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Communiqué

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***Tax system unfair to
families with children,
says C.D. Howe Institute study***

Canada's income tax system is inequitable and inefficient in its treatment of families with children, conclude economists Kenneth J. Boessenkool and John Richards in a study released today by the C.D. Howe Institute. Boessenkool and Richards argue that, as Canadians debate tax reductions in an era of budget surpluses, taxes should be reduced for middle-income families with children.

The study, entitled *It Takes Two: The Family in Law and Finance*, is a collection of essays on the impact of the tax and welfare systems and the implications of changing divorce rules and same-sex marriages on family structure. The book was edited by Douglas W. Allen, Associate Professor of Economics at Simon Fraser University, and John Richards, Associate Professor of Business Administration at Simon Fraser and an Adjunct Scholar of the C.D. Howe Institute.

Boessenkool, until recently a policy analyst with the C.D. Howe Institute and now a policy advisor with Alberta Treasury, traces the federal government's tax treatment of families with children since World War II. In earlier decades, the income tax system allowed reasonable tax deductions for children for both single- and dual-earner families. In recent years, however, tax benefits have been targeted toward very poor families and those with two earners; middle-income, single-earner families with children are taxed as heavily as families without children. This, Boessenkool says, is unfair: the tax system should accommodate the cost of child rearing whether or not both parents are working outside the home.

Boessenkool considers a range of policy options, and recommends restoring child tax deductions and integrating targeted benefits and child care expense deductions, which would reduce federal income taxes by approximately \$3 billion annually.

Richards analyzes a range of barriers to employment among low- and modest-income families, and suggests that provinces experiment aggressively with programs to supplement the market earnings of truly poor families that are eligible for social assistance. As examples of such support, Richards discusses Quebec's earnings supplement program (APPORT) and the recently introduced Saskatchewan Employment Supplement.

Richards also looks at the problem of unacceptably high marginal effective tax rates that modest-income families face due to the fact that benefits from federal and provincial government programs aimed at the poor are clawed back as earnings rise. Benefit clawbacks have a

disincentive effect on employment similar to that of income taxes, Richards explains. The combined effect of income tax plus clawbacks means that the highest effective tax rates are faced, not by upper-income families, but by those with modest incomes.

Last week's federal budget modified the Canada Child Tax Benefit (CCTB), but did not address the problem of very high marginal effective tax rates, Richards notes. After the announced changes are fully phased in, a family with income in the \$20,000 to \$30,000 range will face a benefit clawback on the CCTB of 11 percent to 27 percent (depending on the number of children) on additional earnings. This clawback is stacked onto that of other federal and provincial programs and the personal income tax. In some provinces, a single-earner family with two children — with earnings in the \$20,000 to \$30,000 range — would keep less than \$35 from an additional \$100 in earnings.

To address this problem, Richards recommends that Ottawa “universalize” the child tax credit, making it available to all families with children. This would be expensive — an annual reduction of at least \$6 billion in federal personal income tax revenue — but it would reduce very high marginal effective tax rates on modest-income families, and it would provide meaningful tax relief to all Canadian families with children.

The other essays in the book look at the effects of changes to family law. Douglas W. Allen argues that “one would be hard pressed to find another example of a single piece of legislation that has had as much impact on families as the introduction of no-fault divorce.” This significant change in divorce law has, Allen says, inadvertently promoted the notion that marriage should be no more than a private contract between two equal partners, and it has contributed to negative consequences that few anticipated. The most dramatic of these is the great increase in the number of children growing up poor and with only one parent. The solution, Allen argues, is to abandon no-fault divorce in favor of divorce by mutual consent. Under such a divorce law, neither partner would be able to leave a marriage without the consent of the other, and no consent would be given unless both parties benefited.

Donald Moir, a retired family lawyer in Vancouver, surveys the literature on the disastrous effects of divorce on children, who face higher probabilities of virtually every social ill relative to children from intact marriages, even when such marriages are “bad.” Divorce, Moir concludes, is creating a large group of children with low human capital, with serious consequences for society as a whole. His solution is to change current “easy” divorce law so that it recognizes commitment in marriage and encourages and enforces that commitment. The law, Moir argues, “should regard marriage as an institution indissoluble except for grave cause — an institution in which others than the adult partners, particularly their children, have an interest.”

Margaret F. Brinig, a law professor at George Mason University, Arlington, Virginia, examines the effects on women of changes to Canada's *Divorce Act*. Most wives suffer a fall in their personal consumption after divorce that often lasts until they remarry or their children leave home, Brinig says. Yet wives usually receive either full custody of their children or, where they receive joint custody, retain most of the control over them. This is a source of stress for mothers, but separation from their children becomes a major emotional hardship for fathers. Although husbands often increase their personal standard of living after divorce, many divorced families cannot support two households at the former standard of living.

Brinig argues that divorce laws should “encourage investments during marriage (in finances and in children) that will reap rewards regardless of whether or not the legal relationship ends and the spouses are free to remarry. At minimum, laws that need amending include

those allowing recoupment of earning capacity and joint custody.” She, too, is in favor of making divorce more difficult and, like Allen, sees mutual consent laws as a possible solution.

Another source of pressure on the traditional family is the legal and tax systems’ increasing acceptance of nontraditional relationships, such as same-sex unions. F.H. Buckley, also a law professor at George Mason University, opposes homosexual marriage, however. He argues that “the efficiency gains that homosexuals might exploit through marriage would be small since they have far less incentive to marry than child-rearing heterosexuals. What remains is the symbol of state approval that the recognition of homosexual marriage would accord them.” Yet the symbolic sanction of marriage for homosexuals, Buckley says, would further lower the respect afforded heterosexual marriages, which need more, not less, support. He concludes that the legitimate reasons for which homosexuals may want to marry can be accommodated under existing contract law.

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C.D. Howe Institute
Institut C.D. Howe

Communiqué

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Le régime fiscal est injuste à l'égard des familles qui ont des enfants, affirme une étude de l'Institut C.D. Howe

Le régime fiscal du Canada est inéquitable et inefficace dans son traitement des familles qui ont des enfants. Telle est la conclusion à laquelle arrivent Kenneth J. Boessenkool et John Richards, dans une étude publiée aujourd'hui par l'Institut C.D. Howe. Dans le cadre du débat sur les réductions fiscales qui entoure les excédents budgétaires, ils soutiennent notamment qu'il faut réduire les impôts des familles à revenu moyen qui ont des enfants.

L'étude, intitulée *It Takes Two: The Family in Law and Finance (Il faut être deux : la famille aux yeux de la loi et des finances)*, est une série d'articles traitant des répercussions du régime fiscal, du système d'aide sociale, de la modification des règles sur le divorce et du mariage entre personnes du même sexe sur la structure familiale. L'ouvrage est dirigé par Douglas W. Allen, professeur agrégé d'économie à l'Université Simon Fraser et John Richards, professeur agrégé en administration des affaires à l'Université Simon Fraser et attaché de recherche auprès de l'Institut C.D. Howe.

M. Boessenkool, qui jusqu'à tout récemment était analyste de politique auprès de l'Institut C.D. Howe et qui remplit maintenant la fonction de conseiller en politique auprès du Trésor de l'Alberta, retrace le traitement fiscal par le gouvernement fédéral des familles qui ont des enfants en remontant jusqu'à la Deuxième Guerre mondiale. Pendant longtemps, le régime fiscal accordait des déductions fiscales raisonnables aux enfants des familles où un seul conjoint ou les deux conjoints travaillaient. Mais récemment, ces avantages fiscaux n'ont visé que les familles à très faible revenu et les familles où les deux conjoints travaillent. Quant aux familles à revenu moyen ou celles dont un seul des conjoints travaille et qui ont des enfants, elles sont imposées aussi lourdement que les familles sans enfants. Selon M. Boessenkool, il s'agit là d'une situation injuste : que les deux parents travaillent ou non, le régime fiscal devrait tenir compte du coût d'élever des enfants.

M. Boessenkool suggère tout un éventail de mesures de politiques et recommande tout particulièrement de rétablir les déductions fiscales pour enfants, et d'intégrer les prestations ciblées et les déductions pour frais de garde d'enfants, ce qui réduirait d'environ trois milliards de dollars par an l'impôt fédéral sur le revenu.

M. Richards analyse toute une série d'obstacles à l'emploi des familles à revenu faible et moyen. Il suggère que les provinces mettent activement à l'essai des programmes qui fournissent un supplément de revenu aux familles véritablement démunies qui sont admissibles à l'aide sociale. Comme exemples d'un tel soutien, M. Richards mentionne le programme québécois de supplément du revenu (APPORT) et le supplément d'emploi récemment annoncé par la Saskatchewan.

L'auteur se penche sur le problème des taux effectifs marginaux d'imposition bien trop élevés que subissent les familles à revenu modeste, car les avantages que procurent les programmes des gouvernements fédéral et provincial aux démunis sont récupérés lorsque le revenu augmente. La récupération des avantages versés est une contre-incitation à l'emploi, au même titre que l'impôt sur le revenu, explique M. Richards. L'effet combiné de l'impôt sur le revenu et de la récupération se traduit par le fait que ce sont les familles à revenu modeste, et non les familles à revenu élevé, qui écopent des taux d'imposition réels les plus élevés.

Le budget déposé la semaine dernière par le gouvernement fédéral a modifié la prestation fiscale pour enfants, mais n'a pas résolu le problème des taux effectifs marginaux d'imposition très élevés, ajoute-t-il. Une fois les modifications annoncées pleinement mises en œuvre, une famille dont la tranche de revenu varie de 20 000 \$ à 30 000 \$ sera confrontée à une récupération de la prestation fiscale variant de 11 à 27 % (selon le nombre d'enfants) sur tout revenu additionnel. Or, cette récupération s'ajoute à celle de tout autre programme fédéral et provincial et à l'impôt sur le revenu. Dans certaines provinces, une famille comptant un seul soutien et deux enfants, dont le revenu se situe dans la fourchette de 20 000 \$ à 30 000 \$, se retrouvera avec moins de 35 \$ sur tout montant de 100 \$ de revenu supplémentaire.

Pour remédier à cette situation, M. Richards recommande à Ottawa « d'universaliser » la prestation fiscale pour enfants, en l'offrant à toutes les familles qui ont des enfants. Cette solution coûterait cher, puisqu'elle entraînerait une baisse d'au moins 6 milliards de dollars des recettes fiscales de l'impôt fédéral sur le revenu des particuliers, mais elle réduirait les taux effectifs marginaux d'imposition très élevés sur les familles à revenu modeste, et elle offrirait un allègement fiscal valable à toutes les familles canadiennes qui ont des enfants.

Les autres articles de l'ouvrage traitent des effets qu'ont eus les changements du droit de la famille. Douglas W. Allen soutient qu'il « serait difficile de trouver un autre exemple d'un seul acte législatif qui ait eu autant de répercussions sur la famille que l'introduction du divorce sans notion de tort ». Selon l'auteur, cette profonde modification de la loi sur le divorce a malheureusement favorisé la notion que le mariage ne devrait pas constituer autre chose qu'un contrat privé entre deux partenaires égaux, et elle a eu des retombées que peu d'entre nous ont pu prévoir. La plus sérieuse d'entre elles est celle du nombre croissant d'enfants qui grandissent dans la pauvreté, élevés par un seul parent. Selon M. Allen, la solution consisterait à abandonner la notion du divorce sans notion de tort et d'adopter le divorce par consentement mutuel. De cette manière, un conjoint ne pourrait mettre fin à un mariage sans le consentement de l'autre, et aucun consentement ne serait accordé à moins que la séparation ne profite aux deux parties.

Donald Moir, un avocat de Vancouver spécialisé dans le droit familial et maintenant à la retraite, passe en revue la documentation sur les effets désastreux du divorce sur les enfants, qui se heurtent à des probabilités plus élevées de tous les maux sociaux par rapport aux enfants de mariages intacts, et ce même lorsque le mariage est chancelant. Selon M. Moir, le divorce crée un groupe important d'enfants au capital humain faible, ce qui comporte des conséquences sérieuses pour la société dans son ensemble. Sa solution consiste à modifier la loi

sur le divorce « facile », afin de reconnaître l'engagement que représente le mariage, et d'encourager et renforcer celui-ci. La loi, soutient M. Moir, « devrait considérer l'institution du mariage comme indissoluble, sauf dans des cas graves, une institution où d'autres personnes que les partenaires adultes, et particulièrement leurs enfants, ont un intérêt ».

Margaret F. Brinig, professeure de droit à l'Université George Mason d'Arlington en Virginie, passe en revue les changements apportés par la *Loi de 1985 sur le divorce* pour les femmes. La plupart d'entre elles éprouvent une baisse de leurs dépenses de consommation à la suite d'un divorce, qui se poursuit souvent jusqu'à ce qu'elles se remarient ou que leurs enfants quittent le domicile familial, affirme Mme Brinig. Et pourtant, ce sont les femmes qui reçoivent habituellement la pleine garde de leurs enfants, ou même lorsqu'il y a garde partagée, qui gardent le plus grand contrôle sur eux. Ceci crée une source de tension chez la mère, tandis que la séparation d'avec les enfants crée de grandes difficultés d'ordre émotif chez le père. Bien que les maris améliorent souvent leur niveau de vie personnel à la suite d'un divorce, nombreuses sont les familles de divorcés qui ne peuvent garder deux domiciles au même niveau de vie qu'avant.

Mme Brinig soutient que les lois sur le divorce devraient « favoriser les investissements durant le mariage (l'investissement financier aussi bien que l'investissement dans les enfants) qui produiront des résultats, que la relation légale se poursuive ou non, et que les époux soient libres de se remarier ou non. Tout au minimum, les lois qui devraient être modifiées sont celles qui autorisent le recouvrement de la capacité de gagner sa vie et de la garde partagée ». Elle se prononce en faveur de rendre le divorce plus difficile, et, tout comme l'auteur précédent, estime que les lois afférentes au consentement mutuel seraient une solution envisageable.

Une autre source de tension pour la famille traditionnelle est l'acceptation croissante par l'appareil judiciaire et le régime fiscal des relations non traditionnelles, comme les unions entre personnes du même sexe. F.H. Buckley, professeur de droit lui aussi à l'Université George Mason, s'oppose toutefois au mariage entre homosexuels. Il soutient que « les gains d'efficacité qu'obtiendraient les homosexuels grâce au mariage seraient mineurs puisqu'ils ont bien moins d'incitation à se marier que les hétérosexuels qui veulent élever des enfants. Ce qui persiste, c'est le symbole d'acceptation par l'État que la reconnaissance du mariage entre homosexuels leur accorderait ». Mais cependant, la sanction symbolique du mariage entre homosexuels, selon M. Buckley, réduirait encore davantage le respect accordé aux mariages entre hétérosexuels, qui ont besoin, selon lui, de plus et non de moins d'appui. Il conclut que les raisons légitimes qui pourraient motiver le désir de mariage des homosexuels pourraient être conciliées dans le cadre du droit contractuel.

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It Takes Two

The Family in Law and Finance

Douglas W. Allen
and
John Richards,
editors

Policy Study 33

C.D. Howe Institute

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Foreword

Readers who are familiar with the C.D. Howe Institute and its areas of research interest may wonder why a volume bearing its imprimatur contains essays on the implications of changing divorce rules, same-sex marriages, and the impact of the tax and welfare systems on family structure. Yet, as editors Doug Allen and John Richards remind us in their Introduction to this volume, “[w]e are all born into families, and most of us spend most of our years living in families.”

More to the point, the sea change in family-related law and social programs that has taken place since the 1960s has had profound effects on our economy in the form of greatly increased taxation, welfare rates, and public spending. It has also led, arguably, to an undue weakening of the institution of the family, the ramifications of which are still unfolding but which may not be entirely positive.

The Institute presents these essays, not to pass judgment on questions of morality or on how people choose to conduct their lives, but out of a belief in the healthiness of an open, vigorous debate on how our society is structured and on the role of government and the law in shaping that structure.

The book was copy edited by Elizabeth d’Anjou, Lenore d’Anjou, and Sheila Protti, and prepared for publication by Wendy Longsworth and Barry A. Norris.

As with all C.D. Howe Institute publications, the analysis and opinions presented here are the responsibility of the authors and do not necessarily reflect the views of the Institute’s members or Board of Directors.

Thomas E. Kierans
President and
Chief Executive Officer

The Contributors

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Kenneth J. Boessenkool was, until recently, a policy analyst with the C.D. Howe Institute, where he specialized in social and monetary policy. He has written or co-authored numerous Institute publications on Bank of Canada policy as well as on welfare, training, and family issues. He has since accepted a position with Alberta Treasury, providing policy advice to the minister.

Margaret F. Brinig is Professor of Law at George Mason University, Arlington, Virginia. She teaches courses in family law and alternative dispute resolution. She has taught family-law-related courses for more than 20 years, although her primary research focus, the law and economics of the family, has developed more recently. She is the co-author (with Carl E. Schneider) of *An Invitation to Family Law* (West Publishing); and *The Contract and the Covenant: Beyond Law and Economics* (to be published in 2000 by Harvard University Press).

F. H. Buckley is Professor of Law at George Mason University, Arlington, Virginia, and holds degrees from McGill University and Harvard University. He is the co-author (with Robert Yalden and Mark Gillen) of *Corporations: Principles and Policies*, 3rd ed. (Emond-Montgomery, 1995); and editor of *The Fall and Rise of Freedom of Contract* (Duke University Press, 1999).

Donald S. Moir is Associate Counsel, Moir & Moir, Vancouver, and former Associate Counsel with Alexander, Holburn, Beaudin & Lang. He has been a member of the British Columbia Bar since 1952. He is Past President of the Association of Family and Conciliation Courts, Founding Director and now Honourary Director of Family Mediation Canada, and a member of the Canadian Bar Association. He is the author of a number of papers on family law, including "Putting Children First: A Reconsideration of Family Law" (1997); and "No Fault Divorce and the Best Interests of Children" (1992).

John Richards grew up in Saskatchewan and served as a member of that province's legislature during the first term of the Blakeney government from 1971 to 1975. For the first two years of his term, he was legislative secretary to the minister of health. In mid-term, he crossed the floor and sat as an "independent socialist." In his words, he has "since mellowed and rejoined the NDP." Trained as an economist, he currently teaches in the business faculty at Simon Fraser University, Burnaby, British Columbia. He has written on resource policy, labor relations, and public policy. He is an Adjunct Scholar of the C.D. Howe Institute, and co-edited (with William Watson) the Institute's "The Social Policy Challenge" series.

Introduction

Douglas W. Allen
and
John Richards

We live in an era of social policy frustration. There was a time in the 1960s when hope sprang eternal: when low government debt levels combined with new theories of social engineering and baby-boom effervescence promised greener pastures. The Americans undertook a war on poverty and Canadians introduced an abundance of new social programs, such as universal health insurance and the Canada Assistance Plan. There was the *Canada Divorce Act* to free those trapped in dead relationships. Thirty years later, Canadians cannot avoid admitting to major failures. Some of these programs have succeeded, but in matters of family policy Canada is encumbered with federal and provincial programs that somehow failed to deliver.

Arguably, the world is now a worse place. The percentage of children who live in poverty is as high now as it was in the 1970s. The number of single-parent families and the number of children living in such families has roughly doubled over the past two decades. The divorce rate in Canada is approximately three times higher now than in 1967.

We all are born into families, and most of us spend most of our years living in families. Accordingly, families are a subject about which everyone has an opinion. Families are also immensely varied and complex: it may require the skill of a novelist ever to grasp the nuances of family life. Thus, the two of us approach this book with a certain modesty: we are not novelists, we neither agree on all aspects of family policy nor do we pretend that the book is definitive. None-

theless, we claim that a common denominator of the *increase* in many of the social ills that plague our society is the weakening of marriage as the primary institution for raising and educating children. The attacks on marriage are many, but here we focus on four:

- the effect of the *Divorce Act* on the rate of divorce and on the welfare of wives and children;
- the tax treatment of single-earner relative to dual-earner families, and of families with children relative to families without;
- the consequences of long-term welfare transfers on family structure and children's outcomes; and
- the potential weakening of the symbolic importance of marriage by extending the marriage contract to include homosexual and other relationships.

The essays in this book fall into two broad categories. The first group deals with aspects of law and the family, the second with a variety of tax and fiscal incentives that bear on families.

Law and the Family

Marriage is an efficient institution. Were there a more efficient means to raise children, marriage would not have lasted over the millennia as the primary form of organization for procreation and social structure. Raising children — not just providing for them physically but embodying them with what is good and productive — is a complicated business. Historically, the family has been a type of “firm” that has provided parents with proper incentives to see the job through. Marriage is not for everyone, and it is not a formula for personal bliss. But relative to other arrangements (such as communes or intentional single parenthood), marriage minimizes cheating problems that are common to all forms of organization and maximizes the probability that biological parents will undertake long-term investment in the success of their children.

Traditionally, marriage has been viewed as a relationship in which there are many stakeholders: children, parents, the church,

and the state. Ours may be a more secular and individualist age, but that does not absolve us from collectively caring about the success of marriage as an institution. At a minimum, we all have a stake in successfully rearing the next generation.

Over the past 30 years, there has been a revolution in family law in Western society. Douglas Allen argues in his essay that the introduction of “no-fault” divorce inadvertently went a long way toward promoting the unsustainable doctrine that marriage should be no more than a private contract between two equal partners, and has contributed to negative consequences that few anticipated. Perhaps the most dramatic effect has been the great increase in the number of children growing up poor and with only one parent.

In this decade, academics, legislators, and policy think tanks have started to take seriously the consequences arising from no-fault divorce. A fundamental re-evaluation is now taking form: current law is flawed and band-aid remedies (such as regulations to enforce financial support by noncustodial parents) have failed.

As with all crossroads, this one offers multiple routes to follow. Marching along one path are the children of the 1960s’ reformers, who argue that we have not gone far enough in destroying historical notions of the family. The definition of marriage is being pushed to include all intimate relationships with some claim to permanence, such as homosexual and common-law unions, and even relationships between individuals with no sexual intent. Some legal scholars even argue that the entire body of family law should be abandoned in favor of a simple rule of contract. Moving along another path is a collection of strange bedfellows who argue that the way of the future requires rehabilitation of some traditional notions of marriage and the family. These traditionalists claim that marriage is efficient in dealing with the particular problems of raising children and that efforts to abandon this arrangement will lead to further social ills. This volume joins those travelers on the second path.

Canadians often think of their country as distinct from the United States in its provision of more generous social programs, but this distinction has been valid only since the mid-1960s. In the 1930s, the United States was more generous than Canada in terms of social

spending and, until the 1960s, had more liberal divorce law. Canada's 1968 *Divorce Act* was one of the significant legislative reforms that helped to create Canadians' self-image of being a more liberal society than elsewhere. Canada was the first country to launch into the era of no-fault divorce, although with a law that was almost modest compared with divorce acts that were being contemplated in other jurisdictions at the time. It was, however, a radical change for a country in which two provinces had previously required an act of the federal Senate to grant a divorce and in which the others essentially allowed only one ground, adultery, for divorce. For the first time, Canadian law now allowed individuals merely separated from their spouse for a minimum of five years to file for divorce.

The new *Divorce Act* seemed innocuous at the time. Social scientists claimed that an end to unhealthy marriages would be better for the parents and, implicitly, for the children. Legal scholars suggested that the new law would eliminate the guilt that often arose when couples perjured themselves to fulfill the adultery condition of the old law, and that henceforth there would be less animosity among divorcing couples since no one would be "at fault" for the divorce. Religious leaders gave their blessing to the new law in the belief that courts and social workers would be able to determine those marriages that had truly broken down and restrict divorce to those cases. Taking their cue from all this, politicians enacted the new legislation with little debate and absolutely no opposition.

The new law's effect has not, however, been innocuous. Within five years of its passing, the divorce rate soared to a level almost three times higher than before and has essentially remained there ever since. The dynamic effects of increasing the flow of divorces from something rare to something common are only now being realized. In his essay, Donald Moir, a retired family lawyer in Vancouver, surveys the literature on the effect of divorce on children (complicated understandings of statistics are often not necessary here because the results are so obvious): divorce, to be blunt, is a disaster for them. Children of divorce face higher probabilities of virtually every social ill one can think of relative to children from intact marriages, even when such marriages are "bad." Having a dad at home is

important. Divorce is creating a large cohort of children with low human capital. What will happen to their children when they become adults?

The effect of divorce on children is but one of the unanticipated negative consequences of the *Divorce Act*; the consequences for wives and husbands have been more complicated. For wives, divorce is, on average, a financial hardship. Most wives suffer a fall in their personal consumption after divorce that often lasts until they remarry or their children leave home. Yet wives usually receive either full custody of their children or, where they receive joint custody, retain most of the control over them. This is a source of stress for mothers, but separation from their children becomes a major emotional hardship for fathers. Although husbands often increase their personal consumption after divorce, the simple fact is that many divorced families cannot financially support two households at the former standard of living. Often, divorce is a unilateral act of independence by one partner rather than a mutual parting of the ways. In her paper, Margaret Brinig, an expert in family law, outlines the effect divorce has on both wives and husbands.

When the family fails as the primary institution in which to raise children, people seek substitutes. The lobby for publicly funded child care programs, full-time kindergarten, and preschool programs is driven in part by the needs of single parents who are looking for assistance. When the family fails, lobbies invite government intervention into family affairs. School programs now contain “life-skill” training that was unheard of a generation ago. Virtually every school has a significant budget devoted to the “resource room,” where the ever-growing number of problem children wind up. Teachers are now required not only to teach core academic subjects, but also to deal with career and personal planning, ethics, and basic health education — areas that are normally the purview of parents of functioning families. When this instruction is inconsistent with parents’ wishes or values, the result is tension and migration to private schooling. As two-parent families move their children into private schools, adverse selection problems arise in the public schools, which begin to devolve into low-quality education centers. To the

extent that marriage is the efficient place for the formation of “social capital,” substitution via schools and other government institutions serves only to damage the ability of the public schools to perform their basic task: teaching the skills and knowledge on which there is broad social consensus.

Back to the Crossroads

To mitigate the unintended negative consequences of liberal divorce laws, different jurisdictions are now pursuing divergent paths. The state of Louisiana, for example, recently became the first North American jurisdiction to recognize two types of marriage simultaneously: an ordinary no-fault marriage, and a covenant marriage that stresses the permanence of the union and that is both harder to enter into and to dissolve. In practice, there is not a great difference between the two types of marriage in Louisiana, but it is a revolution in precedent and symbol.

If two types of marriage can exist at the same time, why not three, four, or more? The French government is currently debating a proposal to create a third category (joining religious and civil marriage), a *pacte civil de solidarité*, or PACS. Access to a PACS would be open to a wide range of partners in (presumably) stable relationships: heterosexual and homosexual couples, and those (for example, priests and their housekeepers) who may have no sexual bond. Restrictions would, however, apply to couples linking siblings, first cousins, and parent/uncle to child/nephew. A PACS would afford many of the fiscal benefits of religious and civil marriages, such as the tax reductions implicit in joint filing and joint property ownership, but not all. PACS couples could not, for example, adopt children.

In Canada, British Columbia has begun to recognize homosexual unions as legitimate marriages. In summary, along this path the traditional notion of a marriage as a union of one man and one woman is being abandoned for the more nebulous concept of a loving and committed couple.

Aside from the fiscal implications of expanding the definition of marriage — it is estimated that PACS marriages would cost France

the equivalent of C\$1.1 billion to C\$1.6 billion annually (Lanez et al. 1998, 107) — there may be other hard-to-measure costs of further diluting the cornerstone institution of the family. This is the subject of Frank Buckley’s essay. Buckley tackles a number of arguments in favor of homosexual marriage and concludes that they ultimately are not convincing:

The efficiency gains that homosexuals might exploit through marriage would be small since they have far less incentive to marry than child-rearing heterosexuals. What remains is the symbol of state approval that the recognition of homosexual marriage would accord them. (P. 126.)

The legitimate reasons for which homosexuals may want to marry can be accommodated under existing contract law, Buckley argues, so there is little reason to provide for homosexual marriage. Buckley also opposes the *symbolic* sanction of marriage for homosexuals, arguing that this would further lower the respect afforded heterosexual marriages, which need more, not less, support. Refusing homosexuals the symbolism of marriage, Buckley insists, is not tantamount to “a constable standing before Oscar Wilde at the Cadogan Hotel but a restriction not even recognized as a disability until very recently” (p. 122).

Taxing and Rewarding Families

Just as rewriting divorce laws has, over time, wreaked major change on families, so too has apparently minor tinkering with tax policy and transfer programs. With the growth in the size of government over the past half-century, such tinkering has often become sizable wedges between pre-tax, pre-transfer income and post-tax, post-transfer income.

In his essay, Ken Boessenkool traces the tax treatment of marriage and children in Canada since World War II. At that time, Ottawa maintained a universal per child social policy transfer (the family allowance) and a deduction from taxable income for each child. The tax system treated single- and dual-earner families at vari-

ous income levels the same. In the decades since, this universal transfer has been transformed into a targeted program (most recently, the Canada Child Tax Benefit — CCTB) that is clawed back aggressively once family income reaches a threshold level. Income tax deductions for children have been eliminated, but families receive a per child deduction for child care expenses — a deduction that is primarily of benefit to dual-earner families. In sum, low-income families now receive higher transfers, and families with child care expenses receive a large deduction to taxable income, but middle- and upper-income single-earner families receive negligible tax recognition of the costs of child rearing.

Boessenkool argues that this development arose because social policy mechanisms confounded sound tax policy. He emphasizes

three difficulties that arise from this confusion of social and tax policy objectives. First, the tax system no longer recognizes the cost of raising children in all families. Second, to the extent that the tax system has relieved the burden for middle- and upper-income families with children, it has done so disproportionately for dual-earner families through generous child care exemptions. Finally, the combination of clawed-back social policy transfers plus income and other taxes has created unacceptably high effective marginal tax rates for families earning between \$20,000 and \$30,000. (P. 130.)

After carefully discussing the evidence on these matters, Boessenkool assesses four options for reform:

- Universalize targeted low-income programs, such as the CCTB and the refundable goods and services tax (GST) credit, thereby transforming them into demogrants (refundable credits) for all families with children. The advantage of this approach would be to eliminate very high effective marginal tax rates over the income ranges at which these programs are aggressively clawed back. The cost in terms of forgone federal income tax would, however, be high: about \$6 billion annually for the CCTB alone, and up to \$10 billion if other programs were included.
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- Increase the generosity of personal, spousal, and child deductions sufficiently to provide tax-free “room” over the income ranges at which targeted programs are aggressively clawed back. This implies that a family with two children would pay no income tax until family income exceeded roughly \$25,000. In principle, Boessenkool favors deductions over credits, and this option would recognize explicitly the costs associated with child raising. Like the first option, however, this would be costly to the federal treasury.
 - Introduce a tax deduction of \$2,000 per child. This more modest option would cost Ottawa about \$3 billion annually. The cost could be reduced and equity between dual- and single-earner families enhanced, however, if the amount of the per child deduction were subtracted from the eligible claim under the Child Care Expense Deduction (CCED).
 - Integrate the CCTB, GST tax credit, CCED, and personal income tax among low-income families. This option, which Boessenkool prefers over the others, would also cost the federal treasury about \$3 billion a year. It would smooth the effective marginal tax rate over the \$15,000 to \$35,000 range and would offer a modest tax cut to families earning above \$25,000.

A brute fact to keep in mind is that families with children comprise slightly over half of all Canadians deemed poor by conventional poverty measures. The increasing prevalence of single-parent-hood means that the proportion of the poor living in single-parent families has also been rising. For example, in 1980, Canadians in such families comprised 16 percent of all those deemed poor. By 1996, they were 22 percent of the poor, and 93 percent of poor, single-parent families were headed by a mother.

The overall incidence of poverty among elderly families has been declining (from 19 percent in 1980 to 9 percent in 1996). Among non-elderly families, however, the incidence of poverty has been rising (from 12 percent in 1980 to 16 percent in 1996). Several factors are at work to explain these trends. One is the generous government transfers that go to the elderly. For the non-elderly, the state of the

business cycle matters: between 1980 and 1996, the lowest incidence of poverty was in the boom year 1989. Another important reason for the increase is a rising share of families that are headed by a single parent: throughout the 1980–96 period, the incidence of poverty among families with children was roughly five times higher among single-parent than among two-parent families.¹

In his contribution to the volume, John Richards argues that, among low-income families, public policy has erected not one but two “poverty traps.”

The first is well known: beyond a modest earnings exemption, provinces typically claw back welfare benefits dollar-for-dollar as earnings increase. The result is that, if parents with limited market skills forgo welfare for work, they may do little to increase family income and, taking into account loss of noncash welfare benefits (such as extended medical coverage), they may well lower it. Over the last generation, this first trap has become more acute because, across provinces, welfare benefits for families with children have either risen or remained constant and earnings of men with low or narrow skills has fallen. Increases in transfers targeted to low-income families have offset the effect of a decline in male earnings at the bottom so that, to date, while there has been little change in the distribution of family income, an increasing share of income among families at the bottom derives from transfers as opposed to earnings.²

1 All figures cited in this and the previous paragraph are derived from Statistics Canada (1997).

2 In Ontario, for example, welfare benefit levels in 1995 were 20 percent higher in real terms than in 1975. After the cuts imposed by the newly elected Progressive Conservative government, 1996 benefits returned to 1975 levels. A comprehensive nationwide survey reported an 18 percent increase in the real value of single-parent welfare benefits between 1981 and 1993. By contrast, earnings from low- or narrow-skilled work have declined. A typical result is that published in a recent study by Statistics Canada: between 1973 and 1989, real annual earnings among men in the bottom fifth of wage earners declined by 16 percent; roughly half of this decline occurred because of a reduction in hours worked, but even among men who worked full time full year, real annual earnings fell by 7 percent over the period (Brown 1995, table 3; Canada 1997, table 5; Lefebvre et al. 1998, table 5; Morissette et al. 1995, 28).

In addressing this first poverty trap, Richards argues that the provinces should experiment with ambitious earnings supplement programs that subsidize work among low-income families. Such programs provide ongoing subsidies to any and all earnings by family members, and are accessible to all low-income families with children — as opposed to a host of discretionary programs that subsidize employment among designated groups for a limited time. The intention is to increase work among families that currently have no earnings, by increasing dramatically the wage-to-welfare ratio. Earnings supplement programs are not intended for single individuals or childless families.

The case for earnings supplement programs rests on two propositions: that financial incentives matter in determining the extent of employment, among both the poor and the rich, and that the role model of working parents matters a great deal in predicting whether the children of poor families avoid repeating the cycle of poverty.

Earnings supplement programs have become significant in a number of countries. The United States, for example, has an Earned Income Tax Credit. In Britain, the newly elected Labour government gave a high priority in its first budget to enhancing an equivalent, the Working Families Tax Credit. In Canada, Quebec's APPORT is the pioneer program, while in the 1990s Ottawa has undertaken a pilot earnings supplement project in regions of both New Brunswick and British Columbia. Saskatchewan introduced its version of a universal earning supplement program in 1998. Crucial to the success of such programs is close attention to their design and administration: they must "feel" like wages as opposed to welfare or an income tax rebate.

A second poverty trap has arisen in recent years because of the aggressive clawback of targeted benefits other than welfare. These other benefits include the recently expanded CCTB, the GST tax credit, and numerous provincial add-ons. Aggressive clawback of these benefits begins when families earn roughly \$20,000. By design, targeted programs claw back benefits as earnings rise, and they generate work disincentives similar to those of explicit income taxes. The stacking effect of income taxes plus targeted program clawbacks

has meant that modest-income families face marginal effective tax rates on incremental earnings well in excess of 50 percent at very low earnings. In British Columbia, for example, a family with two children faces a marginal effective tax on incremental earnings approaching 70 percent in the range of \$21,000 to \$26,000.

The appropriate policy to address this second poverty trap, Richards argues, is to restore universality to the CCTB. To extend the present CCTB (of roughly \$1,500 per child) into a universal tax credit would lower personal income tax revenues by nearly \$6 billion annually — a sizable tax reduction. While this proposal must compete with other tax-reduction strategies — such as lowering employment insurance premiums or raising the income thresholds at which higher marginal tax rates take effect — it deserves a serious hearing. This disarmingly simple reform could achieve two important social policy goals:

- It would appreciably lower the marginal effective tax rate faced by modest-income families, particularly those in the \$21,000 to \$26,000 range over which the CCTB is presently clawed back aggressively. At present, the CCTB is clawed back at a rate between 12 and 27 percent in that range (the rate varies by number of children).
- Poor families are not the only ones that have children; middle- and upper-income families do too. Currently, Canada's tax regime takes inadequate account of the costs of good child rearing among those who are not poor. By construction, universalizing the CCTB would provide no additional benefit for single individuals, families without children, or families already receiving the maximum CCTB. But, to repeat Boessenkool's argument, a sound income tax policy should use as its base some measure of income after deducting costs — including costs attendant on good child rearing.

In a scene from the film *Jurassic Park*, a character explains how mathematical chaos theory works: a butterfly flapping its wings on a leaf in a rain forest on the equator may generate air flows that, sev-

eral months later, culminate in a tidal wave on the other side of the world. In the same way, small changes in social policy ultimately may have large impacts on people's lives. These impacts may not be felt immediately, nor are they easy to trace. "What's to be done?" is a question to which the authors in this volume bring divergent answers, but all share an intuition: the cumulative effect of many seemingly small changes in social policy has been to weaken unduly the family as an institution.

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