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Women, Pensions and Equality

*Susannah Worth Rowley**

1. INTRODUCTION

A society's values are reflected in its treatment of the elderly. The relationship of the aged to the rest of the population and the social and economic hierarchy within the aged as a group provide tangible and graphic evidence of a society's most fundamental values and attitudes. Who is rewarded and for what? What qualities and contributions are valued, and to what extent?

A culture which places a high value on wisdom gleaned from a richness of life experience will very likely revere its elderly—those who necessarily possess these qualities to the greatest degree—and will reward them by insulating them from need when they are unable to provide for themselves. In an egalitarian society which values the basic worth and dignity of each human being *qua* human being, the needs of the elderly—along with all other members of society—will be met according to the maxim, “to each according to his or her needs.” In

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a culture where an elderly person's "station in life" is dependent upon the "contribution"—however defined—that he or she made during years of productivity, it will be immediately clear, by the hierarchy of the relative stations in life in old age, which particular contributions are the most valued.

What social values are reflected by the fact that one-quarter of Canada's elderly are poor? What is the significance of the fact that among these elderly poor, seven out of ten are women, most of them "unattached"?¹

The conclusion is inescapable; that is, that euphemistically-termed "senior citizens" are not valued as a group in Canada, and that women—particularly those who are not "ancillary" to a man—are the least valued members of that group. It is perhaps belabouring the obvious to observe that this situation is rooted in the extremely materialistic nature of our culture, in which the human being is reduced to a mere economic persona. What is rewarded in old age (indeed at every age) is the ability—past or present—to amass wealth.

Were we as a people less materialistic, we might look to our elderly for wisdom and spiritual insight. We might consider them a treasure, not a liability; and their economic station in life would reflect this. Sadly, such is not the case.

In general, beyond the age of retirement, most Canadians are considered to be a liability. Except in occasional individual cases, they do not add to the country's economic growth, indeed they only detract from it, by "withdrawing" (their) money that had been invested in the economy by public and private pension funds, and—worse yet—by relying on inter-generational transfers of wealth (the Old Age Security pension, the Guaranteed Income Supplement and to a certain extent the *Canada Pension Plan*) in order to survive.

What of women in particular? What is the significance of the fact that nearly three-quarters of the elderly poor are female? To the extent that poverty statistics may be a rough indicator of the value that we place on women's contribution during their years of productivity, it becomes clear that so-called "women's work" is simply not valued. The work of bearing and raising children is not rewarded in old age.

¹ To avoid confusion, the term "unattached" is used in this paper in the same sense as it is used by Statistics Canada. It means a "person living alone or in a household where he/she is not related to other household members." See *Income Distributions by Size in Canada, 1984*, *infra*, note 35, p. 12. I am aware of the problem that people living in a homosexual union would therefore be considered "unattached".

The only lifetime activity that is rewarded in old age is the activity of making money. The work of nurturing and caring for others—in fact “producing” others—counts for little, so it would appear.

Eighty percent of Canadian women bear children. Most of them assume the role of primary caretaker to those children, almost inevitably to the detriment of their role as “money-makers”. In addition, most women also work at paid jobs, usually poorly paid, thus doing double-duty in terms of social contribution—if raising a family were viewed as a “contribution”, which apparently it is not.

The reward in old age for a lifetime of “double-duty” is, for a great many women, poverty. Intuitively, most would agree that this state of affairs does not seem “fair”. The purpose of this paper is to demonstrate that not only is it unfair, it is unconstitutional.

Many studies respecting pension reform have been undertaken recently by various organizations, including federal and provincial task forces. The federal government created a Task Force on Retirement Income Policy whose report appeared in 1979. A Green Paper, *Better Pensions for Canadians*, was circulated by the federal government for discussion in 1982, and in 1983, again the federal government appointed a Parliamentary Task Force on Pension Reform, which presented its recommendations to Parliament in December, 1983. In 1983, the Report of the Nova Scotia Royal Commission on Pensions was published.²

All these studies recognize the shortcomings of the present system and offer proposals for improvement, some good but all inadequate from a constitutional point of view. I do not propose to deal in any depth with the pension reforms which have been suggested in these documents, as the subject of pension reform in general is a massive and complicated one. I propose rather to concentrate on the requirements of section 15 of the *Canadian Charter of Rights and Freedoms*. The following analysis supports the proposition that, at the federal level, the *Canada Pension Plan* and the *Pension Benefits Standards Act*

2 Most recently, along with the announcement of the 1985 Budget, the federal government announced its intention to implement certain reforms in the *Pension Benefits Standards Act* which governs those employer-sponsored pensions under federal jurisdiction. The *Pension Benefits Standards Act, 1985*, S.C. 1986, c. 40, which comes into force on January 1, 1987, repeals and replaces the old *Pension Benefits Standards Act*. There has also been some talk of the inclusion of homemakers in the CPP. Such changes, long overdue, would be a step in the proper direction if implemented; but without more, they will be inadequate to bring the current pension system into line with constitutional requirements.

(even the amended version, *Pension Benefits Standards Act, 1985*, S.C. 1986, c. 40) are unconstitutional. In addition, the argument is made that in Nova Scotia *The Pension Benefits Act* (and even the amended version—Bill 122^{2a}) is unconstitutional.³ This is so for a number of reasons, outlined here and developed at a later stage.

First, women's differences are turned into disadvantages. These differences are rooted in the biological fact that women get pregnant and bear children, but men do not. This biological difference has been expanded into a social difference, *i.e.* the reality that women are primary caretakers of children. The result is different lifetime working patterns for men and women. However, the pension system uses as a standard pattern of work that of the male worker. To the extent that a women's lifetime pattern does not conform to the male pattern, she is penalized.

Second, the use of pre-retirement income as the index of pension benefits discriminates against women. This is so because women's wages are only 64% of men's wages on the average for full-time employment; furthermore, 3 out of 4 part-time workers are women, consequently women earn much smaller incomes than men. (Even male part-time workers earn substantially more than female part-time workers). Inequities in pre-retirement income are therefore necessarily reflected in pension income. Further, women's contribution to society is often in the form of unpaid labour. A homemaker who devotes her life to caring for children and/or a husband is not eligible for any pension in her own right. The work she does has real economic and social value, although she receives no pay for it; but this is not recognized by the current pension scheme.

2. THE CURRENT PENSION SYSTEM IN CANADA

(a) Constitutional Considerations: Legislative Competence

What types of pension legislation may be enacted by the different levels of government?

In 1964, s. 94A in its present form was added to the *British North*

^{2a} Bill 122, *Pension Benefits Act*, received its second reading on May 22, 1986, but was then referred to Committee.

³ Insofar as other provincial pension legislation resembles Nova Scotia's, and insofar as the *Quebec Pension Plan* is a replica of the *Canada Pension Plan*, the conclusions of this paper will be applicable to that legislation as well.

America Act, now the *Constitution Act*.⁴ This provision reads as follows:

The Parliament of Canada may make laws in relation to old age pensions and supplementary benefits, including survivors' and disability benefits irrespective of age, but no such law shall affect the operation of any law present or future of a provincial legislature in relation to any such matter.

It is under this grant of power that the federal legislation dealing with income security programs and the *Canada Pension Plan* was enacted. It should be noted that the federal and provincial governments share jurisdiction in respect of such pension plans.

In accordance with the distribution of powers in sections 91 and 92, the federal government may also regulate the private (employer-sponsored) pensions of federal public servants and of those institutions under its jurisdiction—namely banks, crown corporations, federally-regulated undertakings such as railways, *etc.*

Federal legislation respecting Registered Retirement Savings Plans (RRSPs) come under section 91(3), "the raising of money by any mode or system of taxation."

The provinces have jurisdiction—under the general section 92 head of "property and civil rights"—to legislate with respect to private employer-sponsored pension plans.⁵

(b) The Three Tiers of the Retirement Income System

The retirement income system in Canada is composed of three tiers. The first tier, the Old Age Security pension and Guaranteed Income Supplement (OAS/GIS), provides a basic minimum (below poverty-level) income for those with no other source of income. The second tier consists of the *Canada Pension Plan* (CPP), the so-called "universal" pension based on average lifetime earnings. The third tier consists of income from private pension plans, RRSPs that have been used to purchase annuities, and other investment income.

(i) Income Security Programs

Nearly all Canadians age 65 and older receive the "universal" Old

4 *The Constitution Act, 1867* (U.K.), reproduced in R.S.C. 1970, App. II, No. 5.

5 *Report of the Parliamentary Task Force on Pension Reform* (Ottawa: Queen's Printer, 1983), p. 87, from the submission by the Canadian Bar Association of Ontario.

Age Security pension (OAS).⁶ This is a flat-rate monthly sum, indexed to the Consumer Price Index.⁷ As of April 1, 1985 that amount is \$276.54, having been increased from \$273.80.⁸ Thus the rich as well as the poor receive this benefit; it is taxed back from those with higher incomes, but as no individual income tax rate exceeds approximately 57%, all Canadians over sixty-five (who meet the residence requirements) receive a benefit from this pension, whether rich or poor.

For those whose retirement income does not meet a minimum level (\$7,823.99 for a single person or \$10,175.99 for a married couple in January, 1985), the Guaranteed Income Supplement (GIS) is available on an income-tested basis; that is to say, it will vary according to the other income of the pensioner. Assets are not taken into consideration in calculating this benefit, only income. The maximum GIS benefit for a single person is \$328.66 per month, increased in April, 1985, from \$325.41 per month. For a married person (where both spouses are over sixty-five), the maximum benefit is \$214.05 per month, just up from \$211.80.⁹ Thus the maximum GIS for an unattached individual is 65% of the maximum benefits available to married persons. Combining OAS and GIS benefits, the maximum benefit available to an elderly unattached individual's income is 62% of that of a married couple, both of whom are over sixty-five.

In the first part of 1981, the maximum GIS available to a single pensioner was \$203.00. During the same period, the OAS was \$202.00 per month¹⁰; so there has been a greater increase in maximum GIS benefits. However, this increase has not been sufficient to raise out of poverty those in retirement with no other source of income than the OAS and GIS, mostly women.¹¹

6 The legislation dealing with this benefit is the *Old Age Security Act*, R.S.C. 1970, c. 0-6.

7 The proposed 1985 budget would have partially de-indexed this benefit; public outcry caused the government to re-introduce indexation.

8 CCH Employment Benefits and Pension Guide Reports, Number 289, March 19, 1985, at p. 1.

9 *Ibid.*

10 L. Dulude, *Pension Reform with Women in Mind* (Ottawa: Canadian Advisory Council on the Status of Women, 1981), pp. 7, 26.

11 See National Council of Welfare, *Giving and Taking: The May 1985 Budget and the Poor* (Ministry of Supply and Services, 1985), p. 23: "We estimate that about 185,000 or two-thirds of those who qualify for the maximum GIS benefit are women, most of them widows." Those who qualify for the maximum GIS benefit are the poorest of the poor.

The GIS was instituted in 1966 as a transitory feature of the Canadian pension system, to ease the penury of those who had no other sources of income, while waiting for the newly-instituted *Canada* and *Quebec Pension Plans* to begin benefit payments. However, in 1970 the Federal government, in response to the realization that these plans would not meet the needs of many elderly, particularly women, decided to make the GIS a permanent appendage of the old-age pension system. It has some of the elements of "welfare", *i.e.* it is income-tested, but it does not subject recipients to the humiliating scrutiny and investigation of welfare. OAS and GIS payments come out of the federal general revenue fund.

(ii) "Universal" Pension: The *Canada Pension Plan (CPP)*

The *Canada Pension Plan* was created by federal legislation,¹² which came into force on January 1, 1966.¹³ This is a so-called "universal" public pension plan, despite the fact that only paid workers are covered by it. Everyone who is an employee pays contributions into this plan, as do employers on the employees' behalf. The self-employed may contribute double the employee's rate, that is, the employee's share plus the theoretical employer's share. But those who work in the home are not permitted to contribute to this plan; nor are the unemployed nor the recipients of social assistance.

Who pays for the benefits under this plan? Benefits are paid out of a special fund created by contributions from the participants in the plan, *i.e.* employers and employees. On the other hand, the GIS is a subsidy of the poor by the more well-to-do, via the vehicle of a progressive income tax structure.

Under the *CPP*, everyone contributes a fixed percentage (1.8%) of his or her wages up to a ceiling wage, the yearly maximum pensionable earnings (YMPE). This amount, the YMPE, as of January 1, 1985, is \$23,400, up from \$20,800 in 1984.¹⁴ The employer as well contributes an equivalent amount for each employee (1.8%). There is an exemption upon which no benefits are payable—\$2,300 in 1985¹⁵—

12 *Canada Pension Plan*, R.S.C. 1970, c. C-5, as amended (most recently by S.C. 1986, c. 38).

13 The *Quebec Pension Plan (QPP)*, R.S.Q. 1977, c. R-9, is the similar legislation in force in the Province of Quebec. Whenever the abbreviation *C/QPP* is used, it is a reference to both the *Canada* and the *Quebec Pension Plans*.

14 CCH Topical Law Reports: Canadian Employment Benefits and Pension Guide Reports, para. 8004.

15 *Ibid.*

all of which results in a maximum yearly contribution of \$379.80 by both employer and employee. This is a regressive system of contribution. For someone with a yearly wage well above the maximum pensionable earnings, \$379.80 will represent a much smaller percentage of total wages, and will represent therefore a much smaller burden as well as a larger tax advantage. Because these contributions are tax-deductible, those taxpayers at a high marginal tax rate will receive a greater tax savings from this deduction than will taxpayers at a lower marginal tax rate.

What benefits are payable under this plan? Retirement benefits will amount to a replacement income of 25% of the individual's average yearly wage up to the amount of the YMPE. This average will be calculated by averaging the individual's yearly total earnings between the ages of 18 and 65. A drop-out provision of 15% of the years of lowest earnings is allowed so as potentially to increase this average figure. This deduction may only be used when the employee has made contributions over "the basic number of contributory months", which is 120 months—10 years. It is important to note that all the years between the given ages are used in arriving at the average lifetime wage, irrespective of whether the individual was a member of the paid labour force during each of those years.

Very recently, a new provision¹⁶ was added to the *CPP*. This is the "child-rearing drop-out" provision, which allows those who remain out of the paid labour force in order to care for dependent children under the age of seven years to eliminate all those years from the calculation of average lifetime earnings, provided that the number of years used to arrive at an average figure is at least ten years (120 months). (This provision has been in effect in the *Quebec Pension Plan* since 1977.)

Ontario had steadfastly blocked the implementation of this provision, as had British Columbia; but in June, 1983, this provision came into force retroactively to January 1, 1978, when Ontario finally dropped its opposition to the measure six years after it had been approved by Parliament.¹⁷

Disability benefits are also payable under the *CPP*. The vast majority of disability pensions are paid to males, subsidized by contributions from women.¹⁸

16 *Canada Pension Plan*, R.S.C. 1970, c. C-5, s. 48(1.1), as enacted by S.C. 1976-77, c. 36, s. 4.

17 *Globe and Mail*, June 28, 1983, p. 10.

18 See Appendix I, from Dulude, *supra*, note 10.

(iii) *Private Employer-Sponsored Pension Plans and RRSPs*

One characteristic shared by all private pension plans is that they are required to be "fully funded". In other words, they are not "pay-as-you-go" plans which require future employees to pay the benefits which current employees are promised. In all private pension plans, the money out of which benefits are to be paid must be held in a separate investment fund. On the other hand, the CPP is only a partially-funded plan. It can only fulfill its promise to current contributors by paying benefits, at least in part, out of the contributions of future contributors. The OAS and GIS subsidies are purely "pay-as-you-go" inter-generational transfers of wealth.

The *Pension Benefits Standards Act*¹⁹ regulates private pension plans of employees under Federal jurisdiction such as banks, crown corporations, and the Public Service. Section 10 sets minimum contractual provisions that a pension plan must contain in order to be eligible for "registered" status, allowing contributions to the plan to be tax-deductible. Section 10(a) provides that vesting²⁰ must occur when an employee "has been in the service of the employer for a continuous period of 10 years or has been a member of the plan for such period, and who has attained 45 years of age." This is known as the rule of "45 and 10". Locking-in of both the employee's and the employer's contributions must occur at this time as well (section 10(d)). This means that the employee is not entitled to receive any contributions paid either by her or by her employer, except in the form of an annuity payment upon retirement.²¹

19 R.S.C. 1970, c. P-8. This has been replaced by the *Pension Benefits Standards Act*, 1985, S.C. 1986, c. 40, which comes into force on January 1, 1987.

20 Vesting is the process whereby the contributions of the employer in effect become the property of the employee, although the employee is not entitled to receive any portion of these in the form of benefit payments until age sixty-five. After an employer's contributions vest in the employee's pension account, they cannot thereafter be removed by the employer when the employee leaves the job. Prior to vesting, the employee upon termination of employment forfeits the amount of the employer's contribution, which can then be used by the employer to subsidize contributions for someone who has remained in the plan long enough for that pension to "vest". The present vesting provisions tend to result in women—who move more frequently from job to job—subsidizing the pensions of men, who will tend to stay with an employer long enough for the pension to vest.

21 S.C. 1986, c. 40, *supra*, note 19, would eliminate the rule of "45 and 10" and would replace it with mandatory vesting after two years.

Other relevant sections for the purposes of this paper are section 13, which provides that provisions of Provincial law shall apply with respect to payment of pension benefits "to the extent that they are not inconsistent with or repugnant to this Act"; and section 21 regarding the power of the Governor in Council to make regulations "respecting methods and bases for computing pension benefits". Under this Act at the present time, sex-based mortality tables approved by the Provincial Superintendent of Pensions are used in computing deferred annuity pension benefits.²²

In Nova Scotia, the *Pension Benefits Act*²³ (hereafter *NSPBA*) reg-

22 Proposed amendments to this statute set out in the 1985 Budget, and scheduled to take effect in January, 1987, would require "equal, periodic benefits to men and women retiring in identical circumstances." (*May 1985 Budget Papers*, p. 48. See s. 27 of S.C. 1986, c. 40.) Unisex mortality tables would be one way to achieve this, although the employer could choose an alternative method if sex-based tables were used, under the proposed revisions. This sounds as though sex-based mortality tables will still be around. In that case annuities purchased with RRSPs could still be calculated according to sex-based tables, as these are not governed by the *PBSA*. Further proposed changes to the Act would increase the portability of pensions by the possibility of transfer of accumulated pension contributions to a new type of locked-in RRSP when an employee covered by a private pension plan leaves a job. Benefits to a surviving spouse would be mandatory to the extent of 60% of the amount payable to the retired employee. However, inflation protection—indexing of benefits—would not be mandatory but would only be "encouraged". Coverage in pension plans would be extended to part-time workers who make more than 35% of the average industrial wage for two consecutive years. Since three-fourths of all part-time workers are women, one might expect this provision would be of greatest benefit to women. This is not so. A Statistics Canada breakdown of part-time earnings by sex and age group shows that no specified age group of women in 1982 had average earnings high enough to qualify for coverage under this new plan. On the other hand, all specified age groups of men between 25 and 65 had average part-time earnings above the required amount. (Statistics Canada, *Earnings of Men and Women, 1981 and 1982* (Ministry of Supply and Services, 1984) Table 4, pp. 30–31.) Thus women should not be lulled into a sense of security by the pension reforms proposed by the 1985 Budget and S.C. 1986, c. 40. The Government's misleading assertion that "the proposals to change the *Pension Benefits Standards Act* . . . will significantly improve the pension rights of all Canadians" (see *Improved Pensions for Canadians, infra*, note 59) obfuscates the fact that the Act in question only sets the standards for private pension plans under the jurisdiction of the federal government. By itself, the Act will have no impact on the pension rights of other employees, not to mention those Canadian women who are not members of the paid labour force at all.

23 S.N.S. 1975, c. 14. The *Pension Benefits Act, supra*, note 2a, if enacted in its present form, will mirror many of the changes made by the new federal *Pension Benefits Standards Act, supra*, note 19, such as a two-year vesting period and coverage for part-time workers who earn over 35% of the YMPE.

ulates private employer-sponsored pension plans. It establishes the minimum contractual criteria which determine whether or not a private pension plan may be registered. In particular, section 17(1)(a) establishes the rule of "45 and 10", providing that vesting must occur when "a member of the plan . . . has been in the service of the employer for a continuous period of ten years, or has been a member of the plan for such period, whichever first occurs, and who has attained the age of forty-five years." "Locking-in" of the employer's and employee's contributions occur at that "qualification date" as well (section 17(1)(c)).

Other relevant provisions of this Act for the purpose of this paper are the following: Section 24 provides that "the Governor in Council may make regulations respecting methods of computing pension . . . benefits . . ."; and Regulation 12 provides that "the computed value of a deferred life annuity shall be calculated in a manner acceptable to the Superintendent." These provisions establish the legislative authority for approval by the Superintendent of Pensions of the insurance company's practice of calculating deferred life annuities according to sex-based mortality tables. In these tables, only two variables are involved in calculating retirement benefit payable under a money-purchase plan: the age and the sex of the individual.

Among provincial legislatures, the Manitoba legislature has been the most progressive in revising its private pension legislation, introducing many new provisions which will be of benefit to women in particular. It is the only province which prohibits the use of sex-based mortality tables. Bill 95, *An Act to amend The Pension Benefits Act*,²⁴ passed in 1983, made several significant amendments to the *Manitoba Pension Benefits Act*,²⁵ one of which was the addition of section 21(6.4), effective January 1, 1985:

No pension plan shall provide for or permit

- (a) different rates or amounts of contributions by the members based on difference in sex; or
- (b) different pensions, annuities or benefits based on differences in sex; or
- (c) different options as to pensions, annuities or benefits based on differences in sex; or
- (d) the inclusion in or exclusion from membership in the pension plan of employees on the basis of the sex of the employees.

24 S.M. 1983, c. 79.

25 S.M. 1975, c. 38.

This corresponds to the law in the U.S., as established by the Supreme Court decisions of *Los Angeles Department of Water and Power v. Manhart*²⁶ and *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Nathalie Norris*.²⁷ It will almost certainly be a required amendment to Nova Scotia's *Pension Benefits Act* in order to effect the most minimal compliance with section 15 of the *Charter*.

How large are the pension funds generated under the various types of pension legislation? In 1981, contributions to private pension plans totalled over 9 billion dollars. Contributions to the *C/QPP* totalled less than 4 billion, and *RRSP* contributions were close to 4 billion dollars as well.²⁸ A comparison of these figures reveals the importance of private pension plans in the overall pension scheme. These 9 billion tax-free dollars, contributed to private pension plans, represent enormous investment power. They also represent a sizeable chunk of lost tax revenue.

Who is covered by employer-sponsored pension plans? Public sector coverage is nearly universal; participants in these plans represent 42.4% of total participants in private pension plans. The private sector accounts for the remaining 57.6% of the participants.²⁹ In terms of percentage of the total labour force, private pension plans cover an average of 46.8% of all employed paid workers—excluding workers in the home, the self-employed, and the unemployed, but including part-time workers. This figure can be further broken down to 36.5% of the female work force and 53.9% of the male work force. Coverage in Nova Scotia is at 46% of the employed paid workers in the labour force.³⁰

What are the different types of private pension plans? Such an inquiry is beyond the scope of this paper. However, suffice it to say that private pension plans take many forms: defined benefit plans, defined contribution plans, money-purchase plans (where a monthly annuity is purchased from an insurance company when the individual reaches retirement age, such an annuity being calculated—except in Manitoba—according to sex-based mortality tables as previously mentioned), contributory and non-contributory plans, indexed benefits

26 (1978), 98 S.Ct. 1870.

27 (1983), 103 S.Ct. 3492.

28 Statistics Canada, *Pension Plans in Canada, 1982* (Ministry of Supply and Services, 1984) Table A, p. 9.

29 *Ibid.*, pp. 13–14, Tables C and D.

30 *Ibid.*, p. 18, Table F.

and (mostly) non-indexed benefits. Defined benefit plans are most common where the employee receives, as a yearly retirement income, a percentage of his or her last or best or average earnings. The percentage is usually 2% times the number of years covered by that plan, up to a maximum of 35. It is clear, however, that inflation will eat into these pensions, unless there is some provision that they be indexed. Most plans do not provide for any indexing.³¹

An employee may contribute to a Registered Pension Plan (that is to say an employer-sponsored pension plan) up to a maximum amount, which will be tax-free. (This amount was \$3,500.00 in 1985. However, the May 1985 Budget proposed to increase the maximum to \$7,500 in 1986, with yearly increases thereafter until 1990, when the maximum allowable yearly contribution would be \$15,500. Legislation implementing these increases has not yet been introduced at time of writing.) If the employee does not contribute up to the maximum amount in a private pension plan, he or she may contribute to a Registered Retirement Savings Plan (RRSP) up to the amount of the difference between contributions to a Registered Pension Plan and the maximum allowable contribution. Again, this portion of the taxpayer's income will be tax-free. The net effect of this system will be an interest-free loan to the taxpayer in the amount of the tax deferred, from the public treasury to the taxpayer. When the money is withdrawn from the RRSP account, it is taxable, unless used to purchase an annuity at age 65. If at the time of withdrawal the taxpayer is in a lower tax bracket, there will be a benefit to the taxpayer in the form of a smaller tax payable. An annuity is taxable as well; but as the taxpayer will probably be in a lower income bracket after age 65, there will still be a tax savings.

An RRSP is not locked-in. It may be withdrawn at any time by the taxpayer who must then pay tax on it. If upon retirement at age 65 (or in any case at age 71), the taxpayer withdraws the money from the RRSP account, two things can happen:

1. The lump sum withdrawn will be taxed; or
2. The RRSP can be used to purchase a lifetime annuity, in which case only the annuity payments will be subject to tax.

31 Although lack of inflation protection in pension plans works to the disadvantage of all elderly, it hurts women more than men. As they live longer on the average than men—four years longer past age sixty-five, their pension income on average will be more eroded by inflation.

It is to be noted, however, that benefits payable under such a money-purchase plan are calculated according to sex-based mortality tables, where only the sex and age of the annuitant are taken into consideration. Here again, because women live on the average 4 years longer than men after age 65, women's annuity payments will be smaller than men's for the same premium paid.

Furthermore, it is clear that RRSPs benefit those with high incomes (men) more than those with low incomes (women). One reason is obvious: those with high incomes have more money available to invest in such plans.³² In terms of tax savings, those in the highest income brackets will benefit the most. A \$1,000 contribution will reap a tax saving of \$500 for a person in the 50% marginal tax bracket. For someone who pays tax at a rate of 20%, the tax savings will be only \$200. For someone who makes so little that no tax is paid at all, there will be no tax benefit.³³ This is therefore a regressive rather than a progressive system of taxation. Since women's salaries are only 64% of men's, this provision will benefit men more than it will women.³⁴

32 The reforms proposed in the 1985 Budget, for example increased limits on RRSPs, not to mention tax-exempt capital gains, will only increase the tax benefits to those same high income earners (men), and will also increase the losses in government revenue. These revenue losses will be partially recouped though decreasing the net amount of money paid to mothers in the form of Family Allowances, which will be partially de-indexed. The proposal to de-index (partially) Old Age Security benefits, on which the government was forced to back down, would also have served to make up for some of this lost revenue—i.e., taxes that the rich (men) would not have to pay. Such de-indexation would have hurt most severely those elderly who live below the poverty line, 70% of whom are women. An equality analysis of the 1985 Budget could not fail to render it highly suspect constitutionally, if not downright anti-women, in effect if not intent.

33 National Council of Welfare, *A Pension Primer*, (Ministry of Supply and Services, 1984), p. 59.

34 See generally *Giving and Taking*, *supra*, note 11. It states at p. 25: "The Budget proposes to progressively raise contribution limits until they reach \$15,500 in 1990 This change will cost the federal government an estimated additional \$235 million in foregone tax revenue by 1990. Only the most affluent taxpayers—those with incomes over \$86,111 in 1990—will be able to claim the maximum \$15,500 deduction and after the Budget, as is now the case, higher-income taxpayers will take the lion's share of benefits. In fact some moderate-income tax filers will lose tax benefits because the Budget will limit their RRSP deductions to 18 percent of earnings, rather than 20 percent under the current system. We recommend instead that the tax deductions for private pension and RRSP contributions be replaced by a tax credit designed to provide proportionately larger benefits to smaller contributors."

3. POVERTY IN OLD AGE DIVIDES ALONG GENDER LINES

This section contains a description of the "outcomes" of the current pension legislation. A useful concept in this investigation is the Statistics Canada low-income cut-off, more commonly referred to as the "poverty line". Those who fall below this income level spend more than 58.5% of their income for the necessities of food, shelter, and clothing, and are considered to be in "straitened circumstances".³⁵ The actual cut-off figure varies according to family size, population density and area of residence (*e.g.* urban or rural). These poverty lines indicate that large cities are the most expensive places to meet the minimum requirements of daily living.³⁶

The number of women over 65 below the poverty line is far greater than the number of men. By any accounting, a disproportionate number of women over sixty-five are disproportionately poor. A study done by the National Council of Welfare³⁷ baldly states: "There has been considerable progress against poverty among the aged. However the reduced risk of poverty has benefited elderly men more than women . . ." ³⁸ "One conclusion stands out from all the facts and figures: Poverty in old age is largely a women's problem, and is becoming more so every year."³⁹ Interestingly, these seemingly damning statements come from an official government publication, distributed at no cost by the Department of Health and Welfare. They are hardly the conclusions of a dissatisfied radical fringe group.⁴⁰

What then are the facts and figures? The simplest numerical comparison is perhaps the most telling. In 1981, approximately 415,000

35 Statistics Canada, *Income Distributions by Size in Canada, 1984* (Ministry of Supply and Services, 1985), p. 11 (1978 base).

36 See Appendix 2, taken from Statistics Canada, *ibid*, Table I, p. 11.

37 National Council of Welfare, *Sixty-Five and Older* (Ministry of Supply and Services, 1984).

38 *Ibid.*, p. 33.

39 *Ibid.*, p. 24.

40 Anyone seriously considering either litigating or lobbying with respect to the issue of pensions would do well to study the detailed statistics in this publication, which are too voluminous to cover in detail in this paper. Other useful studies relating to pension reform, women, poverty, and most recently the May 1985 Budget (*Giving and Taking*, *supra*, note 11) are available without cost from the National Council of Welfare as well. The address is Brooke Claxton Bldg., Ottawa K1A 0K9.

women and 189,000 men over age sixty-five were below the poverty line. The calculations took into consideration both families and unattached individuals, and were conservative estimates.⁴¹ (These numbers, incidentally, represent one-quarter of Canada's elderly population.) Thus, there were more than twice as many poor elderly women as poor elderly men in 1981. Approximately seven out of ten elderly Canadians who live below the poverty line are women.

Although it is hardly necessary to proceed further to demonstrate the disproportionate risk of poverty that women bear in old age, a more detailed analysis is instructive.

There is a higher risk of poverty for the unattached individual than for families; and unattached elderly women outnumber unattached elderly men by three to one.⁴² Furthermore, a higher percentage of unattached women are poorer than unattached men. In 1984, 52.6% of unattached elderly women were poor, as compared to 43.6% of unattached elderly men.⁴³ What does this represent in terms of actual numbers? In 1982, with respect to unattached individuals only, there were four times as many poor women as men over 65: 337,000 women and 85,000 men. There were more women in that age group below the poverty line than above it (that is, 337,000 below and 223,000 above).⁴⁴

Among families, 22% of those headed by women over 65 were below the poverty line in 1984, while only 10.5% of those headed by men over 65 were poor.⁴⁵

The picture is even worse for the older women. Sixty-five per cent of unattached women aged 70 and over were poor in 1981.⁴⁶ Of the total unattached poor population in Canada in 1984, 7.5% were elderly unattached men, whereas 27.7% were elderly unattached women.⁴⁷

It is important that the economic situation of the unattached individual be examined in order to determine the relative risks of poverty faced by men and women in their own right rather than as dependents. Women who do not work at paid jobs must "borrow" on the

41 *Sixty-Five and Older*, *supra*, note 37 at p. 24.

42 *Ibid.*, p. 25.

43 *Income Distributions by Size in Canada*, *supra*, note 35, Table 10.

44 *Sixty-Five and Older*, *supra*, note 37 at p. 30.

45 *Income Distributions by Size in Canada*, *supra*, note 35, Table 10.

46 *Ibid.*, p. 26.

47 *Ibid.*, p. 29, Table 11.

economic personae of their husbands. Through this economic dependency, these women may not appear "poor" in the statistics; but this economic arrangement is often temporary and can backfire suddenly by virtue of divorce or the death of the man. As an illustration, consider that the highest income group—of Statistics Canada's five equal income groups or "quintiles"—consists primarily (84%) of two-earner families. Consider as well the divorce rate of four marriages out of ten, which renders this high income status temporary for many. Consider that the lowest income group consists in large part of unattached individuals (67%), and in particular unattached women with children (56%).⁴⁸ Becoming unattached, *i.e.* divorced or widowed, can send a woman plummeting from the highest to the lowest income group.

A significant proportion of this lowest income quintile (38%) consists of individuals over sixty-five.⁴⁹ Since only one-tenth of the population of Canada is over sixty-five,⁵⁰ it becomes clear to what extent the elderly as a group are disproportionately poor. Furthermore, it would seem that the lowest income quintile is nearly a female ghetto, as it consists in large part of single mothers and elderly women.

Married couples in old age tend to be better off than unattached individuals.

The adage "two can live as cheaply as one" has been supported by studies which conclude that a single person's living costs are about two-thirds those of a couple. Yet in 1982 the median income of unattached elderly Canadians was only 44 percent of that for families with heads in the same age bracket. Clearly the unattached elderly are considerably worse off financially than aged families.⁵¹

What are the figures with respect to marital status in old age?

Six in ten elderly women are single, most of them widows. By contrast, three in every four aged men are married and only 14 percent are widowers. The proportion of elderly women who are married declines sharply with increasing age, but the decrease among men is much less marked.

48 Statistics Canada, *Charting Canadian Income, 1951-1981* (Ministry of Supply and Services, 1984), pp. 13-15.

49 *Ibid.*, p. 13.

50 *Sixty-Five and Older*, *supra*, note 37 at p. 4.

51 *Ibid.*, p. 37, footnote omitted.

Even among men as old as 85 to 89, half are still married, as opposed to only 10 percent of women in the same age group.⁵²

Thus, in a nutshell, the unattached aged are worse off than the married; and there are far more unattached women over 65 than men.

In calculating median incomes for unattached individuals by sex, as well as median incomes by sex irrespective of marital status, the extent of the inequality of protection from the risks of daily human needs as between men and women becomes clear.

In 1982, using the individual as the unit regardless of marital status, incomes among the elderly were described as follows:

Elderly women are worse off than elderly men. . . . The large majority (80 percent) of elderly women had incomes under \$10,000 in 1982, compared to 54% of aged men. A tiny proportion of elderly (3.5 percent) reported incomes over \$25,000, in contrast to 11.3 percent of aged men. The median income of aged women (\$6,440) was only 69 percent of the median income of elderly men (\$9,349).⁵³

There is no question that these median income figures for both men and women are low. That the elderly as a group are worse off financially than most of the rest of the population is hardly in dispute. But the point is that women are disproportionately disadvantaged in this group.

In the 1982 Green Paper on pension reform,⁵⁴ average incomes (as opposed to median incomes) for all elderly Canadians were given.⁵⁵ Although the figures represent 1979 average incomes, they are nonetheless revealing. The average income for a man over 65 was \$10,062. For a woman over 65, the average was \$5,983. Thus, among the aged in 1979, a woman received on the average 59% of the income that a man over 65 received.

What follows from these facts is the conclusion that poverty divides along gender lines. The constitutional significance of this conclusion is that the law is simply not as effective in protecting women from poverty in old age as it is in protecting men. Women do not enjoy "equal protection" from poverty.

52 *Ibid.*, p. 70.

53 *Ibid.*, p. 39.

54 Public Affairs Directorate, Department of Health and Welfare, *Better Pensions for Canadians* (Ministry of Supply and Services, 1982). (The Green Paper.)

55 See Appendix 3.

It is reasonable to assume that at a minimum, the purpose of pension legislation is to protect the elderly "against risks arising from daily human needs. [Furthermore,] no difference in those risks as between men and women exists."⁵⁶

The higher one's income/pension, the greater will be one's protection from the risks associated with daily human needs. It is arguable, however, that luxury is not a daily human need, and beyond a certain income cut-off point at which minimum daily human needs are met (and "luxuries" begin to be "purchased"), protection from such risks is not at issue, and therefore neither is "equal" protection.⁵⁷

If we assume that, at the very least, equal protection relates to minimum daily human needs, it can be said that an individual is more vulnerable and therefore less protected to the extent that the individual's income is below the poverty line and he or she is thus more exposed to those risks arising from daily human needs. This is a bare-minimum "outcomes" analysis.⁵⁸ Since the data relating to poverty in

56 *Reilly v. Robertson*, (1977) 360 N.E. 2nd 171, in which the Supreme Court of Indiana decided that a State employer's use of sex-based mortality tables to calculate different monthly pension annuities for men and women offended the Equal Protection clause, by offering less protection to women than to men. This decision speaks of "risks" arising from daily human needs as being equal as between men and women, meaning for example that men and women are equally at risk of starving to death if they do not have anything to eat. This paper will also discuss the separate though compatible idea that in fact women are more at risk of poverty than are men. I mention this to avoid any confusion in talking about risks that are the same and different.

57 An alternative way of using s. 15 is to suggest that women are entitled to the "equal benefit" of the pension system. This approach shares a problem with the "equal protection" approach in that it raises the issue of whether absolute economic equality is mandated. There is the additional question of whether "benefit" refers to tangible economic benefits. While an "equal protection" analysis is used above, the alternative is recognised here. Whatever approach is used, it might be strategically advisable to find a way to justify a deviation from absolute economic equality under the *Charter*, while still using the interpretation of "benefit" as tangible economic benefit. One way would be to construe "equal benefit" to mean that "average benefits" as between men and women must be the same in order for the constitutional requirement of s. 15 to be met. Such an argument in favour of equal "average benefits" is flawed in that it might well be used to justify the existence of extreme poverty, so long as that poverty is equally distributed between men and women.

58 Prof. Ed McBride of Saint Mary's University has pointed out that this analysis is supported by s. 7 of the *Charter*, wherein may be found a basis for the argument that each human being has "the right to personal dignity." Implicit in this analysis is the notion that such a "right to personal dignity" is denied to those who subsist at or below poverty level.

old age clearly indicate that women are more exposed to those risks than are men—more than twice as many women subsist below the poverty line—they are not receiving equal protection of the law.

Thus far the data presented have essentially embellished the basic fact that there are more than twice as many poor elderly women than poor elderly men, establishing a *prima facie* case of unequal protection. Depending on one's view of equality, this alone might be sufficient to impugn the existing pension legislation. However, an examination of the reasons for this blatant economic inequality will show that the law operates so as to be a direct cause of the inequality, making a much stronger case for a violation of section 15 of the *Charter*.

Not only are women more vulnerable to poverty than are men throughout their lives, but an economic "double jeopardy" is involved as well. Women live closer to poverty than do men before age 65 due to a discriminatory wage scale and job market; because of this fact the law requires them to live in greater danger of poverty after age 65. So long as pensions are earnings-related, and so long as women earn less than men, this legislatively-enforced inequality will continue.⁵⁹

The foregoing "equal protection" analysis is not based on any theoretical assumption that each individual is entitled to an identical share of society's resources. Equality requires different treatment for people who are differently situated.⁶⁰ If women live closer to the dangers of poverty by virtue of systemic discrimination in the form of low wages and unpaid labour during their pre-retirement years, then the law may be constitutionally required to give them an extra measure of protection from poverty in old age by a pension scheme which recognizes the economic realities of their lives. Identical treatment of

59 The reasoning here appears to be the following: Women are poor (before age 65); *ergo*, women deserve to be poor (after age 65), and the law will see that this is so. The Mulroney government apparently has adopted this line of reasoning in its proposals for pension reform in the May 1985 Budget. The Budget pamphlet entitled *Improved Pensions for Canadians* (Department of Finance, 1985) reads as follows at pp. 10-11: "The improved tax incentives for retirement saving proposed by the government will provide Canadians with a fairer and more flexible system of savings incentives . . . The overall goal of the proposals is to help Canadians, by way of pension contribution deductions, to fund pensions sufficient to maintain their living standards in retirement." From this it seems that the government's goal is "to help" women/the poor maintain this poverty right into retirement. Is this the equality that s. 15 of the *Charter* promises? Or is this Orwellian double-think?

60 See Part 5 for a discussion of relevant theories of equality.

men and women via gender-neutral laws will not provide this protection, except insofar as those laws address the problems of all persons in situations comparable to women's, such as the poor in general or male homemakers.

This argument that "equal" protection may require extra protection for the disadvantaged may be more clearly understood by means of an analogy. Canadian systems for the delivery of health care services arguably give everyone equal protection from the risks of disease. And yet they do not do this by allowing an equal ("identical for everyone") number of visits to a doctor per year; nor do they provide equal protection by allocating an equal amount of money to each individual's hypothetical health care account, on the assumption that the same financial resources expended on every individual will result in equal protection from disease for all. Nor, incidentally, do they link the amount of health care to which one is entitled, to income.

Indeed, health care systems in Canada tend to work in an egalitarian manner according to the principle, "to each according to his or her needs." Those whose needs are greater—the sickly, those who face a greater risk of ill-health—are protected to the extent of their need. The rich are not more protected in this system than the poor. All receive equal protection, even though one individual might require very costly treatment, while another person might require no treatment at all. Thus in such systems the healthy subsidize the less healthy; and society accepts this without question. Indeed the furor that arose over extra billing by doctors, insofar as this might tend to decrease "equal protection" from disease by introducing a discriminatory economic factor, is evidence that at least in some segments of our society, the concept that "equal" treatment does not mean the "same" treatment—indeed that "equal" treatment requires allocation of resources according to need—is firmly entrenched.

Translating this analogy into the pension context would require that more of society's resources be allocated to protecting women from poverty so long as they face a greater risk. Only when men and women are equally "healthy" economically can society's resources be allocated in quantitatively identical measure as between men and women. Until then, the healthy must subsidize the less healthy to fulfill the promise of section 15. If subsidization is abhorrent to those who must subsidize, then gender-based economic ill-health must be eradicated at its source, the discriminatory job market and wage scale.⁶¹

61 Arguably, more of those governmental funds ear-marked for social welfare are

4. HOW DOES THE CURRENT PENSION DENY EQUAL PROTECTION OF THE LAW TO WOMEN?

(a) Wage Inequity Precludes "Fair Opportunities" for Women

The Green Paper on pension reform,⁶² put forth by Parliament for nationwide consideration in 1982, stated the Liberal government's objectives:

- to guarantee a basic income for those without resources of their own;
- to assure fair opportunities for Canadians to provide for their retirement years; and
- to enable Canadians to avoid serious disruption in their living standard upon retirement.⁶³

The present Conservative government in its 1985 Budget proposals for "improved tax incentives for retirement saving"⁶⁴ uses similar terminology in talking of "goals"; "fairer"; "more flexible": the overall goal is to help Canadians . . . maintain their living standard in retirement.⁶⁵ There does not seem to be a radical shift away from the previous administration's stated goals, except perhaps that a guaranteed basic income in retirement years is a lower priority, if the proposal to de-index in part the OAS is any indication of broad government policy. I will therefore assume that, at least to some extent, these broad statements of governmental purpose continue to apply under the present Federal government.

Government policy, as indicated earlier, becomes questionable when examined against the background of the wage discrepancy be-

already allocated to women—single mothers on social assistance, elderly women who receive the maximum GIS subsidy. The problem is that this subsidy is not sufficient to keep them out of poverty. In fact, the subsidy keeps them in poverty by foreclosing change. To return to the health care analogy, the goal of the health care system is not to keep "patients" upon "medication"; rather it is to bring them from "illness" to "health". However, our social welfare system is not pegged to the full run of treatment, remedy, and cure.

62 *Supra*, note 54.

63 *Ibid.*, p. 11.

64 Department of Finance, *Securing Economic Renewal: Budget Papers*, tabled in the House of Commons May 23, 1985, pp. 45–59; Cf. note 22, *supra*.

65 *Improved Pensions for Canadians*, *supra*, note 59, pp. 10–11.

tween men and women, given the link between post-retirement security and pre-retirement income.

For the moment I will not deal with the question of the homemaker.⁶⁶ Rather, I will focus on the fact that women in the paid labour force receive on the average 54.6% of men's wages (including part-time work), and 64% of men's wages (including only full-time work).⁶⁷

The average income figures isolating the situation of part-time workers are revealing—and depressing—as well. Three out of four part-time workers are women. However, women's average yearly income from part-time employment is only 62% of the figure for male part-time employees.⁶⁸ So the statistics are relatively consistent as to women's second-class status in the paid labour force.

For more detailed evidence of wage inequality, see Appendix 8, "Percentage Distribution of Earners by Earning Groups, Education, Sex and Full/Part-time Worker Status."⁶⁹ Note that both women and men with university degrees are the highest wage earners in their respective sexes; but note as well that only 28.3 percent of women with university degrees earn over \$30,000 per year, as opposed to 60.9 percent of men with university degrees. Further note that the average salary for a woman with a university degree is only \$4,207 higher than the average salary of a man who did not get past grade 8. It is only \$1,602 higher than a man who did not receive a high school diploma. It is \$282 less than a man who had only some post-secondary education, but failed to receive a degree. And it is only 67% of the average salary of a man with the same academic credentials that she has. Apparently it is not for lack of education or training that women are paid less.

It is clear that both Liberal and Conservative policy is to perpetuate this inequity into the retirement years. It might be argued that lower wages for women simply result from the operation of the "free

66 It is significant that the Green Paper rejected a proposal that homemakers be allowed to contribute to the *C/QPP*, in spite of the lip service it paid to "fair opportunities."

67 Statistics Canada, *Earnings of Men and Women, 1981 and 1982* (Ministry of Supply and Services, 1984), Table 4, Percentage Distribution of Earners by Earning Groups, Age, Sex and Full/Part-time Worker Status, 1982. See also Appendix 9.

68 *Ibid.*

69 *Ibid.*, p. 36.

market.”⁷⁰ Since a “free” market in its “pure” form is by definition one in which there is no governmental intervention, it could be argued that the *Charter*, narrowly interpreted, does not apply to that market nor to any discriminatory wage scale it imposes.⁷¹ Even in such a “worst-case” scenario, however, it must follow that once “state action” (that is to say, pension legislation) kicks in, so does the *Charter*. Can the government constitutionally adopt a pension system whose main purpose is the perpetuation of the inequities of the market’s allocation of wealth as embodied in its discriminatory wage structure with respect to men and women?

In a society which is required by its *Constitution*—the “supreme law of the land”—to be egalitarian, a government policy objective that aims to permit all Canadians, rich and poor alike, to maintain a pre-retirement standard of living/income upon retirement is nearly ludicrous, were it not so deadly serious in its total disregard of the needs of women and other disadvantaged groups. It is indisputable that there is a tremendous disparity in pre-retirement income distribution as between men and women. The government’s explicitly enunciated intention is that this disparity continue into old age, when individuals are no longer able, through their own efforts, to alter their economic circumstances.

Simply stated, the government’s aim is that the rich shall be protected equally with the poor from any change in living standard. And who are the poor in our society? Using Statistics Canada’s average wages for men and women as an indicator⁷² or alternatively using the breakdown of income into quintiles according to sex,⁷³ we find that the poor are in large part women.

70 Cf. Mary Daly’s “world of reversal”, *Gyn/Ecology: The Metaethics of Radical Feminism* (Boston: Beacon Press, 1978), and *Pure Lust* (Boston: Beacon Press, 1984). The characterization of the market as “free” in the patriarchal and phallocentric “world of reversal” masks the true and opposite nature of this (slave) market.

71 On the other hand, it is clear that such a “pure” free market does not exist in Canada. Government intervention in all sectors of the economy is the norm. See also *infra*, note 151, for a discussion of the operation of “the market” in the insurance context as a mechanism for perpetuating the subordination of women.

72 See Appendices 8 and 9.

73 See Appendix 11.

(b) "Separate but (Un)Equal": Two Systems of Retirement Income

Is this discrimination against women in government policy neutralized by the existence of the so-called income security programs for the aged which provide a basic income for those with no resources of their own?⁷⁴ On the contrary, in its present form, this program serves to perpetuate the subordination of women in society. Rather than aiding women, its net effect is to perpetuate the *status quo*, keeping elderly women at a subsistence income level, while allowing those (men) with high pre-retirement incomes to continue to enjoy a high standard of living.

The effect of the three-tiered legislative scheme described in Part 2 may in fact be to create two separate systems of old age retirement income:⁷⁵ one consisting of OAS and GIS government subsidies achieving a subsistence level standard of living for the elderly poor—mostly single women; and another consisting of a mix of OAS, CPP, employer-sponsored pension income, and private investment income for the non-poor—mostly men.

What is the reality of this subsidy? What is this basic income provided to those with no other source of income? Lest I be accused of ingratitude for the crumbs thrown to the elderly members of my sex, I hasten to justify my observations with some facts. In January, 1985, the combined monthly OAS pension and maximum GIS payable to a single pensioner was \$599.21 per month. This amounts to a yearly income of \$7,190.52. For a married pensioner, the maximum OAS/GIS entitlement was \$485.73. Thus, a married couple, both pensioners, will receive \$11,657.52 per year. These are the figures in effect as of January 1, 1985.⁷⁶

74 Such an income security program has promise in theory, particularly if s. 15 in conjunction with s. 7 is seen as placing an affirmative duty on the government to provide a decent standard of living equally to men and women. Cf., *Can. Report of the Royal Commission on the Economic Union and Development Prospects for Canada* (Ministry of Supply and Services, 1985) Vol. II, pp. 769–803, 824–826—Macdonald Report. This proposes a guaranteed minimum income for all Canadians through a "Universal Income Security Program".

75 See Appendix 12, showing the break-down of income sources among the elderly poor and non-poor.

76 Department of Health and Welfare, *Old Age Security, Guaranteed Income Supplement, Spouse's Allowance: Tables of Rates in Effect January 1985* (Ministry of Supply and Services, 1984). As these rates are indexed to the consumer price index every three months, they are somewhat higher at present.

If we compare these figures with the 1985 National Council of Welfare estimates of the Statistics Canada low-income cut-off ("poverty line"),⁷⁷ a rather dismal picture emerges. We see that the yearly income of single pensioners (read "women") who rely exclusively on the OAS/GIS subsidy falls short of this poverty line by a substantial margin. Even a couple's income does not reach up to the poverty line. For a city such as Halifax, population 100,000 to 500,000, the poverty line for a single person is estimated to be \$9,723.00, and for a couple it would be \$12,820.00. In a larger metropolis, such as Montreal, Toronto, or Vancouver, the poverty line would be \$10,238.00 for a single person and \$13,508.00 for a couple.⁷⁸ Thus, the plight of elderly single people, 70% of whom are women, is particularly unenviable. Most do not receive even three-quarters of what is considered a poverty-level income.

The income security program is therefore not adequate to neutralize an otherwise unconstitutional pension program. A retirement income system which creates a separate and demonstrably unequal income system for the majority of elderly women violates the *Charter's* promise of equality.

(c) Differences in Work Patterns of Men and Women

The difference begins with the biological fact that women get pregnant and bear children, but men do not.⁷⁹ This single fact has an enormous effect on women's life and work patterns. By and large, women do not only bear the children, they thereafter are the primary caretakers. Furthermore, they are traditionally responsible for the "home-making" function in society. While it is an unalterable fact that only women can bear children, there is no readily-apparent reason that they should assume the responsibilities of primary caretaker as well as homemaker. Yet this is the social reality in which many women live and work—and try to plan for their retirement.

As a result of this reality—the differences that nature and society have created for women—women's work patterns are substantially

77 National Council of Welfare, *1985 Poverty Lines* (Ministry of Supply and Services, 1985).

78 See Appendix 2a.

79 "It is the capacity to become pregnant which primarily differentiates the female from the male": Justice Stevens' dissent in *General Electric Company v. Gilbert* (1976), 429 U.S. 125 at p. 162.

different from men's work patterns. Men's working careers by and large are not affected by the responsibilities of child care. They are certainly not affected by the inescapable requirements (of maternity leave) involved in childbirth. Men to a far greater degree than women will tend to work continually throughout their lives, often at a single job, without significant interruptions to bear and raise children. Of course, men too are forced to leave jobs because of lay-offs; but because of the seniority that the man will have acquired by working at a job longer than might a woman worker in the same job (as women tend to move from job to job more frequently than do men), the man will probably be less at risk of being laid off than will a woman employee. (I mention this primarily to defuse a possible argument that men are equally at risk with women of having their careers interrupted.)

Women's highest rate of participation in the labour force is between the ages of 20 and 24. Seventy percent of women work during that time. Over age 24, the percentage falls to fifty percent. A pension plan which does not vest until age 45 clearly discriminates against women in this respect.⁸⁰ What of men? Their participation rate in the labour force is 79% between the ages of 20 and 24. After age 24, it drops slightly more than one percentage point to 77.7%. Thus they are far more likely to benefit from the "45 and 10" vesting provisions of the pension legislation than are women.⁸¹

Women often take part-time jobs in order to meet both economic and family responsibilities. Moreover, women looking for a job can often only find part-time work. In fact, three out of four part-time workers are women. In Appendix 4, Reason for Part-Time Employment, from Statistics Canada, *The Labour Force, January, 1985*, it is significant that *no men* gave as their reason for doing part-time work "family or personal responsibilities", in contrast to the considerable number of women (147,000) who did. It is significant too that many more women than men had part-time jobs because they were the only jobs they could find (139,000 men as opposed to 349,000 women). A large number of women in the age range 25 to 54 (years during which women raise families) gave as their reason for having a part-time job: "Did Not Want Full-Time Work". Why did they not want full time work? So they could care for their families? The answer does not appear from these statistics.

80 Statistics Canada, *The Labour Force, January, 1985* (Ministry of Supply and Services, 1985), p. 26.

81 *Ibid.*

Women may drop out of the labour force to raise a family, only to re-enter later in life (again disadvantaged in finding a job, especially one with decent wages, due to their lack of experience).⁸² The labour force is defined as those who are either working or unemployed but actively seeking work. Women who drop out of the labour force to raise children are no longer considered part of the labour force. Once they begin to look for a job, however, even though they continue to be "unemployed", they are called "re-entrants" into the labour force. Appendix 5 clearly shows that, in 1977, many more women than men re-entered the labour force without finding a job. The statistics relating to long-term re-entrants indicate that male re-entrants have an easier time finding work than do women re-entrants. Appendix 6 shows that in 1977, no men over age 34 re-entered the labour force (without finding work), whereas a significant number of older women up to the age of 54 re-entered the labour force and failed to find work.

Because women tend to move from job to job, they will lose seniority benefits (including a better salary) that attach to long employment with one company. They will frequently be forced to find work in the service industries or low-paying jobs in small businesses which have no private pension plans. More women than men change jobs because of changed residence, hinting that women may often have to leave jobs to follow a transferred husband;⁸³ and further many women are required to find work that is compatible with their child-care duties and home-making obligations, in general precluding jobs that require travel, or long or irregular hours.

Therefore, it is clear that women's work patterns are radically different from men's; and the reason for this is the biological fact that women have babies, and the social fact that women have been delegated as primary caretakers of children as well as the homemakers in our society.

82 See Appendix 6.

83 See Appendix 7, Reasons for Leaving Last Job by Sex. Note, that among the unemployed, the percentage of women who gave as their reason "Changed Residence" was 14.5% while the percentage of men who gave that as their reason was 6.5%. Although this does not prove that women follow their husbands whose jobs require moving to a new location, at least it is evidence that women's work patterns are different from men's in this respect.

(d) Male Work Pattern: The Objective Standard

Most Canadian women work in the paid labour force (53% between the ages of 15 and 65).⁸⁴ Furthermore, most women with children (80% of Canadian women) have to tailor their career patterns to accommodate the demands of their families. It would hardly be unreasonable to expect pension legislation to be flexible enough to meet the needs of the different work patterns of men and women. It is not. It uses the male work pattern as the norm, and to the extent that women do not conform to that pattern, they are penalized. What this means is that they are penalized because they have children, and because our society is structured so that women have to look after children. The male practice—the male *status quo*—becomes the objective standard by which all must be measured. The male working pattern becomes the model upon which most pension plans are based.⁸⁵

Thus women's differences from men are turned into disadvantages by the law. Women are only equal to men under this scheme to the extent that they are the same as men. But even if a woman were to decide not to have children so as not to be disadvantaged, she could still not be the "same" as men in the work force as it is currently set up. Many jobs—the high-paying ones—are male domains; and as discussed earlier in this paper, women are paid much less than men across the board.

(e) How Private Pension Plans Discriminate Against Women

Insofar as "coverage" by private pension plans can be equated to "protection" of the law (from poverty in old age), again the system reveals a *prima facie* violation of section 15 of the *Charter*.

Women receive less coverage from private pension plans than do men, by virtue of their career patterns. In terms of percentage of the total labour force, private pension plans cover an average of 46.8%

84 *The Labour Force*, *supra*, note 80 at p. 26.

85 The *Canada Pension Plan* is no exception. As Louise Dulude notes *supra*, note 10, p. 91: "Canada's pension system was designed by men to benefit men. Even in the last fifteen years, when the emphasis was supposed to be on helping the poorest among the elderly, the incomes of male pensioners rose by \$3 for every additional \$2 that went to elderly women. [Footnote omitted.] This was not a coincidence. It was the direct consequence of male-centered policies whose crowning achievement was one of the most sexist income security programs ever devised by governments in this country, the *Canada/Quebec Pension Plan*."

of all employed paid workers—excluding workers in the home, the self-employed, and the unemployed, but including part-time workers. This figure can be further broken down to 36.5% of the female work force and 53.9% of the male work force. The discrepancy in coverage between men and women employees is substantial. Excluding part-time workers from the picture, an average of 53.5% of the full-time paid labour force is covered by pension plans, representing 57.2% of the male labour force and 46.8% of the female labour force.⁸⁶

Statistics Canada has made the following comment with respect to these figures:

The male participation rate in pension plans is considerably higher than that for females. One reason for the lower female participation rate is the high concentration of female workers in the trade and community, business and personal service industries where pension plan coverage is significantly lower than in such industries as mining, construction and most manufacturing industries where male workers predominate. The greater prominence of female part-time to male part-time workers is also evident from the fact that the coverage for female full-time employed paid workers is higher by more than 10 percentage points than coverage of the total female employed paid workers. In the case of the male workers this participation rate increased by just 3.3%.⁸⁷

Part-time workers are excluded from the majority of private pension plans. Since most part-time workers are women, this again turns women's differences in career patterns into a disadvantage.⁸⁸

The vesting provisions of the *NSPBA* and *PBSA* (the rule of "45 and 10") are based on the standard working pattern of the male worker as well. It discriminates against women for a number of different reasons.⁸⁹

86 *Pension Plans in Canada, 1982, supra*, note 28, Table C., p. 14.

87 *Ibid.*, pp. 12 and 14.

88 The 1985 Budget proposals to alter the federal *Pension Benefits Standards Act* so as to require coverage of part-time workers who earn more than 35% of the average industrial wage for two consecutive years will not help most of these part-time workers. First, it only applies to pensions under federal jurisdiction; second, most part-time workers who earn enough to be covered are men, according to Statistics Canada's figures for average part-time earnings for men and women. See footnote 22, *supra*.

89 The federal government has proposed reform with respect to the vesting provisions of the federal *Pension Benefits Standards Act*, and it is to be hoped that the Provinces will follow suit. The present inquiry is not "obsolete", however, as it is important to understand the way that pension plans have been designed around male patterns of work; current vesting provisions provide such an example.

Although it was mentioned in Part 2, it may be well to review this rule. Section 17(1) of the *NSPBA* sets out the minimum contractual requirements of pension plans eligible to be registered. The provision regarding vesting, section 17(1)(a), stipulates that all registered pension plans must provide for vesting when an employee has been a member of the plan or in the service of the employer for ten consecutive years and in addition has attained the age of 45 years. Hence the appellation "the rule of 45 and 10".

Consider how this affects women. As we have seen, the greatest number of women are in the labour force between the ages of 20 and 24. We have also seen that because of family responsibilities, their working pattern in general is to work intermittently, or to work early in their career, drop out of the paid labour force to raise children, and then to rejoin when their children are older. In this regard, it is important to remember that vesting occurs after ten consecutive years—so that intermittent years as an employee will only count towards a vested pension if they are for the same employer.

Since men, on the other hand, much more often than women, will remain in one job for a long duration, with no time out to raise children, they will benefit from this provision to a far greater degree than will women. For a woman, all private pension benefits earned in her early working years can be lost, if she drops out of the paid labour force to raise children. Even if she works for an employer whose pension plan does not have an age 45 vesting requirement but only requires 10 consecutive years of employment prior to the vesting of a pension, she will still be at a disadvantage. Conceivably she could work nine years covered by a private pension plan, take off a year to have a child, work another nine years for a different employer (again covered by a pension plan), and yet not be entitled to any benefits from these plans, in spite of the fact that she has worked 18 years covered by a private pension plan.

These considerations point to fundamentally different needs for women and men in pension plans respecting vesting provisions alone. Women require pension plans that vest either immediately or after a short period, either one or two years.

Furthermore, the employer's contributions that a woman forfeited by terminating before the pension vested will be used to subsidize a worker who has worked the required length of time. Given men's work pattern, that subsidization will more likely than not go to a man.

Because of the fact that women change jobs more frequently than do men, it is most important that they be covered by a private pension

plan that is "portable". Some of the recent studies dealing with pension reform recommend the creation of a central Registered Pension Account whereby an employee can take with her all her accumulated pension credits when she leaves a job. The credits would be locked in to the pension account.

The public *CPP* is an example of a fully portable pension plan. There is no reason that private pension plans could not also be made portable through the introduction of a general pension account for each individual, perhaps replacing the discriminatory RRSP.⁹⁰

The pension legislation has no provisions requiring that private pension plans provide benefits to a spouse upon the death of the beneficiary. Therefore, women who have accepted the traditional role—that of bringing up a family and caring for a husband to the exclusion of a career—often find themselves in dire financial straits upon the death of their husband.⁹¹

In 1982, 20.1% of Canadian private sector workers covered by private pension plans had plans whose benefits ceased abruptly upon the death of the employee after retirement. The widow received no further pension benefits at all despite the fact that she may have been a partner in the marriage for many years. 37.6% had plans which allowed a guaranteed minimum of 5 years of payment after retirement if death occurred before that time, and "extra" payments being made to the retired employee's beneficiary. 12.1% had a guaranteed minimum period of benefits of 10 years. Only 22.4% had plans which provided a spouse's pension upon the death of the beneficiary. The situation in the public sector was better, where 71.1% of the participants' plans provided for spouse's pension. Most plans that provided for a spouse's pension paid half of the former employee's pension.⁹² Legislation should require, as a condition for registration of private pension plans, that "joint and survivor" provisions be mandatory.⁹³

The use of sex-based mortality tables to calculate annuities—either purchased with an RRSP or under an employer-sponsored pension plan—also discriminates against women. Deferred annuity pen-

90 The May 1985 Budget has proposed increasing portability provisions of the *Pension Benefits Standards Act* by the use of a new type of locked-in RRSP.

91 Since women tend to marry men older than they are, and since women on average tend to live longer than men, those women who stay married are very likely to be widowed.

92 *Pension Plans in Canada*, *supra*, note 28 at pp. 45, 80.

93 "Joint and survivor" plans are those that continue to pay benefits until the death of both the retired employee and spouse.

sion plans operate in the following manner. When an employee retires, the money that has been built up in his or her pension account is used to purchase a life annuity. Of course, the more money that has been put into that account, the larger will be the monthly, quarterly, or yearly annuity that can be purchased from an insurance company. However, in computing the value of these annuities, actuarial tables take into consideration only two factors; the sex and age of the individual. Thus, women receive, for the same pension contribution, a smaller lifetime annuity than a man will receive, simply because statistics show that on the average women as a group live 4 years longer than men past age 65.

As was mentioned in Part 2, Manitoba has made illegal the use of such sex-based mortality tables to compute pension benefits. There has been a considerable amount of litigation in the U.S. on this issue recently, with the end result that this practice has been declared unconstitutional. This will be discussed in Part 5.

In Nova Scotia, the *Pension Benefits Act*⁹⁴ is the paradigm of pension legislation which blatantly discriminates against women. With respect to coverage, vesting provisions, pension portability, surviving spouse's benefits, and the use of sex-based mortality tables (to list only the more obvious areas of discrimination), the Act violates section 15 of the *Charter*. Its net effect is to give women less protection than men from the risks inherent in old age, and fewer monetary benefits. In fact, it results in a system whereby women subsidize men in private pension plans, in addition to receiving less protection and fewer benefits.

(f) The C/QPP: A Long Way to Go

The previous sections have demonstrated the inadequacy of private pension plans, as they now exist, with respect to the risks of poverty for women in old age. On the other hand, the *Canada Pension Plan* (at least on the surface) holds greater promise for women. Many of the inequities of private pensions have been eliminated from this plan.

This is the so-called "universal" pension, despite the fact that it does not cover the unpaid work of mothers and homemakers. Nonetheless, for the paid working force it has many advantages. It is

94 *Supra*, note 23.

a fully portable, locked-in pension plan; it vests immediately and all paid employees are covered by it, no matter how few hours they work or how little money they make. In these respects, it lacks some of the major drawbacks of employer-sponsored pensions.

However, there are some serious drawbacks with the *Canada Pension Plan* and the way it discriminates against women and their work patterns. One major problem has been rectified by the recent "child-rearing drop-out" provision. But two fundamental problems remain.

First, it is earnings-related. Any "benefits" perpetuating the wage differential between men and women cannot be said to be "equal benefits", as already argued.

Second, it fails to recognize the value of work done by women for which they are not paid. Arguably, it fails to recognize the value of all work which is not paid. A disparate impact analysis, however, shows that this single fact disadvantages women far more than men, since the "value" of a woman's entire life is often viewed in terms of her unpaid contribution to her family. Women bear and raise children. They do work of tremendous social value; they create the generation of tomorrow. In so doing, they usually fail to be the successful money-makers which their male counterparts become.

Since the *CPP* rewards only money-makers, it does not reward mothers and homemakers for the valuable unpaid work they perform. On the contrary, unless they are fortunate enough to have an independent source of income, they are relegated in old age to a subsistence-level existence well below the poverty level in return for the work done in their lifetimes of creating, nurturing and caring for others.

Consider the following: a woman who works as a housekeeper for a man is eligible to make contributions into the *CPP*, and her employer is required to do so as well; but if she marries that man and continues to do precisely the same work, she is no longer eligible to contribute to the plan.⁹⁵ There is an inherent lack of logic in this situation.

(i) *Reports of Various Government Task Forces Relating to Homemaker Pensions*

Many government Task Forces and Commissions, both federal

⁹⁵ *Women and Pensions: Women in Poverty*, Brief Presented to the Parliamentary Task Force on Pension Reform, May 1983, Canadian Advisory Council on the Status of Women, p. 6.

and provincial, have considered the issue of homemaker pensions in the past decade. The latest consideration of the issue was by the Boyer Parliamentary Committee on Equality Rights in its recent report *Equality for All*, tabled in Parliament in October, 1985. The mandate of this Committee was to report on what was required by way of Federal legislative reform in order to meet the requirements of section 15 of the *Charter*. Sadly, the Committee failed to make any recommendations respecting homemaker pensions.

The 1979 Task Force on Retirement Income Policy was of the following opinion:⁹⁶

In recent years, some groups have argued that those with no employment earnings should be allowed to contribute to the C/QPP on a voluntary basis. The proposal is seen as benefiting females in particular since many women work full time in the home but receive no pension entitlement in respect of such work. Permitting voluntary contributions to the C/QPP, it is argued, would enlarge the pension system and channel much of the increased benefits towards women.

There are two principal difficulties with this proposal. The first is that those who would be in a position to take the greatest advantage of such a provision would, in general, have higher incomes than those who did not, which would raise questions about the basic fairness of such an approach. *A second difficulty stems from the fact that introduction of voluntary contributions would tend to undermine the earnings-related character of the C/QPP.* If those outside the conventionally defined labour force were permitted to contribute up to the level of the Year's Maximum Pensionable Earnings, it would be difficult to deny the same right to those already in the labour force and contributing to the C/QPP but whose earnings were below that maximum. [Emphasis added]

Given the present wage structure in society, it is precisely the "earnings-related" character of the C/QPP that makes it unconstitutional. Furthermore, since the YMPE (Yearly Maximum Pensionable Earnings) is close to the average industrial wage, there would not seem to be any inherent unfairness in allowing everyone to contribute up to that level, as it is highly likely that a large proportion of workers whose wages are under that level anyway are women, already disadvantaged by the discriminatory wage structure of the "free" market.

96 Parliamentary Task Force on Retirement Income Policy, *The Retirement Income System in Canada: Problems and Alternative Policies for Reform*, (Ottawa: Queen's Printer, 1979), Vol. 1 at p. 340.

A pamphlet ancillary to the Green Paper on pension reform of 1982 took the following view of homemaker pensions:

This proposal (for homemaker pensions) would create serious inequities. Most housework is done by women, whether or not they are members of the paid work force. Accordingly, it would be unfair for either CPP/QPP contributors generally or spouses to finance benefits in respect of housework for women who stay at home but not to do so for homemakers who also participate in the work force.⁹⁷

This argument is spurious, however. The child-care drop-out provisions “discriminate” against women who have children and do not choose to take advantage of this provision, but rather continue to work in the paid labour force. Survivor benefits paid to spouses of deceased recipients of a CPP arguably discriminate against single and divorced women.⁹⁸ Is this truly “discrimination” or is it simply flexibility to accommodate—without disadvantaging—different lifestyles, life choices and life situations?

The Green Paper continues:

Furthermore, the role of pension plans is to offset the loss of employment earnings for individuals and couples when they retire. That is the reason, for instance, why no pension contributions are allowed in respect of investment income—no sharp reduction in the flow of this type of income occurs upon retirement. Similarly, housework and other tasks of economic value which individuals and couples perform for themselves do not end abruptly upon retirement from the paid work force. Thus, pension plans cannot reasonably be expected to treat such work as pensionable service.⁹⁹

As Appendix 12 shows, “employment income” after retirement is one of the major factors which separate the poor from the non-poor. The argument that housework continues after retirement and cannot therefore be “pensionable service” is outrageous as well as illogical, in view of the fact that many earners, for example, who paid into the CPP all their lives, continue to work, after age 65, and receive CPP benefits as well.¹⁰⁰ Such an argument attempts to rationalize the pre-

97 *Better Pensions for Canadians, Focus on Women, supra*, note 54 at p. 14.

98 *Women and Pensions: Women in Poverty, supra*, note 95 at p. 6.

99 *Better Pensions for Canadians, Focus on Women, supra*, note 54 at p. 14.

100 *Women and Pensions: Women in Poverty, supra*, note 95 at p. 6.

dominating social ethic whereby women simply are not valued.

The 1983 *Report of the Nova Scotia Royal Commission on Pensions* seemed to waffle in its consideration of homemaker pensions. It recommended against them for the standard reasons mentioned above, adding the fact that women are entering the labour force in increasing numbers. The implication seems to be that the problem is going to disappear. Of course, this completely devalues the work women do in the home. Furthermore, our society will doubtless continue to have mothers (and maybe fathers) who stay at home to look after their children and who therefore will work in the paid labour force only a part of their lives; the problem will not disappear.

Also added was the fact that women are OAS recipients in their own right; thus they don't need "extra" pensions. (*Ergo*, they are poor in their own right and this is as it should be.) This bizarre argument fails to display any concern about the disproportionate poverty of women.

Ironically, the report ends with a reading from the Book of Sirach, part of which reads as follows:

Verse 3. Who so honoreth his father maketh an atonement for his sins.

Verse 4. *And he that honoreth his mother is as one that layeth up treasure.*¹⁰¹

Perhaps that quotation had an impact on this Commission after the fact, as it took a "second look" at homemaker pensions in a postscript to the main report, saying that these pensions should be the subject of further examination.

To conclude this discussion of homemaker pensions on a happier note, the Parliamentary Task Force on Pension Reform, which submitted its report to the House of Commons on December 15, 1983, had this to say about homemaker pensions:

Since the C/QPP was established, women have asked that homemakers be included in the plan. The C/QPP is intended to provide pensions for Canadian workers, they argue, and women who run a household—care for children, husbands and other relatives—do work that has real economic value. The work of homemakers has been ignored for too long; they deserve pensions in their own right. A homemaker pension also pro-

101 N.S. *Report of the Nova Scotia Royal Commission on Pensions* (1983), Vol. II, p. 478 (emphasis added).

vides increased protections for women in the case of marriage breakdown, an event that is unfortunately becoming all too common.¹⁰²

It made the following recommendations:

3.7 The Task Force recommends that a homemaker pension be available to those who, in any year, work only or mainly in the home to care for a spouse, a child under 18, or a dependent and infirm adult relative living in the home.

3.8 The pension accrued for a homemaker with no labour force earnings should be based on half the year's maximum pensionable earnings (YMPE). (This will be half the average wage.) If the homemaker works in the paid labour force but earns less than half the YMPE, the pension income base should be topped up to bring it to half the YMPE. A homemaker who earns more than half the YMPE would accrue pension credits on actual earnings, up to the YMPE, and would receive no net homemaker benefit.

3.9 Financing of the homemaker pension should be through the C/QPP contribution structure. However, this should be amended so that families who benefit from the homemaker pension pay the costs where it is reasonable to expect them to do so. Contribution by low income and single parent families should be fully subsidized. Subsidies should be reduced gradually in relation to income.¹⁰³

(ii) *Other Problems of the Canada Pension Plan*

The Canada Pension Plan provides that survivor's benefits shall cease upon remarriage of the survivor. Naturally, as women live longer than men and tend to marry men older than themselves, survivors are mostly women. Women are already severely disadvantaged in old age. This provision increases that disadvantage, and also has the effect of discriminating on the basis of marital status. Since both the Green Paper of 1982 and the Task Force of 1983 have recommended that this provision be changed, let us assume that the inequities of this provision are obvious, and that it is not necessary to do more than point out this problem.

To calculate retirement benefits payable under the *CPP*, a 15% drop-out period had previously been allowed in figuring average

102 *Report of the Parliamentary Task Force on Pension Reform* (Ottawa: Queen's Printer, 1983), p. 25.

103 *Ibid.*, pp. 25-26.

lifetime earnings—enough for the average man's education and possible periods of disability, but hardly adequate for a woman's needs. Recently the "child-rearing drop-out provision" (mentioned earlier) has been included to alleviate the glaring inequity with respect to women who drop out of the paid labour force to raise children. These women had previously been disadvantaged as those years without income were included in calculating their average lifetime earnings. Now these years may be eliminated from the calculation, but only in respect of children under 7 years of age.¹⁰⁴ However, the child-rearing drop-out provision, even if combined with a homemaker pension (in an optimistic scenario) does not solve the whole problem of legislation which discriminates against women in a fundamental way. This provision only partially serves to neutralize the effects of child-bearing and child-raising on the average lifetime earnings of a mother. These women will re-enter the paid labour force in later life at lower wages than male contemporaries who have gained the benefits of yearly salary increases, promotions, seniority, and job tenure derived from uninterrupted careers.

104 The drafting of the provision in question is of particular interest from a feminist perspective, in its use of language and in the way it imposes a male context onto what is a female reality. The following is the bare-bones rendering of the provision:

"48 (1.1) In calculating the average monthly pensionable earnings of a contributor . . . there may be deducted
 (a) from the total number of months in a contributor's contributory period, those months during which he was a family allowance recipient and during which his pensionable earnings were less than his average monthly pensionable earnings . . . but no such deduction shall reduce the number of months in his contributory period to less than the basic number of contributory months" [(i.e. 120 months)].

The *Canada Pension Plan*, R.S.C. 1970, c. C-5, as enacted by S.C. 1976-77, c. 36, s. 4. From reading this provision, one would assume that men are the usual recipients of family allowance cheques; that this provision was somehow intended to alleviate men's burdens in child-rearing; that this deduction will apply as long as "he" is in receipt of the family allowance cheque. But in reality family allowance cheques are normally sent to the mother; in the vast majority of cases, it would be a woman who would benefit from this provision; and of course, the provision was passed in response to pressure to rectify the inequities of the *CPP* relating to mothers. It is interesting to note the implicit assumption, in the practice of sending family allowance cheques to the mother, that women are responsible for child-rearing; but more interesting is the fact that the legislation on its face seems to portray a universe where women do not exist, not even in stereotypical roles.

(iii) *A Major Shortcoming of the CPP: The Need for Expansion*

Since the *Canada Pension Plan* only pays retirement benefits equal to 25% of an individual's average lifetime wage (up to the maximum pensionable wage), it will hardly be an adequate retirement pension for women—even in the best scenario of a woman who has managed to work at a relatively well-paying job during those years of her life that she had not undertaken family responsibilities. And the best-possible scenario is not the norm. Appendix 10 shows the average benefits received under the *CPP*. Note that the average monthly benefit paid to a woman between 64 and 69 is approximately \$175 per month. This is hardly enough to raise her out of poverty.

From the above, it might seem that many men are not in a much better position than women with respect to the *CPP* benefits they will receive upon retirement—25% of their average lifetime annual wage will not be very much. However, a number of factors are different for men and women: men's benefits will be greater than women's by virtue of the fact that their wages are 56% higher than women's; the fact that their wages are higher allows men more income to make investments that will benefit them in retirement—RRSPs, for example; a greater number of men than women are covered by employer-sponsored pension plans, so that the inadequacy of the *CPP* benefits is of less importance to them, as most men have other pension income to rely on.

(iv) *How Should the CPP Be Reformed So As to Provide Equal Protection for Women?*

Even if employer-sponsored pension plans were made mandatory and their requirements drastically altered so as to accommodate women's work patterns, the *CPP* must still be expanded so as to extend benefits payable ("protection") beyond 25% of average lifetime earnings. The Canadian Advisory Council on the Status of Women¹⁰⁵ recommends that the *CPP* be extended to give 50% replacement income upon retirement, up to the average industrial wage. Furthermore, homemakers as well should be entitled to protection under this "universal" plan. Changes in employer-sponsored pensions will do little to help homemakers.

¹⁰⁵ *Women and Pensions: Women in Poverty*, *supra*, note 95.

Appendix 9¹⁰⁶ graphically illustrates the extent to which women are economically disadvantaged in the job market. Furthermore, Appendix 10 shows the average C/QPP benefits received by men and women. The correlation—and discrimination—should be apparent.

For the youngest recipients of benefits—*i.e.* those who have contributed to the plan for the longest time—this Appendix shows that the average male benefit is approximately \$275 per month, whereas the average female benefit is approximately \$175 per month. This means that a woman's benefit is 64% of a man's benefit on average, correlating exactly with the discrepancy in wages in the work force as between men and women.

It is beyond the scope of this paper to make detailed proposals to rectify the fundamental inequities of the *Canada Pension Plan* that have been discussed. Nevertheless some suggestions might provide a point of departure for further inquiry. One possible way to neutralize the effect of a discriminatory job market in determining benefits payable under the *Canada Pension Plan* might involve adjusting a woman's average lifetime earnings upward by the percentage amount that the female average wage failed to achieve parity with the male average wage during that particular woman's lifetime. Such a calculation would take place at the payout stage. Alternatively, adjustments at the contribution stage might be made. For example, a woman's wage might be deemed to be the male average wage if it falls below that average. Such a provision could be gender-neutral in its application; any person, male or female, whose wage was below a certain level (probably the average male wage or average industrial wage if we want to enforce strict gender-neutrality), should be able to benefit from this provision.

Subsidizing these extra contributions, of course, presents certain problems. Who will pay? I see no reason that those with wages above the Yearly Maximum Pensionable Earnings should not subsidize the pensions of those with lower wages. The higher one's earnings, the greater could be the subsidy. This would be similar to the subsidization that occurs in the health care system, where the healthy subsidize the less healthy.

106 Statistics Canada, *Earnings of Men and Women, 1981 and 1982*, *supra*, note 67, Figure II.

5. THE UNITED STATES—RECENT DEVELOPMENTS IN EQUALITY LAW

(a) The Problems with Theory

The picture presented so far has been one of a largely gender-neutral pension law within a context in which, to a great extent, poverty divides along gender lines. It is a picture of unequal outcomes in terms of actual protection from poverty.

How should we “see” the concept of equality in order to understand that the facts already stated present a problem of inequality?

One possible approach is the formal equality or gender-neutrality approach. This permits an argument that as long as the law does not make distinctions on its face between men and women, then both sexes enjoy equality. In the pension context this can work both for and against women. It would help women (in a limited way) by preventing the use of sex-based mortality tables. But mere “gender-neutrality” is an empty concept; in theory, so long as all are treated alike, irrespective of sex, it does not matter how they are treated. For example, all employees might be entitled as of right to maternity/paternity leave, and such a rule would be “gender-neutral”; or none could be entitled to maternity/paternity leave¹⁰⁷ and again this would be “gender-neutral”, despite the fact that such a practice would have a different impact on men and women. So strict “gender-neutrality” does not take us very far. It can be used to disadvantage women as easily as to help them.

Neither Nova Scotia’s *Pension Benefits Act*, the federal *Pension Benefits Standards Act*, nor the *CPP* make overt facial distinctions between men and women.¹⁰⁸ Yet women will tend to end up much poorer in

107 To provide women with an “extra” benefit of paid maternity leave under such a system could be characterized as “discrimination against men” or at a minimum “discrimination on the basis of sex”—meaning “classification” on the basis of sex. However, this is not an interpretation of s. 15 that could be said to be “purposive”. (See *Southam v. Hunter*, [1984] 2 S.C.R. 145, 55 N.R. 241 (S.C.C.), where Dickson C.J.C. states at p. 248 (N.R.): “The *Canadian Charter of Rights and Freedoms* is a purposive document. Its purpose is to guarantee and to protect, within the limits of reason, the enjoyment of the rights and freedoms it enshrines The proper approach to the *Charter of Rights and Freedoms* is a purposive one.”)

108 In fact the *CPP* legislation appears to take great pains always to use the pronoun “he”, even when referring to recipients of Family Allowance cheques, i.e. mothers. Is this gender-neutrality? Or is it discrimination by rendering women invisible?

old age than will men because of differing impact of apparently neutral provisions.

The more attractive alternative therefore seems to involve the "disparate impact" theory of equality. The idea that laws can be unconstitutional in their effects as well as on their face has been accepted by the Supreme Court of Canada. In *R. v. Big M Drug Mart*¹⁰⁹ Chief Justice Dickson stated:

In my view, both purpose and effect are relevant in determining constitutionality; either an unconstitutional purpose or an unconstitutional effect can invalidate legislation.¹¹⁰

If applied to equality, this approach will be a considerable improvement over the U.S. position. There, the Supreme Court has ruled that a "disparate impact" only constitutes discrimination if there is an "invidious intent" present.¹¹¹

However, there are problems with a "disparate impact" approach to equality. Where does it stop? Outcomes are often different with respect to the gender of the people experiencing them, and quite properly so. Is the *Income Tax Act* unconstitutional because high income earners are taxed more than low income earners and more high income earners are men?

Can we eliminate the objection to a "disparate impact" analysis by accepting different outcomes so long as there has been "equality of opportunity"? But opportunity may be another empty word. Individual women may have the same theoretical "opportunity" as men to become, for instance, members of Parliament; but because they are not men in a phallogocentric world, their real, as opposed to their legal, opportunities are far different from men's.

One possible test of constitutionality of effects can be derived from the work of a leading feminist theorist, Catherine MacKinnon, who views the issue of equality in terms of the subordination of women.¹¹² However, it may be overly optimistic to hope that "dispa-

109 (1985), 58 N.R. 81. The *Lord's Day Act* case.

110 *Ibid.*, p. 105.

111 *Washington v. Davis* (1976), 426 U.S. 229. This is a relatively simplistic statement of the U.S. position. For a full discussion, see A.F. Bayefsky, "Defining Equality Rights," in *Equality Rights and the Canadian Charter of Rights and Freedoms*, A.F. Bayefsky and M. Eberts, eds. (Toronto: Carswell, 1985), pp. 31-38.

112 See generally C. MacKinnon, *Sexual Harassment of Working Women* (Yale University Press, 1979), pp. 101-141. For a full analysis of the limitations of various approaches to equality and a discussion of subordination, see the essay by Colleen Sheppard in this volume, "Equality, Ideology and Oppression: Women and the *Canadian Charter of Rights and Freedoms*".

rate impact" will be an indicator of unconstitutionality only when it mandates inequality of outcome that results in the net subordination of women. Such an analysis, nonetheless, might well be the most in keeping with a "purposive" interpretation of s. 15 of the Charter as suggested by the Supreme Court of Canada in *Southam v. Hunter*.¹¹³ Thus, at present in Canada, "disparate impact" analysis has the potential to take us too far, or else not far enough.

A "differences" theory of equality—*viz.*, that real differences must be recognized and accommodated by the law—can work for and against women as well. So long as real differences are accommodated without turning them into disadvantages, such a theory might be helpful to women. For example, this theory might require pension laws that take into account the effect that a woman's child-bearing role—a real difference—has on her career pattern and lifetime earnings and that do not penalize her for that difference. However, "differences", real or alleged, can be used to justify discriminatory treatment and to perpetuate sex-role stereotypes. And who is to determine when a "difference" has been turned into a "disadvantage"? How will a "disadvantage" be recognized? (Some might view a homemaker's economic dependency on a man as an "advantage", for example, rather than a "disadvantage", despite the poverty statistics.) Again, a "differences" approach like a "gender-neutral" approach can cut both ways.

Perhaps the problem of how best to conceptualize "equal protection" need not be so complicated. Perhaps it need only be infused with some "enlightened common sense" rather than rigid theoretical constructs.¹¹⁴ Although courts are not readily persuaded by the "common sense" theory of equality, with the possible exception of Justice Brennan of the U.S. Supreme Court,¹¹⁵ perhaps it is well to ground

113 *Supra*, note 107.

114 I recognize only too well the danger of relying on "common sense" as a standard of measurement. Such a standard has justified the oppression of women and other disadvantaged groups throughout history. Therefore, when I speak of "enlightened common sense" I refer to the judgment of those female-identified people whose consciousness has been infused with an awareness of the reality of women's subordination. In the final analysis, I refer, as I must, to my own common sense and that of like-minded people.

115 "Surely it offends common sense to suggest that a classification revolving around pregnancy is not, at the minimum, strongly 'sex related'." *General Electric Co. v. Gilbert* (1976), 429 U.S. 125 at 149.

our theoretical arguments at least to some extent in "common sense," subjective as that criterion must inevitably be.¹¹⁶

In order to determine whether men and women are equally protected, a logical prerequisite would appear to be a determination of what they are being protected from. Empirical data might subsequently be used in a modified "outcomes" analysis—infused with enlightened common sense—to determine whether or not they are receiving equal protection.

It may be useful to look for assistance in our difficulties to the U.S. equality jurisprudence.¹¹⁷ Indeed, it is there that we may gain clues as to the potential pit-falls to avoid. Does U.S. law help or hinder us in the effort to see equality in a way that is useful with respect to pensions?

(b) Pregnancy Benefits Cases

These cases are important in the current pension reform context in Canada, since the disadvantages that women suffer in respect of pensions flow partly from the fact that they and they alone get pregnant. If, in the U.S., discrimination on the basis of pregnancy constitutes discrimination on the basis of sex, pension plans that in effect discriminate on the basis of pregnancy may well be unconstitutional under the Canadian *Charter*.

The stance of the U.S. Supreme Court has not been helpful, as the Court refused to treat facial discrimination on the basis of pregnancy as discrimination on the basis of sex (prior to Congressional intervention). If this argument cannot be made successfully, there is no hope for an argument that discrimination on the basis of pregnancy *in effects* is constitutionally offensive.

*Geduldig v. Aiello*¹¹⁸ was a challenge under the Equal Protection

116 Legislatures might be more open to a common sense argument: "It seems only common sense, that since only women can become pregnant, discrimination against pregnant people is necessarily discrimination against women." Remarks of Rep. Hawkins, 123 Cong. Rec. 10582, (1977), cited in *Newport News Shipbuilding & Dry Dock Co. v. EEOC* (1983), 103 S. Ct. 2622 at p. 2629.

117 The Supreme Court of Canada in, e.g., *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295, 58 N.R. 81 (S.C.C.), has similarly considered U.S. jurisprudence in analyzing other *Charter* issues.

118 (1974), 94 S. Ct. 2485.

clause of the 14th Amendment,¹¹⁹ on the basis that exclusion of disabilities¹²⁰ arising from pregnancy under California's disability insurance plan discriminated against women on the basis of sex.

The U.S. Supreme Court held that discrimination on the basis of pregnancy is not discrimination on the basis of "gender as such"; employees were classified as either pregnant or non-pregnant, and the fact that the second group was made up of both men and women proved to the satisfaction of the court that discrimination on the basis of pregnancy did not constitute discrimination on the basis of sex.¹²¹ Therefore, disability insurance which did not provide coverage for pregnancy did not violate the Equal Protection clause; employers were free to exclude pregnancy from disability insurance plans, provided there was no showing of an invidious intent to discriminate against the members of one sex or the other.

*General Electric Company v. Gilbert*¹²² was another Supreme Court case involving denial of disability benefits by an employer to pregnant women even though all other disabilities, including those specific to men, were covered. While this was a claim of discrimination based on sex under Title VII of the *Civil Rights Act of 1964*,¹²³ the issue was essentially the same as in *Geduldig*.

119 (1868), *United States Constitution, Amendment XIV*.

120 My friend Hester Lessard has remarked upon the unfortunate use of this negative term in referring to child-birth and its aftermath, which is the opposite of a "disability". Although the use of this word is a glaring example of the "world of reversal" —in the sense Mary Daly uses the term (*supra*, note 70)—to use any word other than "disability" could take the issue right out of the insurance plan context, and would facilitate the courts' usage of "absolute equality" requirement of the same treatment for both sexes, to the disadvantage of women. Thus I recognize this linguistic hypocrisy, but see the practical legal necessity for it.

121 See also *Bliss v. Attorney-General of Canada*, [1979] S.C.R. 183, [1978] 6 W.W.R. 711, 92 D.L.R. (3d) 417, 23 N.R. 527 (S.C.C.).

122 (1976), 429 U.S. 129.

123 42 U.S.C. SS. 2000e-2(a)—2000e-17 (1976 and Supp. IV 1980). 42 U.S.C. s. 2000e-2(a) states:

"(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

The lower court had held that this practice did indeed contravene Title VII and constituted discrimination based on sex. The Supreme Court reversed the decision of the lower court using the reasoning in *Geduldig* and quoting extensively from that decision. ("While it is true that only women can become pregnant, it does not follow that every legislative classification concerning pregnancy is a sex-based classification.")¹²⁴ The main idea was that the classification in question was not between men and women, it was between pregnant and non-pregnant persons. Both men and women are found in this latter group, although admittedly women are only found in the first group. Furthermore, the Court reasoned that if an employer offered no disability plan, this would not be discriminatory, yet the cost to women would be greater than the cost to men for obtaining full coverage on their own. If an employer specifically excluded pregnancy from disability benefits, the impact on women would be no different: they would still have to pay for the extra pregnancy coverage themselves. The Court was unwilling to require employers to pay unequal costs as between men and women employees for full coverage. I think of this as the "cookie cutter" approach since women have the same rights as men to the extent that they are indeed like men.¹²⁵

(c) Congressional Intervention: Pregnancy Discrimination Act

Congress responded by passing the *Pregnancy Discrimination Act of 1978*,¹²⁶ in order to reverse the "intolerable potential trend" of the Supreme Court.¹²⁷ The Act provides that discrimination on the basis

124 *Supra*, note 118 at p. 2492, n. 20.

125 This type of equality requires that men's and women's entitlement to benefits and protection be doled out in exactly the same shape (if not the same size). An entitlement with a different shape must result in inequality, according to the U.S. Supreme Court. Pregnancy presents the paradigm problem for this formulation of equality, since only women become pregnant. The catch of course is that the equality cookie cutter was designed by men in their own image; it is a cookie cutter with a penis. There is no room in this cookie-cutter shape for the swelling belly of a pregnant woman; that must be cut off by the courts, stamping out "equality" in the male image. Thus women can have "equality" to the extent that they can squeeze themselves into this male shape. Not surprisingly, the *Gilbert* court failed to view as "discrimination" the fact that the shape of the cookie cutter fits men but not women. Thus women can end up with an "equal" right to a vasectomy but not maternity leave.

126 Pub. L. 95-555, Oct. 31, 1978, 92 Stat. 2076; Title 42 U.S.C. S. 2000e(k) (Supp. IV 1980).

127 H.R. Rep. No. 948, 95th Cong. 2nd Sess. 5.

of pregnancy is by definition discrimination on the basis of sex. Congress was therefore moving toward a theory of equality whereby differences between the sexes must be recognised and accommodated, and rejecting the “cookie cutter” approach. An approach involving a sensitivity to gender differences could be of considerable assistance with respect to pensions.

Congress expressly approved the dissenting justices’ opinions in *Gilbert*. The House Report states, “It is the Committee’s view that the dissenting Justices correctly interpreted the Act.”¹²⁸ These views are summed up in the subsequent Supreme Court case of *Newport News Shipbuilding & Dry Dock Co. v. EEOC*:¹²⁹

As Justice Brennan explained, it was facially discriminatory for the company to devise “a policy that, but for pregnancy, offers protection for all risks, even those that are ‘unique to’ men or heavily male dominated.” . . . It was inaccurate to describe the program as dividing potential recipients into two groups, pregnant women and non-pregnant persons, because insurance programs “deal with future risks rather than historic facts.” Rather the appropriate classification was “between persons who face a risk of pregnancy and those who do not.”¹³⁰

There are two significant aspects to this Congressional reversal. First, it was clear that a provision that was literally gender-neutral but which failed to offer equal protection to men and women in terms of the risks that may interfere with their ability to work was challengeable. Second, it was clear that cost was not a justification for excluding a risk specific to women.

The Equal Employment Opportunity Commission (EEOC) guidelines to the *Pregnancy Discrimination Act* state that “[i]t shall not be a defense under Title VIII [sic] to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.”¹³¹

Furthermore, with respect to cost differentials between men and women in insurance programs, it is to be noted that Congress ex-

128 S. Rep. No. 95-331, 95th Cong. 1st Sess. 2-3 (1977) Leg. Hist. at 39-40, quoted in *Newport News Shipbuilding & Dry Dock Co. v. EEOC* (1983), 103 S. Ct. 2622 at 2628.

129 (1983), 103 S. Ct. 2622.

130 *Ibid.*, p. 2628.

131 Quoted in A. Weissmann, *Sexual Equality Under the Pregnancy Discrimination Act* (1983), 83 Col. L.R. at p. 712.

pressly approved the District Court's decision in *Gilbert* when it overturned the Supreme Court. That court stated:

*If it be viewed as a greater economic benefit to women, then this is a simple recognition of women's biologically more burdensome place in the scheme of human existence. An industrial policy which does not account for this fails in providing such sexual equality as is within its power to produce.*¹³²

This is of direct relevance to the pensions issue, as was recognised by the Supreme Court in *Norris*:¹³³

*The enactment of the PDA buttresses our holding in Manhart that the greater cost of providing retirement benefits for women as a class cannot justify differential treatment based on sex.*¹³⁴

This approval of the legitimacy of the principle of allocating greater financial resources to women in order to achieve equality is significant. It would seem to lend greater weight to the observation that a new approach to equality—moving away from the “cookie-cutter” approach—may be emerging among U.S. officialdom.

(d) Danger of Reversal: Using PDA to Disadvantage Women

Despite the seemingly plain intent of Congress in passing the *Pregnancy Discrimination Act*, current judicial developments in the U.S. reveal a danger of reverting to the pre-PDA position respecting laws designed to neutralize the disadvantage experienced by pregnant workers.

On January 13, 1986, the U.S. Supreme Court granted an application to review the decision of the Ninth Circuit Court of Appeal decision in *California Savings and Loan Association v. Guerra*.¹³⁵ The Court of Appeal, in reversing the District Court, held that a California statute requiring employers to give pregnant workers four months maternity leave with the same or a similar job at the end of that period did not constitute discrimination on the basis of sex. The Circuit Court in so finding cited the legislative history of the *Pregnancy Discrimination Act* and stated that “the PDA . . . provides a common-

132 (1974), 375 F. Supp. 367, at p. 383 (emphasis added).

133 (1983), 103 S. Ct. 3492.

134 *Ibid.*, p. 3498 (emphasis added).

135 (1985), 758 F2d 390.

sense test of whether a policy—or a statute—affords equal treatment to women who are pregnant.”¹³⁶ The Court further held that the finding of the District Court (that the statute in question discriminated against men on the basis of pregnancy) “defies common sense, misinterprets case law, and flouts Title VII and the PDA.”^{136a}

The question now to be decided by the U.S. Supreme Court is essentially whether a classification on the basis of pregnancy is inconsistent with Title VII as amended by the *Pregnancy Discrimination Act* by providing more favourable treatment of pregnant employees than other “disabled” workers.¹³⁷

Thus the Supreme Court now has the opportunity to articulate a concept of equality which goes beyond mere “cookie cutter” equality, and which can be of use in Canada in the context of pension laws. On the other hand, it has the chance to strike a heavy blow against women with the double-edged sword of “equality”.

(e) The Doctrine of Invidious Intent

A further problem which could be imported from the U.S. relates to the doctrine of invidious intent. It could be argued that our pensions law does not offend section 15 because there was no intent to discriminate against women.

The requirement of invidious intent to limit a “disparate impact” analysis came into being in the 1976 U.S. Supreme Court decision of *Washington v. Davis*,¹³⁸ seemingly with little questioning as to its legitimacy.¹³⁹

The *Davis* case involved an entrance test for the police force. A disproportionate number of blacks failed the test. Thus it was argued that the test has a “disparate impact” on blacks and constituted a discriminatory hiring practice. However, the court limited this “disparate impact” argument by establishing the requirement that a “discriminatory purpose” be present in order for the rule or practice in question to be unconstitutional. No “discriminatory purpose” was found in the case.

136 *Ibid.*, p. 396.

136a *Ibid.*, p. 393.

137 See *United States Law Week*, January 14, 1986, (54 LW 3448) for the questions presented to the Supreme Court.

138 (1976), 426 U.S. 229.

139 See G. Binion, “‘Intent’ and Equal Protection: A Reconsideration” (1983), S. Ct. L.R. 397.

The problem with this "intent to discriminate" doctrine is that discriminatory purpose is rarely overt. In fact it often exists at an unconscious (though no less real) level. How many of us are racially prejudiced unconsciously, although we claim—and fully believe ourselves—not to be?

Likewise, discrimination against women may be totally unconscious, and hence difficult to recognize, much less provable in a courtroom. It is entirely possible that the advantages conferred by pension law on those who follow a largely male career pattern were decided upon unconsciously. If misogyny operates at such a level, legislators who are misogynists unbeknownst to themselves may pass legislation that actively discriminates against women without any awareness that they are doing so. Moreover, if their purpose was consciously discriminatory, they would certainly be clever enough to hide it and rationalize it.

Thus, the "intent" hurdle is a treacherous one. A law may in effect maintain male supremacy and female subordination, but not have an overt or provable discriminatory purpose. According to the intent doctrine, such a law would be constitutional, despite the fact that it promoted the subordination of women.

Since motive often operates at an unconscious level, one might argue that only feminist psychologists, *viz.* psychologists attuned to the subtleties of gender bias, should be allowed to make the determination of whether intent to discriminate is present in cases involving sex discrimination, if the intent doctrine is imported into Canada (which one fervently hopes it will not be). Male or male-identified judges are at best often insensitive to such concerns; at worst, they are often prone to "extra-judicial bias" against women, even if it is not a conscious bias.

In fact, the intent rule itself, fashioned by white males, appears to me to be an example of an unconscious intent to discriminate, and is therefore itself of questionable constitutionality.

(f) Pensions and Sex Discrimination

*Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Nathalie Norris*¹⁴⁰ decided that Title VII of the *Civil Rights Act of 1964* prohibited employers (in this case the State of Arizona) from "offering its employees the option of receiving retire-

140 (1983), 103 S. Ct. 3492.

ment benefits from one of several companies selected by the employer, all of which pay a woman lower monthly retirement benefits than a man who has made the same contributions."¹⁴¹ This practice was found to be discriminatory on the basis of sex. What this does in effect is to prohibit the use of sex-based mortality tables in determining monthly pension benefits under money-purchase ("deferred annuity") private pension plans.

The same issue had been dealt with in *Los Angeles Dept. of Water & Power v. Manhart*¹⁴² in a different form. What was at issue in *Manhart* was whether or not it was permissible under Title VII for an employer to require women to pay larger contributions to a pension fund than a man, in order for both the man and the woman to receive the same benefits. (Again, of course, this situation arose because of the use of sex-based mortality tables by insurance companies.)

The Court decided both cases according to the same test, enunciated in *Manhart*: "whether the evidence shows 'treatment of a person in a manner which *but for that person's sex* would be different' . . . it constitutes discrimination and is unlawful unless exempted by the *Equal Pay Act of 1963* or some other affirmative justification."¹⁴³

Thus, this test would appear to mandate the same treatment for both sexes as the index of equality. While there are advantages to this test, as is clear from the result favouring women in this case, different treatment to meet special needs of women would be difficult to justify under such a test. There is an insistence in these cases on the paramountcy of the individual, whether male or female; the concern is not with the oppression of women, but simply that "Congress has decided that classification based on sex, like those based on national origin or race, are unlawful."¹⁴⁴ Thus, discrimination is seen to be symmetrical as between the sexes.

The *Norris* Court stated:

This underlying assumption—that sex may properly be used to predict longevity—is flatly inconsistent with the basic teaching of *Manhart*: that Title VII requires employers to treat their employees as individuals, not "as simply components of a racial, religious, sexual, or national class."¹⁴⁵

141 *Ibid.*, p. 3493.

142 (1978), 98 S. Ct. 1370.

143 *Ibid.*, p. 1377 (emphasis added).

144 *Manhart*, *supra*, note 142, at 1376, quoted in *Norris*, *supra*, note 140, at 3498.

145 *Supra*, note 140 at p. 3498.

In one sense, it is unfortunate that the "basic teaching" of *Manhart* was not that employers are required to refrain from any practice that contributes to the subordination of women—as a group and/or as individuals in society. The "basic teaching" of *Manhart*, that women must be treated as individuals and not as members of their (oppressed) sexual class, is useful to women in a limited way. It would tend to prevent the perpetuation of stereotypes—at least in theory. But in another respect, this "basic teaching" is a hindrance to women's struggle to end their subordination.

This approach would not take into consideration real differences that exist between groups. The main "real" difference between men and women is the obvious biological fact that women bear children. To fail to account for this difference in making laws that provide protection for men and women alike is to put women at a disadvantage. Of course, stereotypical "differences" are the kind that should not be taken into account, *e.g.* blacks are lazier than whites, women are less intelligent than men.

The important thing in structuring laws around real differences is that these differences should not be turned into disadvantages, if equal protection is to be achieved.

To return to the *Manhart* court's notion of treating everyone as individuals and not as members of a class, this of course would be the ideal in one sense, were it not for its impracticability. Each individual's needs could be considered separately in determining what is required in a particular case in order that the individual's protection (and benefit) of the law be "equal". (This naturally assumes that "equal" does not mean "the same".) In fact, this is precisely the kind of individualized protection and benefit that one receives in the context of Canadian health care: "to each according to his or her needs." Since such an individualized approach is problematic in making laws of general application (we can't make a separate law for each person), real differences between the sexes must be recognized and suitably accommodated by the law.

Beyond this fundamental objection to "the basic teaching of *Manhart*" is a quasi-philosophical/spiritual objection. This "individual *über alles*" approach is divisive in nature. It tends to de-emphasize communitarian values. It ignores the systemic oppression of one sex by the other in society. It renders each woman a free-floating ion, not bonded to the source of her identity and strength, other women. This approach is the basis of the "reverse discrimination" accusation made by privileged white males, who might gladly profess a desire to see the oppression of women end, but only at no cost to their own positions of relative power and wealth.

Clearly there is something to be said for the absolute gender-neutrality approach to equality. It resulted in a determination of the unconstitutionality of the use of sex-based mortality tables in calculating contributions and benefits payable in private pension plans. This issue is only beginning to be addressed in Canada. Though such a determination by itself will not radically alter the distribution of wealth among the elderly, there is nonetheless an important symbolic value in the decision and a potential for attitude-shaping and increased awareness of the subtle forms discrimination may take.

However, by itself this "no-differences" approach¹⁴⁶ as applied in *Manhart* is inadequate in that it fails to encourage far-reaching social changes which are necessary to end the inequality of outcomes that presently keeps half the population in a position of subordination and relative disadvantage. Sensitivity to difference, that is in terms of relative earnings and career patterns, is necessary in order to ensure an "equal" pension structure.

The *Manhart* decision can be attacked from another perspective, that of the insurance industry and other proponents of sex-based mortality tables. The argument can be made that the introduction of mandatory unisex mortality tables into pension schemes will undermine economic efficiency in the insurance industry and generally work to the disadvantage of all employees. Justice Powell, in a separate opinion in *Norris*, concurring in part, stated:

This holding will have a far-reaching effect on the operation of insurance and pension plans. Employers may be forced to discontinue offering life annuities, or potentially disruptive changes may be required in long-established methods of calculating insurance and pensions. Either course will work a major change in the way the cost of insurance is determined—to the probable detriment of all employees.¹⁴⁷

However, the majority in *Norris* stated in response to the argument:

There is no support in either logic or experience for the view, referred to by Justice Powell . . . that an annuity plan must classify on the basis of

146 Or at least "no differences" from a standard enunciated by the Court. This standard may well be modeled on men's differences, thus putting women at a disadvantage. I reiterate that this "no differences" appellation is not adequate to describe the value-laden reality of a seemingly neutral concept. See *supra*, note 125, where I have attempted alternatively to describe this concept as "cookie-cutter" equality.

147 *Supra*, note 140, at p. 3506.

sex to be actuarially sound . . . [I]t is simply not necessary either to exact greater contributions from women than from men or to pay women lower benefits than men. For example, the Minnesota Mutual Life Insurance Company and the Northwestern National Life Insurance Company have offered an annuity plan that treats men and women equally.¹⁴⁸

Why sex should be an essential distinction in actuarial tables any more than race, health, smoking habits, exercise habits, economic status, marital status, or profession is not immediately clear. All of these characteristics may be tied statistically to the length of life. True, one's sex is immutable throughout one's life, whereas smoking habits, for example, might change. But race is immutable as well, and statistics show the white race to live longer on the average than the black race.¹⁴⁹ Yet such a classification—by race—would offend Justice Powell, whereas classification by sex does not. On the contrary, from his remarks one might conclude that the use of unisex mortality tables would jeopardize the well-being of an entire country.

One commentator, arguing in support of sex-based mortality tables from the perspective of the insurance industry, justifies that position with the following argument:

Classification of risks can be justified on the basis of fairness; that is, that the young should not subsidize the old, nor should the healthy subsidize the sickly. But the insurance industry goal of tailoring individual premiums to risks is largely dictated by economics. Were an insurer to charge all his death benefit policy holders the same premiums regardless of age, adverse selection would likely force the company out of business.¹⁵⁰

Aside from the bizarre and highly questionable assumptions about the nature of fairness made by this author, it is spurious to argue that classification by sex in calculating the cost of a retirement annuity is necessary and "dictated by economics". The "economics" argument has appeal in that "the market" is seen to operate neutrally, even-handedly and mechanically, without any infusion of "soft variables" like

148 *Ibid.*, p. 3499.

149 In a 1976 statistical study in the U.S., life expectancy at birth was as follows: "white male, 68.9 years; white female 76.6 years; black male 62.9 years; black female 71.2 years." Quoted in J. Blevins, *Challenges to Sex-Based Mortality Tables in Insurance and Pensions* (1980), 6 *Women's Rights Law Reporter* 59 at p. 62, note 25.

150 C. Bleakney, *Sex Stereotyping and Statistics* (1983), 7 *University of Puget Sound L.R.* 137 at 143.

morality. But this is an illusory facade. The market in fact is heavily value-laden.¹⁵¹

This author defends the use of sex-based mortality tables in the insurance industry by noting:

A number of commentators have attacked and counter-attacked on the significance of the data on women's life expectancy. None has satisfactorily explained why insurers use the data if it is not reliable.¹⁵²

Indeed, society's pervasive and deeply-embedded gender bias cannot be easily explained. This fact does not justify that bias, however.

A further argument made by this author is that classification by gender in the insurance context carries no stigma, and therefore, "the Court's rationale for finding discrimination . . . does not logically apply to insurance. Women are not stigmatized by an assumption that they will live a greater number of years than men."¹⁵³ This argument misses the obvious point that it is economic disadvantage which is primarily at issue. What stigma there is comes with that disadvantage.

6. CONCLUSION

The above account is an illustration of how a decision of limited,

151 History does not bear out the neutrality of insurance company policy with respect to statistics and actuarial tables. Rather it shows a pattern of discrimination against women unsupportable by reference to "statistics". "In the early twentieth century, many American insurers would not insure women at all or would charge women higher rates, citing their child-birth hazard A study published in 1916 by the Metropolitan Life Insurance Company of its ten million policy-holders, who were classified according to sex, race, age, and cause of death, did not substantiate the . . . assumptions relating to child-bearing hazards. It confirmed earlier finding of women's low mortality rate, reporting that women had a 12% lower mortality rate than men overall, and a 27% lower rate between the ages 25 and 34." (See Blevins, *supra*, note 149, pp. 60-61.) Despite these statistics regarding women's lower mortality rate in the early twentieth century, it was not until 1957 that the first insurance company began charging women lower rates for life insurance based on the lower mortality rate. Blevins presents extremely interesting data on the history and discriminatory practices of insurance companies.

Thus, history does not support the "objectivity"/"economic necessity" argument that the use of mortality statistics dictates insurance company practice. Rather, it indicates that such arguments serve as a smokescreen to conceal the underlying cultural bias against women in the supposedly neutral "market".

152 Bleakney, *supra*, note 150 at p. 163.

153 *Ibid.*, p. 146.

yet significant, value to women can be energetically attacked. Such extreme reaction to minor change is part of the background against which more fundamental suggestions for reform are made.

The pensions debate in Canada has been going on for a decade. Significant change has yet to take place. Even the most minimal and seemingly uncontroversial changes that would be of benefit to women have been staunchly resisted. For instance, Ontario and British Columbia have objected to the introduction of the child-rearing drop-out provision in the *Canada Pension Plan*, a provision that would seem to be a *sine qua non* of constitutionality. It is difficult to explain the resistance to such a measure, if indeed it is not rooted in pure misogyny.

The federal government's recent proposals to amend the *Pension Benefits Standards Act*, even if mirrored by corresponding changes in provincial legislation, will provide only superficial change. Such change will do little to relieve the economic oppression of women which results in the elderly poor being overwhelmingly female. Most importantly, such change will not result in a pension system which is constitutional.

The promise of section 15 will not be achieved without costs. Surface change is not enough; yet, apparently even that is hard-won.

(a) What Reforms Have Been Proposed?

Government task forces and commissions, as well as private groups, have carried out many studies respecting pension reform. There has been some official recognition of the well-documented fact that the current pension system is unfair and inadequate in meeting the needs of a large segment of the elderly. Furthermore, government statistics reveal that such unfairness and inadequacy has the greatest impact on women.

Various types of reforms have been proposed in these studies and reports—particularly in respect of private pension plans, which are more blatantly discriminatory than public plans. Proposals for the reform of private pension plans include among other things earlier vesting and locking-in; portability of private pension plans¹⁵⁴; mandatory

154 The 1983 Task Force as well as the Green Paper recommended the creation of a new central pension vehicle, a Registered Pension Account, to provide for pension portability. This would also reduce administrative costs of a pension plan for the small employer. The 1983 Task Force recommended that this pension vehicle replace the discriminatory RRSPs. However, the federal government in the 1985 Budget apparently rejected the proposal for a Registered Pension Account, proposing instead to create a new type of locked-in RRSP to serve this purpose.

indexing of pension benefits, so that inflation does not eat up a fixed-rate benefit¹⁵⁵; improved coverage (of part-time and low-paid workers, for example)¹⁵⁶; and finally improved protection of spouses by mandatory provision of "joint and survivor" benefits and mandatory credit-splitting, either upon marriage break-up or upon reaching age 65. There have been some proposals that private pension schemes be made mandatory, but these have received little support.

Proposed reforms to the *Canada Pension Plan* include such things as automatic pension-credit splitting upon marriage breakdown (which is now possible but only upon application, and very few take advantage of this possibility, due to the complexities of the application procedure); automatic pension splitting at age 65 between spouses; improved survivorship benefits; expansion of the plan beyond 25% replacement income benefits; and finally the implementation of homemaker pensions,¹⁵⁷ as recommended by the 1983 Parliamentary Task Force.

(b) Would These Reforms Render the Pension System Constitutional?

All of these reforms would improve women's present unenviable lot in old age. Nonetheless, all of them together if enacted would still fail to achieve a pension system which is constitutional.

The thesis of this paper is that constitutionality will not be achieved until women are no longer disadvantaged in the job market, particularly with respect to the gaping differential between men's and women's wages that currently exists. Use of this discriminatory wage scale by the government in determining benefits payable upon retirement is ipso facto unconstitutional.

As long as pensions are based on pre-retirement income, as long as pre-retirement income is allocated on the basis of a discriminatory wage scale, and as long as pension plans fail to recognize the value of work that women do

155 The federal government in its 1985 Budget failed to adopt this as one of its proposed legislative changes to the federal *Pension Benefits Standard Act*, relying instead on "voluntary" measures to deal with inflation protection.

156 As has been noted previously, the federal government's proposal to change the *Pension Benefits Standards Act* to make coverage mandatory for highly-paid part-time workers will do little to help women.

157 But there is much opposition to homemaker pensions. See, e.g., *Can. Equality for All, Report of the Parliamentary Committee on Equality Rights* (Ottawa: Queen's Printer, 1985)—Boyer Report. It failed to recommend that homemaker pensions be adopted in the *Canada Pension Plan*.

for which they do not get paid—and which puts them at a further disadvantage when they do enter the labour force, either intermittently or later in life—the pension system will continue to be unconstitutional.

Reforms of private pension plans, such as those proposed by the federal government, will only help those who are members of such plans. Unless coverage under these plans is radically improved (far beyond the reforms contained in the *Pension Benefits Standards Act, 1985*, S.C. 1986, c. 40 for example) and substantial changes are introduced respecting vesting and portability, men will continue to reap disproportionate benefits from these plans. But in any case such reform does not address the basic problem of the discriminatory job market and wage scale.

The use of this wage scale in determining benefits payable is the most fundamental hurdle to overcome in order to achieve constitutionality of the pension system. Other significant hurdles exist as well. Those reforms which would begin to provide “more equal” protection for women involve expansion of the *CPP* in conjunction with homemaker pensions. It is imperative, in order to provide equal protection for women, that the *Canada Pension Plan* be expanded far beyond its present 25% rate to no less than 50% replacement income based on average annual lifetime earnings, adjusted upwards to compensate for any disparity between the average male and female wage. If “improved” private pension plans which do not discriminate against women were to be made mandatory for all paid workers, this last requirement of expanding the *CPP* might be less urgent, although homemakers arguably would still fail to receive equal protection, as they would only be eligible (in the best scenario of homemaker pensions) for *CPP* benefits upon retirement. They would therefore not get the double advantage that paid workers would get, *i.e.* coverage by the *CPP* and by a private pension plan as well. Since such a major overhaul of the private pension system is perhaps not realistic at the present time, it seems that the most promising route to constitutionality of the pension system is through reforms to the *Canada Pension Plan*.

With respect to *RRSPs*, they are of the greatest benefit to those who have least need of them, *i.e.* upper income individuals, and hence should be done away with in their present form.¹⁵⁸ Again, men reap

158 The National Council of Welfare makes the following recommendation in *Giving and Taking*, *supra*, note 11, p. 36: “We recommend instead that the tax deductions for private pension and *RRSP* contributions be replaced by a tax credit designed to provide proportionately larger benefits to smaller contributors.”

disproportionate benefits from this tax break due to their higher average wage. RRSPs are a regressive feature of the tax system, and the proposed increased limits on RRSP contributions set out in the Federal Government's 1985 Budget (\$15,500 in 1990) will do nothing to help the poor, but rather will result in lost government tax revenue and hence less money to help the needy. RRSPs in every sense promote "unequal protection" from poverty in old age as between men and women.

(c) What Theory of Equality Will Justify the Required Reforms?

The U.S. Supreme Court, in *Brown v. Board of Education*¹⁵⁹ held that "separate but equal educational facilities are inherently unequal."¹⁶⁰ "To separate [children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."¹⁶¹ The court supported these statements with the findings of seven sociologists.

What theory of equality gave rise to such a remarkable and courageous decision? I do not believe that it can be boiled down to any single theory. I believe that there was simply a serious commitment on the part of the court to eliminate racial subordination in American society. The Court in *Brown* held to be unconstitutional practices that, although "facially non-discriminatory", in effect, promoted racial subordination, in that they failed to achieve real and not just formal equality. Perhaps the only way in which the pension system will be seen to be unequal will be if a similar sensitivity develops to the subordination of women. If applied with good faith, the most effective rule that we can fashion with respect to equality is that laws that operate so as to promote or maintain the subordination of women, racial minorities, disabled, aged, *etc.* are unconstitutional.

How will "subordination" be determined? It is not easily recognized in a male-dominated society: we cannot see the forest for the trees. We cannot see subordination because of the institutionalized nature of it.

159 (1954) 347 U.S. 483.

160 *Ibid.*, p. 495.

161 *Ibid.*, p. 494.

Perhaps, as in *Brown*, sociological or other evidence will be necessary regarding both the effect of the law or practice in question upon the "hearts and minds" of the group in question (women), and whether or not poverty in old age and the prospect of it "generates a feeling of inferiority as to their status in the community."

The trouble, here, is that many women do not even recognize their feelings of inferiority because they have internalized patriarchal attitudes to such an extent.

No theory of equality is adequate. Every theory can be turned back on itself to defeat the end desired. Therefore, let us talk ends and outcomes, not theory and process.¹⁶²

In closing, I would like to quote the final passage from the brief presented to the 1983 Parliamentary Task Force on Pension Reform by the Canadian Advisory Council on the Status of Women:

SOME LOOK AT THE WAY THINGS ARE AND ARE SATISFIED.
 OTHERS LOOK AT THE WAY THINGS ARE AND ASK WHY.
 WE LOOK AT THE WAY THEY MIGHT BE AND ASK WHY NOT.

162 I do not mean to denigrate the importance of theory in helping decide strategy and in evolving arguments that will convince a court or a legislature. I simply wish to make the point that only a sincere commitment to equality, as in *Brown* for example, will result in any fundamental changes. Theories are neither "bread" nor "roses". However, as Prof. McBride has aptly noted, theories may serve as containers for bread and roses, giving them form, shape, and portability.

APPENDIX 1*

**Sex of Canada Pension Plan Contributions and Sex of
Recipients of Canada Pension Plan Disability Benefits, 1978**

<u>Age</u>	<u>% of CPP contributors who are</u>		<u>% of CPP disability pension recipients who are</u>	
	<u>Female</u>	<u>Male</u>	<u>Female</u>	<u>Male</u>
~ 25	43.5%	56.5%	12.7%	87.3%
25 to 29	39.6%	60.4%	28.1%	71.9%
30 to 34	36.1%	63.9%	29.6%	70.4%
35 to 39	36.7%	63.3%	26.1%	73.9%
40 to 44	37.0%	63.0%	25.2%	74.7%
45 to 49	35.6%	64.4%	26.2%	73.8%
50 to 54	35.0%	65.0%	27.3%	72.7%
55 to 59	33.4%	66.6%	28.1%	71.9%
60 to 64	29.3%	70.7%	27.2%	72.8%
18 to 65	38.0%	62.0%	27.3%	72.7%

Sources: Canada, Department of National Health and Welfare. *Canada Pension Plan Contributors 1978*; Canada, Department of National Health and Welfare. *Canada Pension Plan Statistical Bulletin*. Vol. 10, No. 4, December 1978.

* Louise Dulude, *Pension Reform with Women in Mind* (Ottawa: Canadian Advisory Council on the Status of Women, 1981), Appendix III.

APPENDIX 2*

TEXT TABLE I. Low Income Cut-offs of Family Units, 1984
 TABLEAU EXPLICATIF I. Seuils de faible revenu
 des unités familiales, 1984

Size of family unit	Size of area of residence				
	Taille de la région de résidence				
	Urban areas - Régions urbaines				Rural areas
de l'unité familiale	500,000 and over	100,000-499,999	30,000-99,999	Less than 30,000 ¹	Régions rurales
	500,000 habitants et plus			Moins de 30,000 habitants ¹	
	dollars				
1969 base - base de 1969					
Person - personne	8,010	7,499	7,282	6,697	5,821
Persons - personnes	11,610	10,872	10,557	9,709	8,447
"	14,814	13,875	13,467	12,394	10,776
"	17,620	16,499	16,014	14,737	12,811
"	19,696	18,439	17,905	16,477	14,326
"	21,622	20,244	19,657	18,085	15,723
More persons - personnes ou plus	23,709	22,191	21,551	19,823	17,239
1978 base - base de 1978					
Person - personne	9,839	9,345	8,766	8,104	7,276
Persons - personnes	12,981	12,321	11,495	10,666	9,510
"	17,365	16,456	15,380	14,307	12,734
"	20,010	19,017	17,778	16,537	14,720
"	23,318	22,078	20,590	19,183	17,117
"	25,468	24,062	22,492	20,920	18,687
More persons - personnes ou plus	28,032	26,543	24,807	23,070	20,590

¹ Includes cities with a population between 15,000 and 30,000 and small urban areas (under 15,000).
¹ Inclut les villes dont la population se chiffre entre 15,000 et 30,000 habitants et les petites zones urbaines (moins de 15,000 habitants).

* Statistics Canada, *Income Distribution by Size, 1984* (Ministry of Supply and Services, 1985).

APPENDIX 2A

Table 1*

NATIONAL COUNCIL OF WELFARE ESTIMATES
OF LOW-INCOME LINES FOR 1985

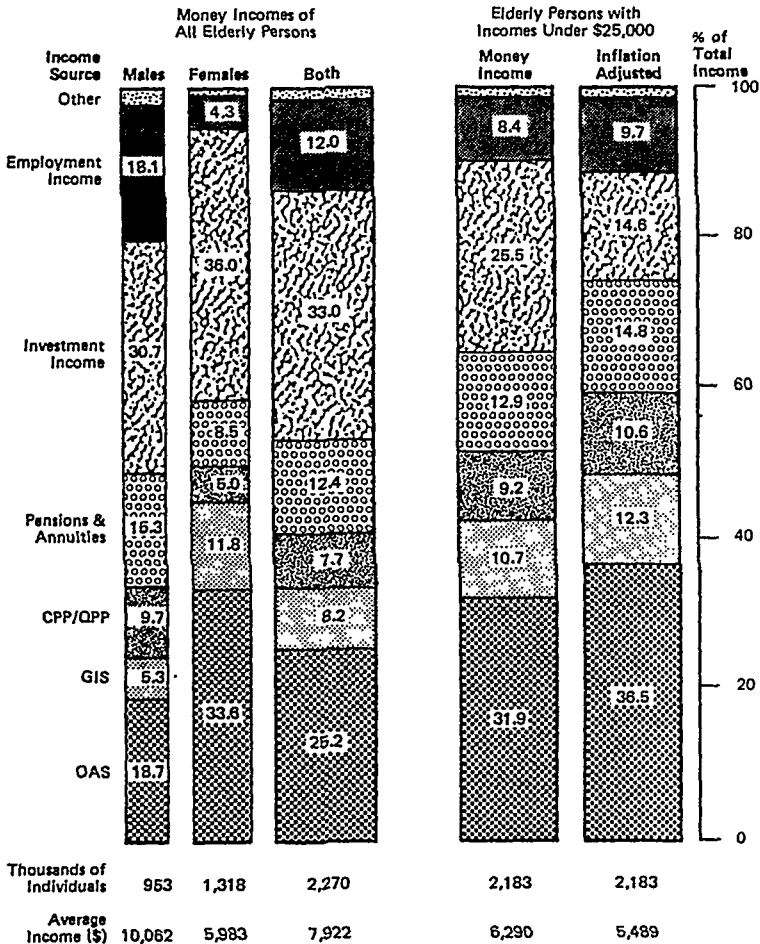
Family Size	Population of Area of Residence				
	500,000 and over	100,000 - 499,999	30,000 - 99,999	Less than 30,000	Rural
1	\$10,238	\$ 9,723	\$ 9,121	\$ 8,432	\$ 7,571
2	13,508	12,820	11,961	11,098	9,895
3	18,068	17,123	16,004	14,886	13,250
4	20,821	19,787	18,498	17,206	15,316
5	24,263	22,972	21,423	19,960	17,810
6	26,500	25,037	23,402	21,767	19,444
7 or more	29,167	27,617	25,812	24,004	21,423

* National Council of Welfare, *1985 Poverty Lines* (Ministry of Supply and Services, 1985).

APPENDIX 3

CHART 1*

Relative Importance of Various Sources of Income to the Elderly, 1979 (%)



* The Green Paper, *supra*, note 54. (This chart is deceptive, as it appears from the graph that male and female incomes are equal.)

APPENDIX 4*

TABLE 32 REASON FOR PART-TIME EMPLOYMENT, JANUARY 1985
TABLEAU 32 RAISON DONNEE POUR L'EMPLOI A TEMPS PARTIEL, JANVIER 1985

	TOTAL	PERSONAL OR FAMILY RESPONSIBILITIES	GOING TO SCHOOL	COULD ONLY FIND PART-TIME WORK	DID NOT WANT FULL-TIME WORK	OTHER REASONS
		OBLIGATIONS PERSONNELLES OU FAMILIALES	VA A L'ECOLE	N'A PU TROUVER QUE DU TRAVAIL A TEMPS PARTIEL	NE VOULAIT PAS TRAVAILLER A PLEIN TEMPS	AUTRES RAISONS
THOUSANDS - MILLIERS						
BOTH SEXES - LES DEUX SEXES	1,758	150	569	488	523	28
15-24 YEARS - ANS	757	7	524	175	37	..
25-54 YEARS - ANS	813	131	35	282	352	13
55 YEARS AND OVER - ANS ET PLUS	188	11	..	31	133	12
MARRIED - MARIÉS	897	142	25	265	449	17
SINGLE - CELIBATAIRES	762	4	540	175	35	8
OTHER - AUTRES	99	5	4	48	38	..
MALES - HOMMES	504	..	285	139	63	14
15-24 YEARS - ANS	342	..	268	64	8	..
25-54 YEARS - ANS	101	..	17	65	12	5
55 YEARS AND OVER - ANS ET PLUS	62	..	..	10	43	8
MARRIED - MARIÉS	128	..	12	58	46	9
SINGLE - CELIBATAIRES	363	..	272	74	13	..
OTHER - AUTRES	14	..	..	7	4	..
FEMALES - FEMMES	1,254	147	284	349	460	14
15-24 YEARS - ANS	415	7	266	111	29	..
25-54 YEARS - ANS	712	121	18	216	340	8
55 YEARS AND OVER - ANS ET PLUS	127	10	..	22	91	4
MARRIED - MARIÉES	770	140	12	207	404	7
SINGLE - CELIBATAIRES	399	..	268	101	22	5
OTHER - AUTRES	85	5	4	41	34	..
NEWFOUNDLAND - TERRE-NEUVE	17	..	..	9	4	..
P.E.I. - Î. -P. -É	8	..	..	..	..	..
NOVA SCOTIA - NOUVELLE-ÉCOSSE	53	..	15	20	16	..
NEW BRUNSWICK - NOUVEAU-BRUNSWICK	40	..	11	16	10	..
QUEBEC						
BOTH SEXES - LES DEUX SEXES	387	35	117	133	94	7
MALES - HOMMES	117	..	63	37	12	..
FEMALES - FEMMES	270	34	54	96	82	4
15-24 YEARS - ANS	172	..	109	53	7	..
25-54 YEARS - ANS	181	28	8	76	66	..
55 YEARS AND OVER - ANS ET PLUS	34	4	..	4	27	4
ONTARIO						
BOTH SEXES - LES DEUX SEXES	703	61	256	158	220	8
MALES - HOMMES	195	..	122	43	25	4
FEMALES - FEMMES	508	60	134	115	196	4
15-24 YEARS - ANS	313	..	242	53	15	..
25-54 YEARS - ANS	309	55	15	92	143	4
55 YEARS AND OVER - ANS ET PLUS	82	4	..	13	62	..
MANITOBA	28	9	22	20	26	..
SASKATCHEWAN	76	10	21	17	26	..
ALBERTA	166	18	60	41	63	4
B.C. - C. - B.						
BOTH SEXES - LES DEUX SEXES	211	13	61	71	62	4
MALES - HOMMES	63	..	31	21	8	..
FEMALES - FEMMES	148	13	30	50	54	..
15-24 YEARS - ANS	88	..	58	24	5	..
25-54 YEARS - ANS	100	12	..	41	43	..
55 YEARS AND OVER - ANS ET PLUS	23	..	..	6	14	..

NOTE: PERSONS WHO USUALLY WORK LESS THAN 30 HOURS PER WEEK, BUT CONSIDER THEMSELVES TO BE EMPLOYED FULL-TIME ARE NOT INCLUDED IN THIS TABLE. SUCH PERSONS ARE INCLUDED IN ESTIMATES OF FULL-TIME EMPLOYMENT.

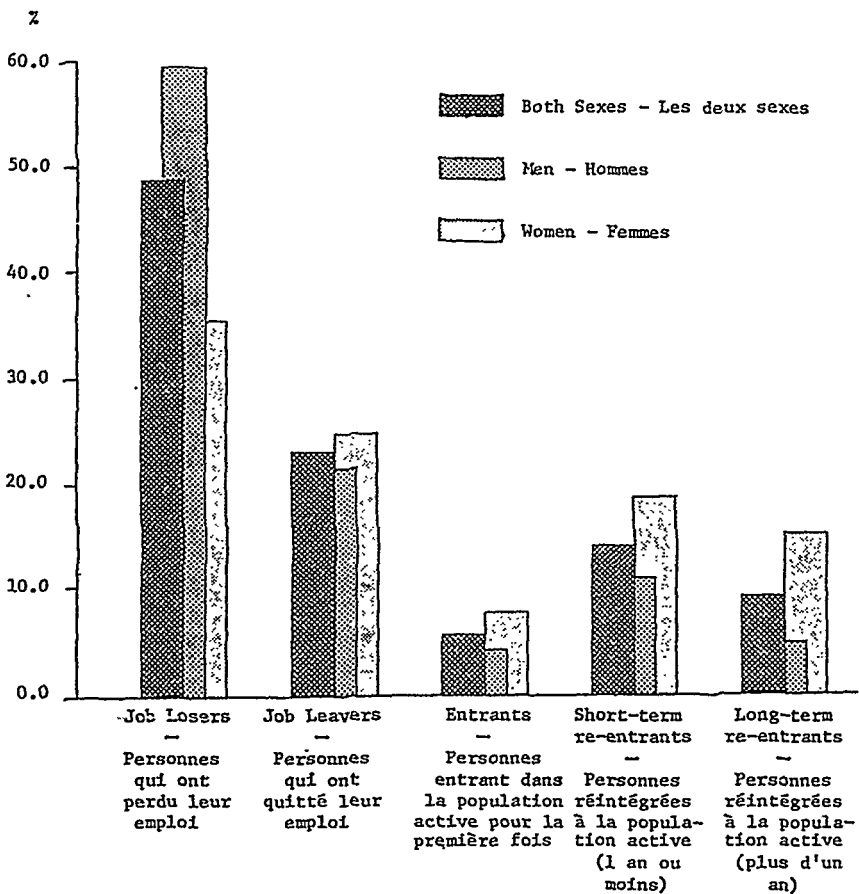
NOTA: LES PERSONNES QUI TRAVAILLENT HABITUELLEMENT MOINS DE 30 HEURES PAR SEMAINE, MAIS QUI SE CONSIDÈRENT EMPLOYÉES A PLEIN TEMPS NE SONT PAS INCLUSES DANS CE TABLEAU. ELLES SONT COMPRISSES DANS LES ESTIMATIONS DE L'EMPLOI A PLEIN TEMPS.

* Statistics Canada, *The Labour Force, January 1985* (Ministry of Supply and Services, 1985).

APPENDIX 5*

CHART 1 Flows into Unemployment by Sex
Annual Average, 1977

GRAPHIQUE 1 Caractéristiques de chômeurs selon le sexe,
moyenne annuelle, 1977



* Statistics Canada, Labour Force Survey Division, Research Paper No. 17, *Flows into Unemployment, 1977* (Ministry of Supply and Services, 1978).

APPENDIX 6*

TABLE A-3. Unemployed Persons by Flows into Unemployment by Sex and Age, Annual Average, 1977

TABLEAU A-3. Chômeurs selon la catégorie, l'âge et le sexe, moyenne annuelle, 1977

Age and sex — L'âge et le sexe	Total unemployed — Ensemble des chômeurs		Job losers — Personnes qui ont perdu leur emploi		Job leavers — Personnes qui ont quitté leur emploi		Entrants — Personnes entrant dans la population active pour la première fois		Re-entrants one year or less — Personnes réintégrées à la population active un an ou moins		Re-entrants more than one year — Personnes réintégrées à la population active plus d'un an	
	'000	%	'000	%	'000	%	'000	%	'000	%	'000	%
Both sexes — Les deux sexes	862	100.0	420	48.7	198	22.9	48	5.6	120	13.9	76	8.8
15-19 years — ans	205	100.0	72	35.1	37	18.0	39	19.0	44	21.6	13	6.3
20-24 " "	209	100.0	104	49.5	53	25.5	5	2.3	31	14.8	17	7.9
25-34 " "	194	100.0	102	51.8	48	24.5	—	—	23	11.5	22	11.2
35-44 " "	107	100.0	60	56.5	24	22.6	—	—	10	8.9	11	10.7
45-54 " "	87	100.0	50	57.6	20	23.0	—	—	7	8.4	9	9.9
55+ " "	57	100.0	32	56.3	15	26.2	—	—	5	8.8	5	8.3
Men — Hommes	481	100.0	287	59.5	104	21.7	19	4.0	51	10.5	21	4.3
15-19 years — ans	116	100.0	49	42.0	21	18.5	16	14.2	23	20.0	6	5.2
20-24 " "	120	100.0	73	60.9	26	21.5	—	—	14	11.6	5	4.5
25-34 " "	104	100.0	69	66.3	25	23.7	—	—	6	6.2	4	3.5
35-44 " "	55	100.0	39	70.4	12	21.9	—	—	—	—	—	—
45-54 " "	48	100.0	33	68.7	10	21.9	—	—	—	—	—	—
55+ " "	39	100.0	24	63.0	10	25.8	—	—	—	—	—	—
Women — Femmes	380	100.0	133	35.1	93	24.5	29	7.7	69	18.2	55	14.6
15-19 years — ans	89	100.0	23	26.1	16	17.4	22	25.2	21	23.7	7	7.6
20-24 " "	89	100.0	31	34.2	28	30.8	—	—	17	19.1	11	12.5
25-34 " "	92	100.0	32	35.3	23	25.5	—	—	16	17.6	18	19.8
35-44 " "	52	100.0	22	42.0	12	23.5	—	—	7	13.6	10	18.7
45-54 " "	39	100.0	17	44.0	10	26.4	—	—	5	12.4	7	16.9
55+ " "	19	100.0	8	42.3	5	27.1	—	—	—	—	—	—

* Statistics Canada, Labour Force Survey Division, Research Paper No. 17, *Flows into Unemployment, 1977* (Ministry of Supply and Services, 1978).

APPENDIX 7*

TABLE 45. UNEMPLOYED BY REASON FOR LEAVING LAST JOB, JANUARY 1985
 TABLEAU 45. CHOMEURS SELON LA RAISON POUR LAQUELLE ILS ONT QUITTE LEUR DERNIER EMPLOI, JANVIER 1985

	TOTAL	OWN ILLNESS	PERSONAL RESPONSIBILITIES	SCHOOL	LOST JOB OR LAID OFF	RETIRED	OTHER REASONS	NOT WORKED IN LAST 5 YEARS	NEVER WORKED
		MALADIE DE L'ENQUETE	OBLIGATIONS PERSONNELLES	VA A L'ECOLE	A PERDU SON EMPLOI OU A ETE MIS A PIED	A PRIS SA RETRAITE	AUTRES RAISONS	N'A PAS TRAVAILLE DURANT LES 5 DERNIERES ANNEES	N'A JAMAIS TRAVAILLE
THOUSANDS - MILLIERS									
BOTH SEXES - LES DEUX SEXES	1,483	47	55	52	1,018	21	205	40	45
15-24 YEARS - ANS	507	9	19	42	327	...	71	...	41
25 YEARS AND OVER - ANS ET PLUS	975	38	40	11	690	21	134	37	4
MARRIED - MARIÉES	794	30	41	5	553	17	115	28	6
OTHER - AUTRES	689	18	13	47	485	4	90	12	39
MALES - HOMMES	905	22	9	35	692	16	99	11	25
15-24 YEARS - ANS	312	4	..	30	220	...	33	...	23
25 YEARS AND OVER - ANS ET PLUS	593	18	..	6	472	16	66	10	...
MARRIED - MARIÉES	449	14	..	..	358	14	50	7	...
OTHER - AUTRES	456	8	..	33	334	..	49	4	23
FEMALES - FEMMES	578	25	50	17	325	5	105	29	21
15-24 YEARS - ANS	195	5	13	12	108	..	38	..	18
25 YEARS AND OVER - ANS ET PLUS	382	20	36	5	218	5	68	27	..
MARRIED - MARIÉES	245	16	39	..	194	...	65	21	5
OTHER - AUTRES	233	9	11	14	131	...	41	8	16
NEWFOUNDLAND - TERRE-NEUVE	53	...	...	...	42	...	5	...	..
P.E.I. - I.-P.-E.	9	..	...	...	8	...	...	...	..
NOVA SCOTIA - NOUVELLE-ECOSSE	57	..	..	...	41	..	7	..	..
N.B. - N.-B.	47	..	...	...	34	...	5	...	...
QUEBEC									
BOTH SEXES - LES DEUX SEXES	392	12	11	10	284	5	44	15	11
MALES - HOMMES	248	5	...	8	193	...	24	6	6
FEMALES - FEMMES	144	7	9	...	90	...	20	9	5
15-24 YEARS - ANS	134	...	...	8	92	...	16	...	10
25 YEARS AND OVER - ANS ET PLUS	258	10	...	..	192	5	28	14	...
MARRIED - MARIÉES	200	7	8	...	148	...	21	10	..
OTHER - AUTRES	192	5	..	9	136	...	22	5	9
ONTARIO									
BOTH SEXES - LES DEUX SEXES	457	16	19	22	295	10	70	11	13
MALES - HOMMES	263	8	...	14	190	9	32	...	7
FEMALES - FEMMES	194	9	18	8	104	..	38	8	6
15-24 YEARS - ANS	156	..	5	18	96	...	22	...	12
25 YEARS AND OVER - ANS ET PLUS	301	14	14	4	199	10	48	11	..
MARRIED - MARIÉES	242	12	15	...	157	8	39	8	...
OTHER - AUTRES	214	5	4	20	138	...	31	..	12
MANITOBA	48	..	...	...	31	..	8	..	...
SASKATCHEWAN	45	...	...	...	29	...	7	...	..
ALBERTA	146	4	7	6	99	...	23	..	4
B.C. - C.-B.									
BOTH SEXES - LES DEUX SEXES	228	6	8	7	155	..	35	6	9
MALES - HOMMES	140	...	...	5	106	...	16	...	4
FEMALES - FEMMES	88	...	6	...	49	...	17	5	4
15-24 YEARS - ANS	71	...	...	5	42	...	13	...	8
25 YEARS AND OVER - ANS ET PLUS	157	5	9	...	113	...	22	5	...
MARRIED - MARIÉES	125	4	7	..	87	...	20	4	..
OTHER - AUTRES	104	...	...	6	68	...	16	...	8

* Statistics Canada, *The Labour Force, January 1985* (Ministry of Supply and Services, 1985).

APPENDIX 8*

TABLE 6. Percentage Distribution of Earners by Earnings Groups, Education, Sex and Full/Part-time Worker Status,(1) 1982 and 1981

TABLEAU 6. Répartition en pourcentage des personnes gagnant un revenu, selon la tranche de gains, l'instruction, le sexe et le statut de travailleur à temps plein/à temps partiel(1), 1982 et 1981

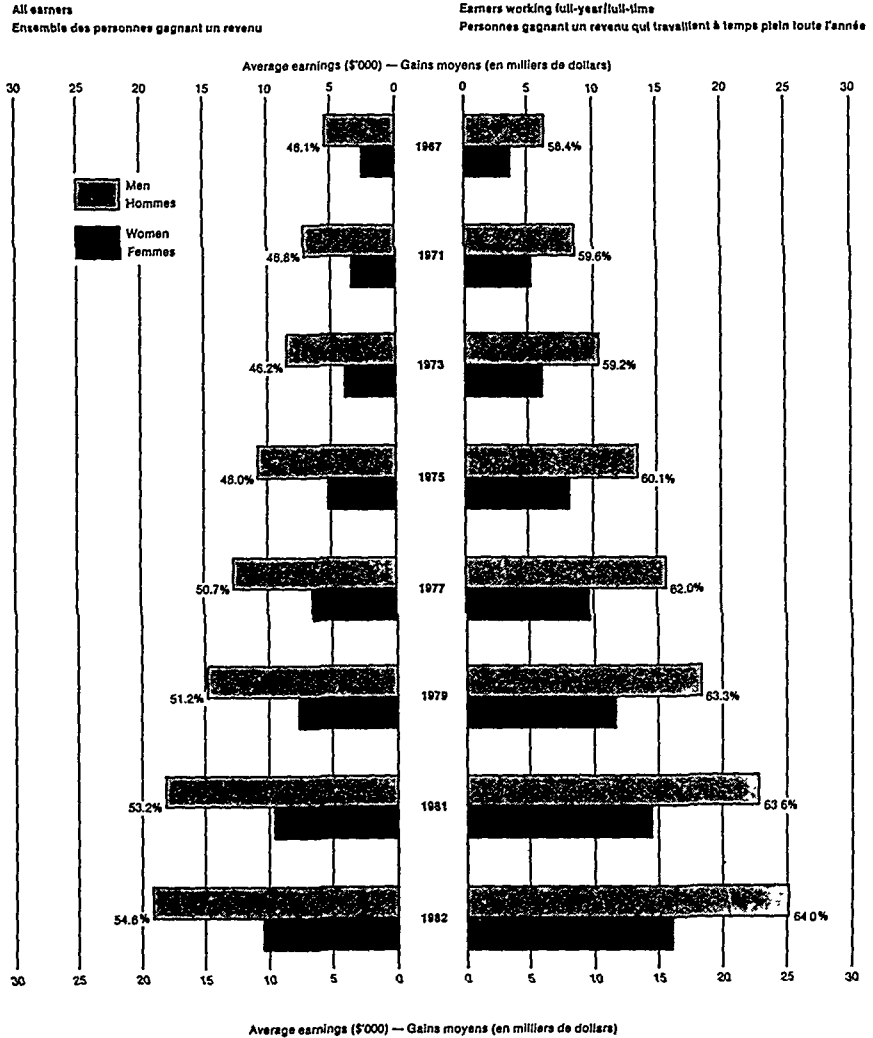
Earnings group Tranche de gains	0 to 8 years 0 à 8 années		Some or completed high school Etudes secondaires partielles ou complètes		Some post- secondary Etudes postsecondaires partielles		Post-secondary certificate or diploma Certificat ou diplôme d'études postsecondaires		University degree Grade universitaire	
	Men Hommes	Women Femmes	Men Hommes	Women Femmes	Men Hommes	Women Femmes	Men Hommes	Women Femmes	Men Hommes	Women Femmes
	per cent - pourcentage									
1982:										
Full-time workers - Travailleurs à temps plein										
Under \$1,000 - Moins de \$1,000	1.8	2.2	1.0	1.4	1.1	0.7	0.8	0.6	0.4	0.6
\$ 1,000 - \$ 1,999	1.4	1.7	0.7	1.5	0.5	1.1	0.4	0.2	0.2	0.4
2,000 - 3,999	2.4	3.0	1.6	2.5	0.9	1.2	0.9	1.4	0.5	1.2
4,000 - 5,999	3.4	5.4	2.2	4.2	2.3	2.8	1.6	2.6	1.4	0.5
6,000 - 7,999	3.0	10.3	2.7	6.9	2.2	4.5	1.4	3.0	0.6	2.0
8,000 - 9,999	4.1	15.3	3.4	10.0	2.6	6.6	2.2	4.0	1.8	3.0
10,000 - 11,999	5.1	14.9	4.0	10.4	3.6	7.4	3.2	7.6	1.3	3.3
12,000 - 14,999	6.9	22.8	8.4	21.0	7.8	18.6	4.0	16.2	2.3	6.4
15,000 - 19,999	23.0	18.3	17.8	25.7	15.4	30.2	14.5	25.3	6.8	16.6
20,000 - 24,999	18.7	3.4	19.1	10.3	19.5	14.4	18.1	18.7	10.2	19.0
25,000 - 29,999	13.5	2.1	16.4	4.2	13.9	7.0	17.5	13.5	13.6	18.8
30,000 and over - et plus	14.6	0.8	22.7	1.9	30.4	5.4	34.5	4.0	60.9	28.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Average earnings - Gains moyens	\$ 20,073	11,604	22,779	14,067	24,662	16,577	26,123	17,607	36,266	24,380
Median earnings - Gains médians	\$ 19,318	11,634	22,192	13,885	23,542	16,152	25,583	17,261	33,607	24,208
Average income - Revenu moyen	\$ 22,568	13,419	24,679	15,321	26,840	18,064	27,948	18,922	38,827	25,905
Number of records - Nombre de dossiers	3,305	893	9,062	5,106	1,603	880	2,207	1,707	2,684	1,258
Estimated numbers - Nombre estimé	762	252	2,204	1,339	435	227	566	430	785	351
Standard error of average earnings - Erreur type des gains moyens	\$ 276	254	169	128	435	323	325	224	561	402
Part-time workers(2) - Travailleurs à temps partiel(2)										
Under \$1,000 - Moins de \$1,000	12.4	21.6	15.6	21.5	11.2	15.9	5.4	12.4	10.2	11.1
\$ 1,000 - \$ 1,999	8.5	14.0	11.2	14.7	12.3	14.7	9.1	12.5	6.4	9.7
2,000 - 3,999	13.8	18.8	15.7	19.8	24.8	24.7	13.9	17.8	8.8	11.4
4,000 - 5,999	10.3	15.9	10.3	14.0	14.2	15.0	13.3	13.5	10.6	10.3
6,000 - 7,999	6.7	10.4	8.8	9.3	9.2	8.2	10.0	11.3	6.6	11.4
8,000 - 9,999	8.2	7.7	6.7	8.7	8.2	6.1	6.7	8.2	6.5	6.7
10,000 - 11,999	6.9	4.2	5.3	4.3	4.3	4.5	5.0	5.7	5.7	7.9
12,000 - 14,999	6.1	2.9	7.3	4.3	5.0	4.5	6.8	11.3	7.0	7.0
15,000 - 19,999	10.1	2.5	8.4	3.3	4.4	3.8	12.7	7.5	10.1	10.6
20,000 - 24,999	5.0	1.0	4.9	1.4	4.4	1.8	7.3	2.7	7.8	5.7
25,000 - 29,999	3.7	0.5	3.1	0.4	1.5	0.4	3.2	0.8	5.4	1.9
30,000 and over - et plus	2.9	0.5	2.6	0.3	1.5	0.4	5.9	0.7	7.8	3.2
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Average earnings - Gains moyens	\$ 9,461	4,813	8,274	4,927	6,727	5,169	11,104	6,769	12,386	9,220
Median earnings - Gains médians	\$ 7,028	3,518	5,455	3,395	4,234	3,564	7,945	5,073	9,365	6,790
Average income - Revenu moyen	\$ 14,412	7,419	11,211	6,784	8,950	6,618	14,229	8,962	18,279	12,131
Number of records - Nombre de dossiers	2,389	1,516	6,696	7,304	1,261	1,423	391	1,639	577	623
Estimated numbers - Nombre estimé	466	324	1,497	1,629	343	365	285	375	160	215
Standard error of average earnings - Erreur type des gains moyens	\$ 239	206	154	65	263	197	430	200	676	380
Total										
Under \$1,000 - Moins de \$1,000	5.8	13.9	6.9	12.4	5.5	10.1	2.2	6.1	2.1	4.6
\$ 1,000 - \$ 1,999	4.1	8.7	5.0	8.7	5.7	9.5	2.7	8.2	1.3	3.6
2,000 - 3,999	6.7	12.0	7.3	12.0	11.4	15.7	4.7	9.1	2.1	5.1
4,000 - 5,999	6.0	11.4	5.5	9.6	7.5	10.3	7.0	5.0	3.0	5.4
6,000 - 7,999	5.6	10.3	6.0	6.3	6.3	6.8	3.9	6.9	2.0	5.0
8,000 - 9,999	5.7	11.0	4.7	8.2	5.0	6.3	3.5	7.0	2.7	4.4
10,000 - 11,999	5.8	8.8	4.5	7.1	3.9	4.0	4.5	6.7	4.1	5.0
12,000 - 14,999	6.6	11.3	8.0	11.8	6.8	10.0	5.7	11.9	3.7	6.6
15,000 - 19,999	18.1	9.3	14.0	13.4	10.6	13.9	14.0	17.0	7.4	14.3
20,000 - 24,999	12.7	2.3	13.8	5.4	12.4	8.5	14.8	11.2	9.8	13.9
25,000 - 29,999	9.8	1.2	11.0	2.1	6.4	2.9	13.3	7.6	12.2	12.4
30,000 and over - et plus	10.2	0.6	14.6	1.0	17.7	2.3	26.1	2.4	51.7	18.6
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Average earnings - Gains moyens	\$ 16,045	7,820	16,910	9,059	16,752	9,542	21,722	12,562	32,144	18,625
Median earnings - Gains médians	\$ 15,462	6,681	16,118	7,755	14,579	7,275	21,489	12,050	30,665	18,293
Average income - Revenu moyen	\$ 19,471	9,999	19,230	10,635	18,638	11,005	23,926	14,244	33,280	20,576
Number of records - Nombre de dossiers	5,894	2,409	15,788	12,410	2,894	2,313	3,098	3,348	2,361	2,811
Estimated numbers - Nombre estimé	1,228	586	3,701	2,968	778	591	800	805	925	765
Standard error of average earnings - Erreur type des gains moyens	\$ 222	189	150	103	342	228	301	202	527	374

See footnote(s) at end of table.
Voir note(s) à la fin du tableau.

* Statistics Canada, *Earnings of Men and Women, 1981 and 1982* (Ministry of Supply and Services, 1984).

APPENDIX 9*

Figure 11
 Comparison of Average Earnings of Women and Men and Their Ratios (in per cent), 1967 to 1982
 Comparaison des gains moyens des femmes et des hommes et leur rapport (en pourcentage), 1967 à 1982
 Earnings in current dollars — Gains en dollars courants

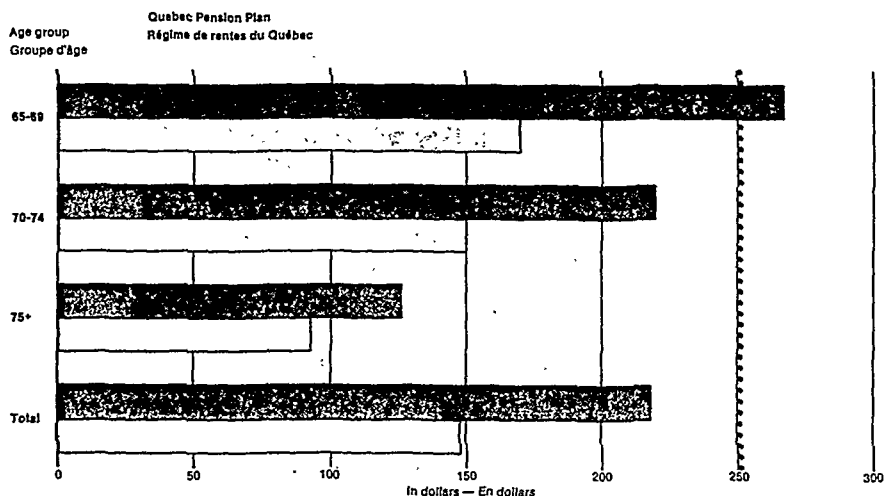
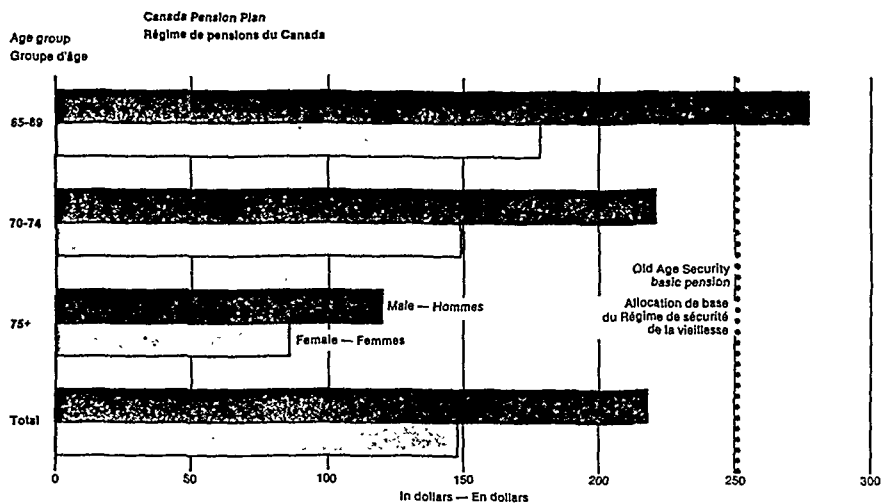


* Statistics Canada, *Earnings of Men and Women, 1981 and 1982* (Ministry of Supply and Services, 1984).

APPENDIX 10*

Average Monthly Retirement Pensions of Canada and Quebec Pension Plans,
 Compared with Monthly Amount of Old Age Security Basic Pension, March 1983

Pensions/Rentes de retraite mensuelles moyennes versées en vertu des Régimes de pensions
 du Canada et de rentes du Québec, en comparaison de l'allocation mensuelle de base
 du Régime de sécurité de la vieillesse, mars 1983



Reference: Tables 10, 11 and Text Table 9-12. — Référence: Tableaux 10, 11 et tableau explicatif 9-12.

* Statistics Canada, *Canada and Quebec Pension Plans, 1984* (Ministry of Supply and Services, 1985).

APPENDIX 11*

TABLE 9. UPPER LIMITS OF INCOME QUINTILES OF INDIVIDUALS AND PERCENTAGE DISTRIBUTION OF TOTAL INCOME OF INDIVIDUALS BY QUINTILES, 1984
 TABLEAU 9. LIMITES SUPERIEURES DES QUINTILES DE REVENU DES PARTICULIERS ET REPARTITION EN POURCENTAGE DU REVENU TOTAL DES PARTICULIERS PAR QUINTILE, 1984

	MALE HOMMES	FEMALE FEMMES	ALL INDIVIDUALS ENSEMBLE DES PARTICULIERS
UPPER LIMITS OF INCOME QUINTILES IS: LIMITES SUPERIEURES DES QUINTILES DE REVENU IS1			
LOWEST QUINTILE/QUINTILE INFERIEUR.....	7,000	3,600	4,912
SECOND QUINTILE/DEUXIEME QUINTILE.....	13,770	7,101	5,441
MIDDLE QUINTILE/TROISIEME QUINTILE.....	22,788	11,182	16,538
FOURTH QUINTILE/QUATRIEME QUINTILE.....	32,980	18,871	27,040
SHARES OF TOTAL INCOME/PARTS DU REVENU TOTAL: PER CENT/POURCENTAGE			
LOWEST QUINTILE/QUINTILE INFERIEUR.....	2.9	2.7	2.5
SECOND QUINTILE/DEUXIEME QUINTILE.....	9.5	9.2	8.5
MIDDLE QUINTILE/TROISIEME QUINTILE.....	17.0	15.0	15.1
FOURTH QUINTILE/QUATRIEME QUINTILE.....	25.8	24.9	25.5
HIGHEST QUINTILE/QUINTILE SUPERIEUR.....	44.7	48.2	48.4
TOTAL.....	100.0	100.0	100.0

* Statistics Canada, *Canada and Quebec Pension Plans, 1984* (Ministry of Supply and Services, 1985).

APPENDIX 12*

TABLE 29
 AVERAGE INCOME FROM PUBLIC PENSION PLANS
 AND PRIVATE SOURCES, POOR AND NON-POOR
AGED COUPLES AND UNATTACHED INDIVIDUALS, 1981 21

<u>Income Source</u>	<u>Aged Couples *</u>		<u>Aged Unattached Individuals</u>	
	<u>Poor</u>	<u>Non-Poor</u>	<u>Poor</u>	<u>Non-Poor</u>
C/QPP	\$1,824	\$2,263	\$1,276	\$1,973
Private pensions	1,075	4,885	1,679	4,787
Investments	.748	7,161	1,176	7,107
Employment	913	10,984	1,206	7,731

* Couples in which both spouses were 65 or older in 1981.

* National Council of Welfare, *Sixty-Five and Older* (Ministry of Supply and Services, 1984).

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