dominion Bond Rating Service reviewed 70 DBPs after the 2008 global financial crisis and concluded that most were solvent. See Mintz report, *supra* note 5 at 24.

the employer administers the plan and offers the employee a range of investment options with respect to the funds in the plan, it is the employee who chooses which of those options to use. Third, once the employee retires, there are more decisions to be made about how to invest the pool of capital that is being used to provide retirement income. While the global financial crisis has wreaked havoc with the value of private pension plans generally,[55] one can speculate that the relatively uniformed and unsophisticated investor will have suffered greater losses than the expert.[56] As the Fry Committee notes, "[w]itnesses suggested that making informed investment decisions for retirement is complicated. They have pointed out that, while Canadians in defined benefit plans are largely spared from making complex investment decisions about their savings, those who rely on private savings require much more sophisticated knowledge to make informed investment decisions and manage risk."[57]

The number of DBPs is declining in Canada, with new plans tending to be DCPs, and employers converting current DBPs to DCPs. This change is often framed in neo-liberal privatization terms as being all about control and choice for the individual—that is, one can control one's own pension funds and make choices about how those funds are invested.[58] The Fry Committee report notes that DBP "coverage has declined from 43.5% in 1979 to 30.6% in 2006."[59] This change is particularly problematic for women. The main reason is that DBPs tend to be offered by public sector employers rather than those in the private sector. It has been estimated that only 20 percent of private sector workers have DBPs.[60] However, the number of women working in the public sector has increased over the years going from 46 percent in 1992 to 56 percent in 2008.[61] Thus, any decline in the number of DBPs in the public sector has a particularly adverse impact on women.

RRSPs

RRSPs were introduced in March 1957 and intended to assist those without access to workplace pension plans to save for their retirement. On introduction, the maximum contribution was the lesser of 10 percent of earned income or

55. OECD, *supra* note 4.
56. The Mintz report suggests that individual investors tend to make mistakes and use poor investment strategies, which can cost them in comparison to professional investors. Mintz report, *supra* note 5 at 18.
57. Fry Committee report, *supra* note 5 at 22.
58. See, for example, Condon, "Privatising Pension Risk," *supra* note 53 at 151.
59. Fry Committee report, *supra* note 5 at 25.
60. C.D. Howe report, *supra* note 5 at 6.
61. Statistical Analysis Unit, Employment Equity Compliance Division of the Canadian Human Rights Commission, *Impact of the* Employment Equity Act *and the CHRC Employment Equity Program over the Years* (Ottawa: Canadian Human Rights Commission, 2010) at 6, online: Canadian Human Rights Commission <http://www.chrc-ccdp.ca/pdf/eer_reme-eng.pdf>.

$2,500 less any pension adjustment. For 2010, the maximum contribution is the lesser of 18 percent of earned income and $22,000 less any pension adjustment.[62] As already mentioned, the projected cost to the federal government of the tax relief given by the deduction of contributions from income and the sheltering of income in the plans is $18 billion. As I shall demonstrate, women do not benefit to the same extent as men from this tax subsidy, with the result that they have less money in their RRSPs, a factor that leads to them living in greater poverty than men in their retirement years. As the Women and Taxation Working Group of the Ontario Fair Tax Commission noted, "[t]he current system of tax assisted savings for retirement results in systemic discrimination against women, as the benefits are disproportionately enjoyed by men."[63]

In order to benefit from the tax breaks associated with RRSPs, one must have funds with which to make a contribution. Given that women earn considerably less than men, they tend to have less discretionary income to contribute to a RRSP.[64] This fact is evident when one reviews the statistics on who contributes to a RRSP and how much they contribute. For example, in the 2008 taxation year (latest figures available) 3,297,330 men and 2,869,820 women contributed to a RRSP.[65] While there is not a huge difference in the numbers of men and women contributing, there is cause for concern when one looks at the amount contributed by men and women. In that year, men contributed $20,240,109 while women only contributed $12,676,281.[66] Not surprisingly, those with higher incomes contributed considerably more that those with lower incomes. For example, taxpayers with incomes of more than $50,000 contributed on average about $7,500 each, while those with incomes of $20,000–25,000 only contributed approximately $1,800 each.[67] The lower amounts contributed by women mean that they are receiving considerably less of the $18 billion tax subsidy than men. There is another aspect to this issue. As discussed earlier, even if men and women contribute the same amount to a RRSP, women, overall, will receive less of the tax subsidy associated with the deduction for that contribution because they tend to

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62. *ITA*, *supra* note 39, s. 146(1). A taxpayer's pension adjustment (defined in the regulations to the *ITA*) takes into account any contributions to a RPP, with the result that the more one puts into a RPP, the less one can contribute to a RRSP.
63. Women and Taxation Working Group of the Ontario Fair Tax Commission, *Working Group Report: Women and Taxation* (Toronto: Ontario Fair Tax Commission, 1992) at 22.
64. Statistics Canada, *supra* note 9.
65. Canada Revenue Agency, "All Returns by Age and Sex (2008 Tax Year)," Interim Table 4, online: Canada Revenue Agency <http://www.cra-arc.gc.ca/gncy/stts/gb08/pst/ntrm/pdf/table4-eng.pdf> .
66. Canada Revenue Agency, "All Returns by Total Income Class (2008 Tax Year)," Interim Table 2, online: Canada Revenue Agency <http://www.cra-arc.gc.ca/gncy/stts/gb08/pst/ntrm/pdf/table2-eng.pdf> .
67. These figures are especially interesting because given that slightly more men than women contribute to RPPs and they tend to have higher incomes, one might assume that men's RRSP room is reduced by those RPP contributions, thereby meaning that they have less opportunity to add funds to a RRSP.

have lower incomes and pay tax at a lower rate. As noted earlier, the value of a tax deduction is tied to the rate at which one pays tax, meaning that those with higher incomes will receive more of the subsidy than those with lower incomes. If the tax break were to be in the form of a tax credit, rather than a deduction, it would be worth the same in value to those who contribute the same amount.

While the gap between the number of women compared to men contributing to RRSPs has been declining over the years, women still have considerably less funds in their RRSPs than men.[68] One consequence of this gap in numbers is that women have considerably fewer funds in their RRSPs than men. The result is that they are not benefitting to the same extent as men from the tax subsidy that allows income in the plan to accumulate on a tax-free basis. The Fry Committee notes that "at the middle and lower earnings levels over 90% of people have unused RRSP room."[69] Furthermore, the distribution of RRSP savings demonstrates this point with the top 20 percent of Canadians in terms of net worth having a median RRSP value of $111,100. The median for the other four quintiles is $35,000, $15,000, $6,000, and $0 respectively.[70]

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

Spousal RRSPs

Neither RPPs nor RRSPs are likely to be of any benefit to women who work inside the home and do not participate in the paid labour force. These women do not have access to employment-based pension plans and, with no income, are unlikely to contribute to a RRSP. The tax system recognizes this problem and attempts to partially redress it by including special rules that apply to spouses. As mentioned, an individual can contribute to a RRSP set up in their spouse's name and thereby split income with their spouse in retirement. While this measure appears to be laudable, it has its problems. Indeed, in the 1980s, the Canadian Advisory Council on

68. In 1997, for example, 56 percent of men and 52 percent of women made contributions. By 2008, the overall number of contributors had declined, although the gap had narrowed to 51 percent of men and 50 percent of women. Statistics Canada, "Participation in Private Retirement Savings Plans, by Sex (1997–2008)," Table 2, online: Statistics Canada <http://www.statcan.gc.ca/pub/13f0026m/2010001/tbl/tbl002-eng.htm> .
69. Fry Committee report, *supra* note 5 at 24.
70. C.D. Howe report, *supra* note 5 at 6–7.

the Status of Women lobbied for an end to this system and for pensions for women in their own right.[71] While the spousal RRSP is a well-intentioned measure, it remains a highly private and limited response to a public issue: women's lack of access to pension plans. Essentially, the private family is encouraged to provide for its own economic security in retirement, albeit with a tax break to encourage it to do so. However, many cannot take advantage of this opportunity. Low-income taxpayers may not have the discretionary funds to contribute on their spouse's behalf. Additionally, single women have no access to this expenditure. Given that 2008 figures show that 17.1 percent of single women over the age of sixty-five live below the poverty line compared to 1.8 percent of women who have a spouse, it appears this subsidy is being misdirected.[72] By linking this tax expenditure to spousal status, the government is directing the benefit to a very limited group of people—a group that may not be the neediest. Furthermore, statistics show that fewer people than ever are living in a married or common law relationship.[73] As the Women and Taxation Working Group of the Ontario Fair Tax Commission states, "the concept of a couple as a life-long economic unit with joint income, wealth and expenses may no longer be appropriate given changing family structures, increasing divorce rates, and falling marriage rates."[74]

In fact, the introduction of the pension-splitting rules described earlier may lead to the demise of the spousal RRSP. As mentioned, the benefit of the spousal RRSP is that an individual can split income with their spouse by directing future pension income to them through the medium of the spousal RRSP. However, the new pension-splitting rules obviate the need to establish a spousal RRSP to accomplish this objective. Why would a taxpayer use their RRSP room to set up a RRSP for their spouse when the same income-splitting result can be obtained without giving up control of those funds by transferring them into a spousal RRSP? Rather, all that is required to split pension income is the filing of a joint election by the taxpayer and their spouse in the year the pension is received.[75]

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71. Dennis Guest, *The Emergence of Social Security in Canada*, 3rd edition (Vancouver: UBC Press, 1997) at 197.
72. Statistics Canada, "Women and Men Aged 65 Years and Over in Low Income after Tax, by Family Status, Canada, 1980 to 2008," Table 8, online: Statistics Canada <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11441/tbl/tbl008-eng.htm>. It should be noted that single women who were previously in a spousal relationship may benefit from contributions to a RRSP by their former spouse.
73. Statistics Canada, *Women in Canada: A Gender-Based Statistical Report*, 5th edition (Ottawa: Minister of Industry, 2006) at 34, online: Statistics Canada <http://www.statcan.gc.ca/pub/89-503-x/89-503-x2005001-eng.pdf> .
74. Women and Taxation Working Group of the Ontario Fair Tax Commission, *supra* note 63 at 22.
75. Jonathan R. Kesselman notes that there are some limited circumstances in which spousal RRSPs may be more beneficial than subsequent pension income splitting. These circumstances relate to spousal RRSP's flexibility in terms of premature withdrawals and early retirement. My view, however, is that the opportunity for the higher earner spouse to maintain control of the funds by contributing them to (usually) his own RRSP rather than transferring them to the spouse would outweigh these possible advantages. See Jonathan R. Kesselman, "Income Splitting and Joint Taxation of Spouses: What's Fair?" (2008) 14 IRPP Choices 3 at 20.

Furthermore, should the relationship end prior to retirement, the taxpayer will not have transferred funds to a spousal RRSP that are the property of their spouse.

Pension Income Splitting

The pension income splitting rules allow spouses to jointly elect to split their pension income. The main advantage is that where one spouse has a higher income and therefore pays tax at a higher marginal rate than the other, the overall tax liability on the pension income will be less than it would otherwise have been. The rules allow up to 50 percent of the pension income to be taxed at the tax rate of the lower income spouse.[76] Generally, pension income splitting benefits men who are supporting their female spouses. These rules are unfair and inequitable for several reasons.[77] First, the split is purely fictional. No transfer of any of the pension income to the spouse is required. In contrast, in every other instance where the *Income Tax Act* permits income splitting, there must be a transfer of the funds that are the subject of the income split.[78] Furthermore, while there may be an overall benefit to the couple, the recipient spouse's marginal effective tax rate has increased from zero or a low rate to a higher rate, and she (usually) is responsible for paying tax on the income allocated to her, even though she has not received any of that income. Second, pension income splitting is regressive because it generally favours those with high incomes over those with lower incomes. Given that income is taxed at progressive tax rates, the tax savings for the couple in which one partner has a high income and the other little or no income is greater than the savings for the couple in which one partner has a lower income and the other little or no income. Finally, given that single women over the age of sixty-five live in considerably greater poverty than those with spouses, the tax subsidy is arguably being misdirected.

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76. Kesselman notes that there are other scenarios in which a split would be advantageous, which depend "on which spouse has more pension income, on the amount of each spouse's non pension income and on interactions with other provisions of the tax and benefit system" (*ibid.* at 20).
77. For an excellent critique of the pension income splitting rules see Woolley, *supra* note 45.
78. *ITA, supra* note 39. These provisions include rules relating to spousal RRSPs, registered education savings plans, employment of a spouse or child in the family business, and the sharing of CPP/QPP income (*ibid.* at 606). On this issue, see also Lisa Philipps, "Income Splitting and Gender Equality: The Case of Incentivizing Intra-household Wealth Transfers," in Kim Brooks et al., eds., *Challenging Gender Inequality in Tax Policy Making: Comparative Perspectives* (Oxford: Hart Publishing, 2011). In this paper, the author acknowledges the problem of permitting income splitting without any requirement that the funds be transferred while arguing that the case can be made for more liberal treatment of genuine intra-household transfers in order to encourage a redistribution of resources in relationships and income splitting can be a tool to accomplish that goal.

The pension income-splitting rules are based on two troubling assumptions. The first is that the couple is the appropriate tax unit rather than the individual. The second assumption is that there is an economic mutuality in the spousal relationship—a mutuality that involves sharing and pooling of income. These assumptions are problematic.[79] Canada has always treated the individual as the tax unit in Canada, although there are numerous provisions that take spousal status into account. However, unlike the US system, for example, Canada does not allow spouses to file a joint tax return. As the Law Commission of Canada states, "[t]he case for individual taxation rests upon the claim that a tax system based on the individual is a more appropriate policy instrument for achieving the government's objectives than one based on the family, that it is less likely to influence the relationships that individuals form and that it is more likely to further values such as gender equality and individual autonomy."[80] With respect to the assumption that there is economic mutuality in all relationships, such an assumption is simply wrong. As Neil Brooks has stated, "there is not anywhere near full sharing in many households, let alone sharing of control that would indicate both spouses value family assets."[81] There are other situations where one can speculate that income and capital is not shared or pooled in a relationship. For example, relationships in which there is a significant power differential, including those characterized by a pattern of control or abuse, are not likely to have much economic mutuality. Louise Dulude suggests that couples with relatively low and equal incomes tend to share more than other couples,[82] and, of course, pension income splitting is of no benefit to these couples at all.

Options for Change

What can be done to redress some of the inequalities that I have discussed? Given that some of the inequities experienced by women relate to their limited access to tax subsidies for private pensions plans, one could change the tax rules. For example, one could deal with the inequitable distribution of the tax subsidy for contributing to RPPs and RRSPs by converting the tax break from a deduction in the computation of income to a tax credit.[83] The advantage of this change is that

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79. Claire Young, *What's Sex Got to Do with It? Tax and the "Family"* (Ottawa: Law Commission of Canada, 2000) . See also Law Commission of Canada, *supra* note 40 at 63–89.
80. Law Commission of Canada, *supra* note 38 at 67. Furthermore, the Law Commission of Canada recommended that "the individual, rather than the conjugal couple or some other definition of the family unit, should remain the basis for the calculation of Canada's personal income tax" (at 71).
81. Neil Brooks, "The Irrelevance of Conjugal Relationships in Assessing Tax Liability," in Richard Krever and John Head, eds., *Tax Units and the Tax Rate Scale* (Melbourne, Australia: Australian Tax Research Foundation, 1996) at 36.
82. Louise Dulude "Taxation of the Spouses: A Comparison of Canadian, American, British, French and Swedish Law" (1985) 23 Osgoode Hall Law Journal 67 at 89.
83. This suggestion has been made by several commentators. See, for example, the Ontario Fair Tax Commission, *Fair Taxation in a Changing World: Report of the Ontario Fair Tax Commission*

the amount of the tax credit would be worth the same to all taxpayers, regardless of their level of income and the rate at which they pay tax. One could even make the credit refundable, which would mean that even if an individual was not a taxpayer, he or she would still receive a tax subsidy. However, this proposal has its problems. It does not assist those who do not have access to a workplace pension fund or those who do not have the discretionary funds to contribute to a RRSP. It is also a very private response to a public problem—that is, women's limited access to private pension plans and their subsequent poverty in retirement.

Before reviewing other proposals for change, it is important to consider a key question—that is, what is the appropriate balance between public and private pensions in Canada? Does Canada rely too much on the private sector for the economic security of its retired citizens? The OECD has noted that "the proportion of retirement incomes coming from private pensions and other financial assets in Canada is one of the highest among the 30 OECD countries."[84] As I have demonstrated in this article, private pensions do not work well for women. We need to move towards a more robust public pension system, one that takes the socio-economic realities of women's lives into account.

There has been considerable discussion recently in Canada about a variety of options for improving the pension system, including strengthening the CPP, adding a new Canada Supplementary Pension Plan, and making changes to private pensions.[85] For example, the *Summary Report on Retirement Income Adequacy Research* (Mintz report) concludes that "overall, the Canadian retirement income system is performing well, providing Canadians with an adequate standard of living upon retirement. The evidence does strongly suggest that some Canadians do not have sufficient replacement income."[86] While the Mintz report might not make specific recommendations for change, the report clearly has contributed to the desire of the federal government to work towards change in this area. The consultation process embarked on in March 2010 has concluded,[87] although no recommendations have yet been released. A recent exchange of letters between the Canadian minister of finance, James Flaherty, and the Ontario minister of finance, Dwight Duncan, indicates that both of these governments see the issue of pension reform as one of high priority.[88] The question is, however, what

(Toronto: University of Toronto Press, 1993) at 333; and Claire F.L. Young, *Women, Tax and Social Programs: The Gendered Impact of Funding Social Programs through the Tax System* (Ottawa: Status of Women Canada, 2000) at 50–1.

84. OECD, *supra* note 4.
85. See all reports in note 5 in this article.
86. Mintz report, *supra* note 5 at 27.
87. Department of Finance Canada, *supra* note 6.
88. See letter from Dwight Duncan, Ontario Finance Minister, to James Flaherty, Canada Finance Minister (10 June 2010), online: Scribd <http://www.scribd.com/doc/32867806/Duncan-s-letter-to-Flaherty>; and letter from James Flaherty, Canada Finance Minister, to Dwight Duncan, Ontario Finance Minister (10 June 2010), online: Scribd <http://www.scribd.com/doc/32867604/Flaherty-s-letter-to-Duncan>. This exchange, which talks about the importance

might that reform look like and how can it best address the problems faced by women with respect to ensuring that they have adequate retirement income?

My starting point is that because women rely to a much greater extent than men on the public pillars of the pension system and do not have as much invested in private pensions, the first requirement is that the public pensions provide an adequate retirement income. At the outset, one obvious change would be to increase the amount of the OAS and the GIS payments so that at the very least they provide an income that is above the LICO. The Fry Committee recommended that the GIS "be raised to the after-tax low income cut off," although it appears in the context of the report that the committee means that the increase should result in a combined OAS and GIS payment that is no less than the LICO.[89] Unfortunately, there has been no indication that the federal government is contemplating such a change to the OAS and the GIS, with most of the discussion about reform in the public sector focusing on the CPP.

There appears to be a consensus in the recent reports on pensions that the CPP is a good model for a pension plan. Monica Townson sees it "as secure, reliable, cost-effective, and well managed."[90] Viewed through the lens of gender, it is more universal than a RPP because it covers all workers, whether full time or part time. Unlike many RPPs, it is portable when one changes jobs. As the Fry Committee has noted, it takes into account women's child care responsibilities by allowing a worker to exclude the years when their child is under the age of seven from the calculation of the pension.[91] However, the CPP can be improved. One glaring weakness is that it does not provide a pension to women whose work is not the subject of remuneration, such as women who work in an unpaid capacity in the family business and women who work in the home rather than the paid labour force. The assumption has been that these women are supported in their retirement years by their spouses through savings or tax preferred investments, such as spousal RRSPs. Again, we see a privatization of the economic security of these women, with the private family being assumed to be taking on that responsibility. Such an approach undermines the autonomy of women and assumes an economic mutuality in the relationship, which as I have discussed earlier in this article, is not always present. Over the years, there has been considerable debate about extending the CPP to "homemakers" or spouses not working outside the home. As long ago as 1983, the Parliamentary Task Force on Pension Reform recommended that the CPP

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of introducing federal and provincial proposals to reform Canada's pension system, took place a few days before the meeting of the ministers of finance and treasurers on 13–14 June in Charlottetown. [Flaherty-Duncan correspondence]

89. Fry Committee report, *supra* note 5 at 14.
90. Townson report, *supra* note 5 at 3.
91. Fry Committee report, *supra* note 5 at 17. It should be noted that the committee recommended that the "dropout" provision be extended to those who "care for sick, disabled or elderly persons requiring care, comparable to the current child rearing drop out" (see Recommendation 4 at 19).

offer a "homemaker pension."[92] More recently, the Ontario minister of finance held hearings on the future of the CPP, and several presenters argued for an extension of the CPP to those not in the paid labour force, such as women working in the home.[93]

Various proposals to improve the CPP have been made, and most of these focus on the amount of the pension. At the outset, it is important to note, however, that in order for any changes to be made to the CPP the consent of the federal government and at least two-thirds of the provinces with two-thirds of the population of Canada is required.[94] Currently, retirement benefits from the CPP are designed to replace only 25 percent of a worker's average-adjusted annual earnings. The Canadian Labour Congress has proposed that the CPP replacement rate be doubled. Specifically, it proposes "to phase in a doubling of the proportion of average earnings replaced by CPP from 25% to 50% over seven to ten years to $1,635 per month, financed by a modest increase in worker and employer premiums which would be fair for lower paid workers."[95] The Fry Committee makes a similar proposal and recommends that the CPP replacement rate be increased from 25 percent to 50 percent "to maintain a decent income and an acceptable standard of living, and that this modification come into force progressively over the next ten years."[96] Bernard Dussault prepared a proposal for the Federal Superannuates National Association that would also increase the retirement benefit replacement rate but in a more spectacular fashion.[97] It would go up to 70 percent of earnings over a forty-seven-year period. As Townson notes "[e]ffectively, this would mean the demise of workplace pension plans and private retirement savings through RRSPs because the CPP in conjunction with OAS would provide an adequate replacement rate for all."[98] Such an ambitious proposal is attractive because it

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92. Canada, Parliamentary Task Force on Pension Reform, *Report of the Parliamentary Task Force on Pension Reform* (Ottawa: House of Commons, 1984) (Chair: Douglas C. Firth).
93. Ontario Ministry of Finance, *Ontario Report on Public Consultations on the Canada Pension Plan* (Toronto: Minister of Finance, 1996) at 7, online: Ontario Finance <http://www.fin.gov.on.ca/en/publications/1996/cpp_eng.pdf>. The issue of providing CPP to those who work in the home and not in the paid labour force is one that has been canvassed over the years. In 1984, the National Council of Welfare argued for the introduction of a pension for homemakers. See National Council of Welfare, *Better Pensions for Homemakers* (Ottawa: Minister of Supply and Services Canada, 1984), online: National Council of Welfare <http://www.ncw.gc.ca/l.3bd.2t.1ils@-eng.jsp?lid=231>. The issue has also been discussed extensively by Monica Townson, *supra* note 7. Most recently, the Fry Committee heard many witnesses who argued for such a pension. Fry Committee report, *supra* note 5 at 18.
94. *Canada Pension Plan*, R.S.C. 1985, c. C-8, s. 114.
95. Canadian Labour Congress, *Security, Adequacy, Fairness: Labour's Proposals for the Future of Canadian Pensions*, Discussion Paper (Ottawa: Canadian Labour Congress, 2009) at 4, online: Canadian Labour Congress <http://www.canadianlabour.ca/sites/default/files/pdfs/Pension-Policy-Paper-2009-EN.pdf> .
96. Fry Committee report, *supra* note 5 at 36.
97. Townson report, *supra* note 5 at 5.
98. *Ibid*.

would mean significantly larger pensions for those whose sole income in retirement is from public pensions and that measure would benefit women in particular.

Another proposal is to add a new public plan, the Canada Supplementary Pension Plan (CSPP) to the current offerings. This proposal from the C.D. Howe Institute is intended to assist those workers who have no access to RPPs.[99] Its key features include automatic enrolment of all workers without a RPP (although it would also provide an opt-out provision), limits on the amount that could be contributed at the same level as those for RRSPs, a target of 60 percent of post-work earnings replacement, and the option to transfer current RRSP savings to the CSPP.[100] A critique of this proposal focuses on the fact that, unlike the CPP, there is no guaranteed pension with the CSPP: "Retirement pensions would depend on the performance of the contributor's investments, and no particular pension would be guaranteed or indexed. In other words, contributors would be required to bear the full risk of retirement income provision."[101] Furthermore, such a proposal would not benefit those workers who do not have the discretionary income to contribute to the plan. Perhaps the most significant problem with the CSPP is the fact that employers and employees can opt out of the automatic default contribution mechanism, which provides for the equal sharing of contributions. The "non-compulsion" aspect of the CSPP severely weakens its potential effectiveness because there is no incentive for employers to make contributions, other than the ability to deduct the contributions in the computation of income.

As mentioned the federal government has been holding public consultations on the Canadian pension system. Recent developments have given some clues as to the thinking of the federal government on the issue. For example, the June 2010 exchange of letters between the Ontario minister of finance, Dwight Duncan, and the Canadian minister of finance, James Flaherty, indicated that at the federal level there is some appetite for improving the CPP, although at the same time it was clear that the role of the private sector will also be enhanced. While agreeing that "we should consider a modest, phased-in, and fully funded enhancement to defined benefits under the Canada Pension Plan," Minister Flaherty also stated that Ontario and the federal government "should work together toward pension innovations that would allow financial institutions and insurance companies to offer broad-based defined contribution pension arrangements to multiple employers, all employees, and to the self-employed."[102] The pressure from the private sector, and especially the financial services industry, to expand the private pension offerings is considerable. The fees charged for management of these

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99. C.D. Howe report, *supra* note 5.
100. *Ibid*. at 8–10. The Fry Committee also appears to have endorsed a plan of this nature. Recommendation 12 of the Fry Committee report, *supra* note 5 at 33, is "that the government introduce an optional supplementary Canada Pension Plan, conditional on provincial agreement, in order to help Canadians save more."
101. Townson report, *supra* note 5 at 3.
102. Flaherty-Duncan correspondence, *supra* note 88 at 1–2.

pension funds and mutual funds are considerable, with huge profits to be made. In arguing for the CSPP rather than an expansion of the private sector, the C.D. Howe Institute notes that the "high fees being paid by investors in many retail products could seriously hamper the efforts of some 5.5 million Canadian households with RRSP assets from achieving their retirement saving goals."[103] Most recently, as mentioned, Minister Flaherty has announced that the federal government intends to proceed with a new private pension plan, the PRPP. This plan will be a privately administered retirement savings vehicle for the self-employed as well as for those working for small businesses who do not have access to a workplace pension plan. As one commentator has noted, "[i]t is a significant shift for Flaherty, who, just six months ago, was touting an enhancement of the government-run CPP as the way to go. He signalled [*sic*] at a news conference Thursday that this option is now on the back burner because of provincial opposition."[104] This opposition has come primarily from Alberta[105] and is troubling since it appears to have led to a move away from any enhancement of the pensions so important to women, namely the OAS, the GIS, and especially the CPP.

Conclusion

In this article, I have applied a gender lens to the three tiers of the Canadian pension system and examined in detail the tax relief accorded to RPPs and RRSPs as well as reviewing the new pension-splitting rules. My discussion is located in the socio-economic realities of women's lives. These realities include factors such as their lower incomes compared to men, their different work patterns, and the fact that more women than ever are living alone and fewer are living in relationships with men. My conclusion is that our current pension policies contribute significantly to women's economic insecurity in retirement. As I have demonstrated, women receive considerably less of the tax subsidies for retirement saving than men, they have less opportunity to contribute to RPPs, and they often lack the discretionary income to make contributions to RRSPs. Furthermore, measures such as the tax relief provided to spousal RRSPs and the ability for couples to split pension income and reduce their overall tax liability do not benefit single women, a group that lives in more poverty than women with spouses. It is critical that these inequities be redressed. If not, elderly women will continue to live in poverty.

Given that women rely so extensively on public pensions such as the OAS, the GIS, and the CPP for their economic security in retirement, I argue that improving the public pension system is a key step towards removing the gender inequities embedded in current pension policies. Given the recent developments, I have explained that the probability of this improvement happening is slim. Even the

103. C.D. Howe report, *supra* note 5 at 8.
104. Kennedy, *supra* note 22.
105. C.D. Howe report, *supra* note 5 at 8.

Fry Committee report, which focused exclusively on women and pensions, did not grapple directly with the issue of the balance between public and private responsibility. In addition, its recommendations have been undermined by the fact that all Conservative Party members of parliament on the committee dissented from the report, stating that "the actions of the Conservative Government and the Minister of Finance clearly demonstrate that we are at the forefront on this issue of retirement income adequacy for Canadian seniors."[106] This statement flies in the face of the statistics on elderly women's poverty and the factors that contribute to it—factors that cannot be dealt with using strategies that are based on a private responsibility for the economic security of the elderly. The research has been done, the reports have been written, the consultations have taken place, and it is now time for women's poverty in retirement to be recognized as an inequity that must be redressed.

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106. Fry Committee report, *supra* note 5 at 47.