

Ingrid is a single parent. She lives alone with her daughter, who has a disability, and their primary ongoing source of income over the years has been provincial income assistance (welfare) and tax benefits (child tax benefits). Like many parents of children with disabilities, Ingrid was terminated from employment positions many times as a result of work disruptions associated with responding to her daughter's care needs. Ingrid earns irregular income providing childcare and housework, receiving income assistance some months. Her daughter is now an adult but she continues to require ongoing support from her mother such that Ingrid cannot work traditional full-time hours. She is looking for part-time flexible work that will allow her to continue to be there for her daughter when needed and finding it challenging to locate suitable work. As a low-income caregiver, who pays very little if any income tax, many tax measures are not helpful to Ingrid.

CHAPTER 5 – Indirect Compensation of Caregivers through the Tax System

I. The Financial Consequences of Family Caregiving on the Caregiver

For the caregiver, the financial consequences of family caregiving can be significant. The majority of respondents to our caregiver survey identified a reduction in income as one of the most significant work-related consequences of caregiving. This response is consistent with studies and consultations on caregiving, all of which highlight the financial consequences of caregiving and the lack of government initiatives to address this problem as a key barrier to the quality of life of caregivers.

In addition to out-of-pocket expenses associated with care, assuming caregiving responsibilities often necessitates a reduction in hours of employment, depending on the scope of care required by the care recipient. One of the barriers to balancing family caregiving and work in a healthy manner is the loss of income that usually accompanies employment changes that support caregiving. The consequences of this are that caregivers must make a difficult choice: sustain full-time employment while fulfilling significant caregiving, often to the detriment of their own health; reject caregiving as incompatible with the other demands work, family and community collectively impose on their lives; take on caregiving at the expense of short or long-term poverty.

As discussed in earlier parts of this paper, for many caregivers there is no practical alternative to becoming a caregiver. For many people, caregiving is a labour of love, and they could not fathom leaving this work to a paid professional. However, it can also be challenging to locate appropriate care. For others, professional care is not affordable, especially in the context of smaller families, in which the responsibility for caregiving is concentrated on fewer family members, and the costs of a caregiving service cannot be shared. Others, such as parents of adult children with disabilities, are lifelong caregivers. They assume their obligations in the same manner as any parent; however, their child's needs may be greater, more complex and more sustained.

It is a question of public policy how the costs of caregiving are to be distributed amongst families, employers, caregivers, care recipients and the larger community, and an international comparison reveals very diverse responses to this problem. There exist essentially three different public policy approaches to compensation of, or income support for, caregivers: indirect compensation through tax policy; direct compensation through stipends and wages paid to the caregiver through various government programs; and pensions initiatives that recognize caregiving labour and the long term financial consequences of caregiving on pension security.²¹⁴ In Chapter 7 we discuss pension income and family caregiving. The following two chapters explore law and policy measures directed at responding to the short-term loss of income that often accompanies caregiving. Chapter 6 discusses direct subsidies for caregivers, an approach that has not been followed in BC. This chapter addresses indirect compensation of caregiving labour through taxation.

In Canada, the income tax system is increasingly the tool the government uses to address the financial circumstances of people with disabilities and their family caregivers.²¹⁵ Respondents to our caregiver survey confirmed that tax credits represent the most available form of financial assistance: over 85% indicated they had received tax credits; however, close to 65% of respondents indicated that greater access to tax credits would significantly improve their lives as caregivers. This chapter presents existing tax measures in BC and Canada that may recognize the costs of caregiving for the individual, and considers the strengths and weaknesses of both available tax incentives and the overall tax approach to compensation.

It is important to keep in mind that tax is but one available instrument through which to recognize the financial cost of caregiving on the family caregiver and deliver financial benefits to caregivers. To the extent that family caregiving implicates many areas of law, each chapter of this study provides but a very partial view of family caregiving policy in BC. This is especially true of the tax chapter of *Care/Work*. Caregiving policy with respect to

²¹⁴ A fourth approach is the direct provision of services, such as respite for the caregiver, and most provincial Ministries of Health currently administer limited respite programs through which some family caregivers may have access to substitute care in order to take a break from caregiving. See Janet Dunbrack, *Respite for Family Caregivers: An Environmental Scan of Publicly-Funded Programs in Canada* (Health Canada, 2003), online: <http://www.hc-sc.gc.ca/hcs-sss/pubs/home-domicile/2003-respite-releve/index-eng.php>. Primary caregivers of former members of the military may also be eligible for housekeeping and grounds maintenance services through the Federal Veterans Independence Program. See Veterans Affairs Canada, Veterans Independence Program, online: http://www.vac-acc.gc.ca/clients/sub.cfm?source=services/vip/vip_care_eligible.

²¹⁵ Claire F. L. Young, *Women, Tax and Social Programs: The Gendered Impact of Funding Social Programs Through the Tax System* (Ottawa: Status of Women Canada, 2000) at 57 [Young].

financial compensation of caregivers emerges out of the interplay between tax, pensions, social assistance and health policy. Any conclusions to this chapter must be provisional, subject to analysis of the interaction between tax, pensions and other potential measures for income redistribution. In Chapter 8 we summarize the collective impact of the various laws that address the circumstances of caregivers and put forward a number of options for reform that would address the financial circumstances of family caregivers.

II. An Overview of the Tax Approach

Tax measures are a form of “indirect” compensation of caregiver costs in that for the most part they provide relief by reducing the taxable income of caregivers in prescribed circumstances. However, they do not compensate caregiving labour directly. What they do is acknowledge the taxpayer’s reduced ability to pay tax that arises out of costs associated with caregiving and other activities considered of social value under tax policy. Although the ostensible purpose of income tax is to raise revenue, taxation is increasingly being used to achieve other goals including redistributing income, encouraging certain kinds of economic and social behaviour, and subsidizing social programs.²¹⁶ Caregiving policy reflects this approach.

It is widely acknowledged that income tax legislation contains two types of provisions: technical tax provisions and tax expenditures.²¹⁷ The technical tax rules set out the basic structural elements of an income tax system: each system has to define a unit, base, period, rate, and contain rules governing its administration. In evaluating the technical tax system, tax policy analysts generally turn to three criteria: equity, neutrality, and simplicity.

However, at least since the mid-1960s, tax scholars have appreciated that there are a large number of provisions in income tax legislation that have nothing to do with defining the unit, base, period, rate, or administration of income tax based upon the three traditional tax evaluative criteria. These provisions are usually referred to as “tax expenditures” since, although they are found in the tax system, they are analogous to direct government spending in terms of the impact of government revenue. As one source explains:

Each tax concession, whether in the form of a deduction or a credit or a rate reduction or an omission from income, has a cost to the government, namely, the amount of revenue foregone by the concession. Its effect on the government revenue is the same as if the tax system lacked that particular concession, and the government made a direct expenditure of the cost of the concession to those persons who would have benefitted from it. The effect of a tax concession is thus no different from that of an expenditure.²¹⁸

As a classic illustration, in the 1970s mothers received a regular cheque from the government. This spending program was usually referred to as the child allowance program. That program has since been disbanded and converted into the child tax benefit.

²¹⁶ *Ibid.* at 5.

²¹⁷ See, for example, the discussion in Law Commission of Canada, *Beyond Conjugal: Recognizing and Supporting Close Personal Relationships* (Ottawa: Law Commission of Canada, 2001) at 64 [*Beyond Conjugal*].

²¹⁸ Peter W. Hogg, Joanne E. Magee & Jinyan Li, *Principles of Canadian Income Tax Law*, 6th ed. (Toronto: Thomson Carswell, 2007) at 50.

The function of these two programs is the same – to assist parents with the costs of raising children – but the delivery mechanism has changed. The early version of the program was designed as a universal subsidy provided directly to mothers; the current version provides a tax credit to families that is clawed back as income rises.

Tax expenditures may be delivered in three ways: as tax credits, as deductions, or as exemptions. Tax credits are the primary design mechanism for delivering tax subsidies to family caregivers. This chapters explores some of the tax credits that might be understood as tax expenditures designed, at least in part, to compensate caregivers or recognize the value of their labour in some manner.

A tax credit is an amount that is subtracted from an individual’s tax payable. Tax credits come in two main forms: refundable and non-refundable. When tax credits are refundable, it means that an individual receives the value of the credit from the government whether or not she actually has taxes owing, as long as she files a tax return. This is how tax credits become a form of government subsidy. When tax credits are not refundable, an individual who does not have any or sufficient taxable income does not receive all or possibly any of the value of the credit.

III. Tax Credits Available to Family Caregivers

There are several tax credits that are relevant to the family caregiving context. The main credits stem from the Canadian *Income Tax Act*.²¹⁹ Parallel credits are available under the British Columbia *Income Tax Act*²²⁰ for several of the credits. Both the federal and the BC acts are discussed below. In later sections of this chapter tax measures existing in other provinces and countries are reviewed where they suggest alternative approaches.

A. Personal Credits

The following are personal tax credits available under the federal Act that may be relevant to taxpayers in relation to family caregiving activities.

(i) Wholly dependent person

This credit is available to a taxpayer who is not entitled to the spousal credit but who supports another person living in the taxpayer’s residence.²²¹ This credit is often called the “equivalent to spouse credit”. To be eligible, the taxpayer must meet the following criteria:

- (a) The taxpayer who is claiming the credit must maintain a self-contained domestic residence in which a dependent person resides.

²¹⁹ *Income Tax Act*, R.S.C. 1985 (5th Supp.), c.1, s. 81(1)(e), online: <<http://laws.justice.gc.ca/en/I-3.3/>> [Federal Act].

²²⁰ *Income Tax Act*, R.S.B.C. 1996, c. 215, online: <<http://www.bclaws.ca/Recon/content/site?id=freeside&xsl=/Recon/template/toc.xml/group-A/>> [BC Act].

²²¹ Federal Act, *supra* note 219 at s. 118(1)(a) and (b).

- (b) The taxpayer must not be in a marriage or common law relationship. Alternatively, if the taxpayer is married or in a common law relationship, they must neither live with, nor support, or be supported, by their partner or spouse.
- (c) The dependent person must be all of the following: related to the taxpayer; resident in Canada (unless the recipient is a child of the taxpayer); and “wholly dependent for support” on the taxpayer (or the taxpayer’s household).
- (d) The dependent person must be either: mentally or physically infirm; under 18; or the taxpayer’s parent or grandparent.

The taxpayer will only be eligible for this credit if the dependent person’s income is less than \$10,320.²²² This figure is the benchmark for 2009; as with all quoted amounts, it will change with indexing.

If a taxpayer claims this credit in respect of a person, they cannot claim the two following credits for that person.²²³ However, if the amount under either following credit would be greater on its own than the wholly dependent credit, the difference is added to the wholly dependent credit.²²⁴

Depending on the overall tax situation of the persons in question, a taxpayer may take advantage of the unused portion of this credit for which their spouse is eligible.²²⁵ In this sense the value of the credit is transferable.

(ii) In-home care of a relative [Caregiver Tax Credit]

Generally known as the Caregiver Tax Credit, this credit is available to taxpayers who have dependent relatives or parents living in the taxpayer’s residence.²²⁶ A taxpayer may claim the credit for each relative who meets the criteria and for whom the wholly dependent relative credit is not claimed. To be eligible the taxpayer must meet the following requirements:

- (a) The taxpayer who is claiming the credit must maintain a self-contained domestic residence in which the care recipient resides.
- (b) The care recipient must be either the adult child or grandchild (*i.e.* over the age of 18) of the caregiver, or the parent, grandparent, sibling, aunt, uncle, nephew or niece of the individual or of the individual’s spouse or common law partner. If not the child or grandchild of the caregiver, the care recipient must be a resident of Canada.

²²² KMPG LLP, *Provincial and Federal (Except Québec) Personal Non-refundable Tax Credit Rates and Amounts*, online <http://www.kpmg.ca/en/services/tax/taxratesPersonal.html> [KMPG].

²²³ Federal Act, *supra* note 219 at s. 118(4)(c).

²²⁴ *Ibid.* s. 118(1)(e).

²²⁵ *Ibid.* s. 118.8.

²²⁶ Federal Act, *supra* note 219 at s. 118(1)(c.1).

- (c) The care recipient must be dependent on the caregiver due to a mental or physical infirmity. However, if they are the parent or grandparent of the caregiver, they need only be aged 65 or older – no infirmity is required.

For 2009, \$4,198 is the maximum claimable amount,²²⁷ making the Federal credit worth \$629.70. The cared-for relative's income must be below \$13,726 for the taxpayer to claim the full credit. If the cared-for relative's income is between \$13,726 and \$17,745, the taxpayer may be eligible for a partial credit. If the cared-for relative's income exceeds \$18,534 no credit is available.²²⁸

(iii) Dependents

A taxpayer may claim this credit for each person she supports who has an infirmity.²²⁹ However, the wholly dependent credit cannot have been claimed in respect of the dependent. The specific requirements for eligibility for this credit are:

- (a) The dependent must depend on the taxpayer because of a mental or physical infirmity and be at least 18 years of age. Determining whether or not an individual is dependent on the taxpayer is a question of fact that will vary with the circumstances of each individual case.
- (b) The dependent must be related to the taxpayer. That is, the child or grandchild of the taxpayer or of the taxpayer's spouse or common-law partner; or the parent, grandparent, brother, sister, uncle, aunt, niece, or nephew of the taxpayer or the taxpayer's spouse or common-law partner.²³⁰

The maximum value of the credit is \$4,198 for 2009.²³¹ For the taxpayer to claim the full amount, the dependent's income must be below \$5,956.²³² If the dependent's income is slightly above \$5,956 the taxpayer may be eligible for a partial credit.²³³

(iv) BC Act – Personal Credits

Directly importing the relevant personal credit criteria of the federal Act, the BC Act includes tax credits that parallel those found in the federal Act. The values of the credits differ from those of the federal Act. This section lists the personal tax credits available under the BC Act. As with the federal personal credit system, personal credits are totalled and multiplied by the lowest tax rate. The BC credits are:

- (a) Equivalent to spousal credit;²³⁴

²²⁷ KMPG, *supra* note 222.

²²⁸ Canada Revenue Agency, T-1 General 2009, Federal Worksheet, online: <<http://www.cra-arc.gc.ca/E/pbg/tf/5000-d1/README.html>> [Federal Worksheet].

²²⁹ Federal Act, *supra* note 219 at s. 118(1)(d).

²³⁰ *Ibid.* s. 118(6).

²³¹ KMPG, *supra* note 222.

²³² *Ibid.*

²³³ Federal Worksheet, *supra* note 227.

²³⁴ BC Act, s. 4.3(1)(b). The taxpayer must be eligible for the Wholly Dependent Person Tax Credit under s. 118(1)(b) of the federal Act to be eligible for the BC Spousal Equivalent Credit. For 2009, this credit is worth

(b) In-home Care of Relative Credit;²³⁵ and

(c) Infirm Dependent Credit.²³⁶

B. Medical Expenses Credit

A tax credit is available for certain medical expenses of the taxpayer. A taxpayer may also be eligible for a credit for certain medical expenses of the taxpayer's dependents: the child or grandchild of the taxpayer or the taxpayer's spouse or common-law partner; or the parent, grandparent, brother, sister, uncle, aunt niece, or nephew of the taxpayer or the taxpayer's spouse or common-law partner.²³⁷ Therefore, a caregiver may be eligible for a credit due to medical expenses incurred by a relative in their care. This credit is calculated separately from other personal tax credits that may be available. The requirements for eligibility are the following:

- (a) The expense in question must be enumerated in the federal Act.²³⁸ Certain expenses related to attendant care and nursing home costs are included as medical expenses.
- (b) Medical expenses must be proven by receipts²³⁹ that are not included in determining another tax deduction for this year, not included in a tax deduction for another year, and not included by another taxpayer.²⁴⁰
- (c) The medical expense must have been actually or deemed to be paid during the relevant tax year, and cannot be reimbursable or reimbursed by another party.²⁴¹

Effectively, the credit is worth 15% of the total of the following.

The qualifying medical expenses of the taxpayer, their spouse, common-law partner and children over the lesser of \$2,011, or 3% of the taxpayer's income. Effectively, this limits the availability of the tax credit to medical costs of over \$2,011, unless the taxpayer's income is below \$64,200.00.

\$8,026. Based on the lowest provincial tax rate of 5.06%, the credit becomes worth \$406.12. See KMPG, *supra* note 222.

²³⁵ BC Act, s. 4.3(d). In terms of value, for 2009, the equation is \$13,881 minus the dependent's net income, up to a maximum of \$4,101 such that the maximum value of the credit is \$207.51. See KMPG, *ibid*.

²³⁶ BC Act, s. 4.3(e) BC Act. For 2009, the credit is worth \$4,101 and so the maximum value of the credit is \$207.51. *Ibid*.

²³⁷ Federal Act, *supra* note 219 at s. 118(6).

²³⁸ *Ibid*. s. 118.2(2). The list of qualifying expenses is meticulous and complex. For a full explanation of the list, see Interpretation Bulletin 519-R2, Paragraphs 18 – 71, online: <<http://www.cra-arc.gc.ca/E/pub/tp/it519r2-consolid/README.html>>.

²³⁹ *Ibid*. s. 118.2(1)(a).

²⁴⁰ *Ibid*. s. 118.2(1)(b) and (c).

²⁴¹ *Ibid*. at s. 118.2(3).

The qualifying medical expenses of a dependent of that taxpayer that exceed the lesser of \$2,011 and 3% of the dependent's income, up to a maximum claim of \$10,000.²⁴²

(i) BC Act – Medical Expenses Credit

If the taxpayer is eligible for a Medical Expenses credit under the federal Act, the taxpayer will be eligible for a further credit under the BC Act.²⁴³ The calculation for the BC credit is identical to the federal formula, except the indexed numbers are different. The threshold for medical costs is \$1,949 (or 3% of the taxpayer's income).²⁴⁴

C. Disability Tax Credit

A taxpayer who has a disability as defined by the Federal Act may be eligible for this tax credit. Below are the general guidelines for eligibility:

- (a) The taxpayer must have a “severe and prolonged” mental or physical disability – one that has lasted or is predicted to last over 12 months.²⁴⁵
- (b) That disability must impact the individual's ability to perform more than one “basic activity of daily living... but for therapy” that maintains a “vital function” of the individual. The therapy must total at least 14 hours a week and be performed at least three times a week. The definition of “therapy” is heavily limited.²⁴⁶
- (c) The following functions are listed as basic activities of basic living: conducting everyday mental tasks (including memory, and the cognitive set of problem-solving, goal setting and judgment); feeding or dressing oneself; communicating in a quiet setting; performing excretory functions; and walking.²⁴⁷
- (d) If the taxpayer can accomplish the above list, but with significant difficulty, then impairment in two of the above fields will constitute a disability for the purposes of claiming the disability credit.²⁴⁸
- (e) The disability must be confirmed in writing by an appropriate medical practitioner.²⁴⁹
- (f) The credit may not be claimed if the credit for an attendant or nursing home is claimed under s. 118.2 Medical Expenses credit.²⁵⁰

²⁴² KMPG, *supra* note 222.

²⁴³ BC Act, *supra* note 220 at s.4.5.

²⁴⁴ KMPG, *supra* note 222.

²⁴⁵ Federal Act, *supra* note 219 at s. 118.3(1)(a).

²⁴⁶ *Ibid.* s. 118.3(1.1).

²⁴⁷ *Ibid.* s. 118.4(1).

²⁴⁸ *Ibid.* s. 118.3(1)(a.3).

²⁴⁹ *Ibid.* s. 118.3(1)(a.2).

²⁵⁰ *Ibid.* s. 118.3(1)(c).

The credit is worth the lowest taxation rate multiplied by an indexed figure.²⁵¹ For 2009, that is 15% x \$7,196, for an actual credit of \$1,079.40.²⁵²

The disability tax credit can be transferred to a support person.²⁵³ The support person must either have claimed a personal tax credit under s. 118(b) or (d), or have been able to claim a personal credit if the support person was not married to the taxpayer. The transferrable portion is the amount by which the tax credit available exceeds the disabled person's income.²⁵⁴

If more than one person is entitled to a transfer of the credit (*i.e.* if the disabled person is dependent on two or more persons), the total claimed cannot exceed the amount that the person with the disability could initially claim.²⁵⁵

IV. Criticisms of Existing Tax Credits in BC and Canada

When the Federal Government introduced the Caregiver Tax Credit it was presented as a measure that would accord value to women's unpaid labour.²⁵⁶ Although ultimately named the In-home care of a relative credit, Bill C-72 retains the title Caregiver Tax Credit in its opening summary.²⁵⁷ A number of criticisms have been levied against this tax credit and related non-refundable tax credits potentially available to caregivers. Some of these criticisms relate to the nature of all non-refundable tax credits; others pertain to the eligibility requirements for the existing tax credits.

First, one of the problems from the perspective of compensating caregivers is that the value of existing credits is so low that they operate as a poor vehicle for recognizing the often intense and time-consuming demands of caregiving. For example, although the amount of each credit is subject to change due to indexing, the Caregiver Credit is worth \$627.70 in 2009. The combined value of the federal and provincial credit is \$837.21 in 2009. In this sense the credit becomes but a "symbolic gesture" in terms of valuing unpaid caregiving labour.²⁵⁸

Second, from the perspective of equity and income redistribution, another problem with the structure of the credit is its regressive nature. The Canadian income tax system to some extent reflects a commitment to equity. However, although the current tax system is progressive in that the existence of various tax brackets means higher income earners are

²⁵¹ *Ibid.* note 219 at s. 118.3(1)(c).

²⁵² KMPG, *supra* note 222.

²⁵³ Federal Act, *supra* note 219 at s. 118.3(1)(2).

²⁵⁴ *Ibid.* s. 118(2)(c) and (d).

²⁵⁵ *Ibid.* s. 118.3(3).

²⁵⁶ Lisa Philipps, "Tax Law and Social Reproduction: The Gender of Fiscal Policy in an Age of Privatization" in *Privatization, Law, and the Challenge to Feminism*, Brenda Cossman & Judy Fudge, eds. (Toronto: University of Toronto Press, 2002) 42 at 63 [Philipps, "Tax Law"].

²⁵⁷ Bill C-72, *An Act to amend the Income Tax Act*, 1st Sess., 36th Parl., 1999, (assented to 17 June, 1999).

²⁵⁸ Paul Kershaw, "Beyond the Spousal Tax Credit: Rethinking Taxation of Dependency and Caregiving (Again!) in the Light of the Law Commission of Canada Report" (2002) 50(6) *Canadian Tax Journal* 1949 at 1959 [Kershaw].

impacted by higher rates of taxation, tax credits tend to provide greater benefit to higher income earners. For only a person with sufficient income to result in tax liability can take advantage of a non-refundable credit. In this sense, the non-refundable nature of the credit fails to recognize that caregivers are often lower income earners, producing the “anomalous result that only 1% of tax filers can use the credit, and 75% of these are male.”²⁵⁹ Thus in practice, although women are disproportionately the majority of caregivers, the Caregiver Tax Credit has been claimed primarily by men and is completely inaccessible to low income caregivers.

As a result of the above dynamic, where it is available, rather than improve the financial independence of a low income caregiver, the credit effectively reduces the tax liability of a spouse or other co-resident family member, thereby undermining independence further and reinforcing the breadwinner/caregiver dyad that underlies much public policy. In other words, the credit “relies on the traditional reasoning that the primary caregivers will be looked after privately by male breadwinners and legitimizes policy makers’ assumptions that public health care, elder care, and other services can be replaced by women’s unpaid work.”²⁶⁰ This approach also presumes that caregivers do not maintain an ongoing labour force attachment.

Third, one of the most problematic and in some ways ironic aspects of the Caregiver Tax Credit is that it is not structured to deliver the benefits to the person engaged in the caregiving labour. Rather, it is available to any taxpayer who resides with the low-income dependent person receiving care and meets other specific non-caregiving criteria. In terms of eligibility requirements, the tax credit does not require any caregiving work. The requirements are attached to the characteristics of the recipient of care; they include dependence, co-residency, infirmity, familial relationship and a reduced income. There is thus a disconnect between the ostensible purpose of the measure and its function as manifest in the eligibility criteria. The reduction in value of the Caregiver Tax Credit if the care recipient earns an income reinforces the notion that the credit is designed to recognize the financial support of care recipients rather than the provision of caregiving labour.²⁶¹ The Wholly Dependent Person Credit and the Dependent Credit are based on similar criteria; however, from a public policy perspective, the disconnection from caregiving labour is less problematic because the purpose of these credits is more clearly related to the costs of supporting financially dependent family members.

Fourth, the relationships of dependency recognized under the eligibility criteria for the Caregiver Tax Credit imports a narrow definition of family that includes only biological and conjugal relations of the caregiver and those of her spouse or common-law partner, as well as people who reside within the caregiver’s residence, excluding relationships of care between people such as friends and other connections akin to family. Permitting greater self-selection of qualifying relationships of dependency would result in more equal treatment of diverse family structures and relationships of intimacy and care. As the Law Commission of Canada concluded in its review of various legislative provisions that recognize

²⁵⁹ Richard Shillington, *Policy Options to Support Dependent Care* (Nova Scotia: Healthy Balance Research Program, 2004) at xii.

²⁶⁰ Philipps, “Tax Law”, *supra* note 256 at 65.

²⁶¹ Kershaw, *supra* note 258 at 1959.

relationships of dependency, if the purpose of the Caregiver Tax Credit is to recognize the value of unpaid caregiving labour, there is “no justification for limiting entitlement to [this] credit to persons with dependants who are relatives, or to dependants with whom a taxpayer lives.”²⁶²

A tax measure that is designed to compensate caregiving should recognize the socially useful care that individuals provide even in the absence of a familial connection. This is the approach the province of Manitoba has taken by making the credit available regardless of a family relationship. The savings to the health and welfare systems are no less real because the care recipient is not related to the caregiver by blood or conjugality.²⁶³ This also appears to be the direction employment legislation is now taking in terms of addressing caregiving responsibilities. Although early employment leave provisions similarly suffered from an overly narrow definition of family, a more expansive approach to defining family is now taken in most jurisdictions in terms of eligibility criteria for compassionate care leave. In many Canadian jurisdictions, leave is available to care for any individual a person considers to be “like a close relative.”²⁶⁴

Ultimately, although tax policy remains the primary vehicle in BC and Canada for compensation of the costs of caring for a family member with an illness or disability, no federal or BC tax measure is directly linked to caregiving labour. Financial dependency of a person with disabilities is the focus of each tax incentive and the people who benefit from existing tax credits relevant to caregiving are higher income families. In this sense tax policy does little to address the financial circumstances of family caregivers who require income support to sustain caregiving. With this in mind, the remaining sections of this chapter consider potential revisions of the tax system that would render it more responsive to the problem of compensating caregivers and valuing caregiving labour, and begins to explore the larger policy question of whether tax policy is the appropriate route for addressing the poverty of family caregivers.

V. The Refundable Caregiver Tax Credit: An Option for Reform

Literature on family caregiving almost universally advocates for converting existing tax credits into refundable tax credits in order to render them more meaningful and accessible to low-income family caregivers. Refundable tax credits are applied at the end of the calculation of taxable income. They are able to result in a payment from the government to the “taxpayer” where taxable income is very low. In this respect a refundable tax credit is arguably a kind of social assistance payment administered by the government through the income tax system. Refundable tax credits are the only tax measure that can result in a payment to individual tax filers with no tax liability.²⁶⁵ They are thus the most appropriate tax instrument for targeting people with lower incomes.

²⁶² Law Commission of Canada, *Beyond Conjugality*, *supra* note 217 at 73.

²⁶³ Kershaw, *supra* note 258 at 1961.

²⁶⁴ See the BC *Employments Standards Act*, *supra* note 74 at s.52.1(5)(b) and the Employment Insurance Regulations, *supra* note 92 at s.41.11(1).

²⁶⁵ Philipps, “Disability, Poverty, and the Income Tax: The Case for Refundable Credits” (2001) 16 *Journal of Law and Social Policy* 77 at 90 [Philipps, “Disability”].

In BC and Canada, the Caregiver Tax Credit and related credits are non-refundable. However, in two provinces the caregiver credit is now refundable. In Quebec there exist two refundable tax credits for caregivers: one credit allows tax-filers to claim up to \$1,033 for each eligible relative, and a second tax credit, worth up to \$1,560, is for respite for caregivers.²⁶⁶ The respite credit allows the tax-filer to claim up to 30% of the total expenses incurred for respite care of a person with a significant disability. These are progressive credits and their value is reduced for higher income families.

Manitoba recently introduced the refundable Primary Caregiver Tax Credit, which allows tax-filers to claim up to \$1,020 if they provide sufficiently comprehensive care.²⁶⁷ Like the Quebec credit, the full credit may be claimed in respect of more than one care recipient: Manitoba caregivers can claim the credit with respect to up to three care recipients, including the broad category of family and friends. This credit became available for this first time in respect of 2008-2009 return, and, as will be discussed in the following section of this chapter, it is notable in that eligibility criteria are expressively linked to caregiving labour.

In the United States, tax law is also a major aspect of caregiving policy; however, the approach is largely to refund elder and childcare expenses. The federal Child and Dependent Care Credit, available to employed people with dependents (defined to include children, siblings, parents and other family members) is designed to offset dependent care expenses that enable the caregiver to continue to work.²⁶⁸ A number of states offer additional benefits with a similar purpose.²⁶⁹ Like the federal Dependent Care Assistance Program, the federal Child and Dependent Care Credit is a tax incentive intended to help the taxpayer to maintain labour force attachment and earning power by assisting her to pay for dependent care provided by a third party; it is not responsive to the circumstances of the family caregiver who forgoes employment income in the interests of engaging in caregiving herself. Other US tax credits are generally not focussed on caregiving labour, nor are they refundable. The exception is the state of California, which has created a refundable tax credit for dependent care.²⁷⁰

Outside North America, refundable tax credits for caregivers are also relatively uncommon. As is the case in the US, the purpose of existing tax incentives is generally to allow caregivers to deduct a portion of caregiving related medical expenses.²⁷¹ However, this approach must be understood in the context of European and Australian caregiving policy more broadly. As will be discussed in greater detail in Chapters 6 and 7, in these countries caregiving labour is recognized more directly through direct stipends and pensions, rather than indirectly through tax expenditures.

²⁶⁶ *Taxation Act*, R.S.Q.C., c.I-13, s.1029.8.61.61.

²⁶⁷ Manitoba Finance, Primary Caregiver Tax Credit, online <http://www.gov.mb.ca/finance/tao/caregiver.html>.

²⁶⁸ *Internal Revenue Code*, 26 U.S.C. §21.

²⁶⁹ See for example, Dependent Care: Tax Assistance, Vermont at V.S.A. §5828c. This credit is technically refundable but designed to reimburse the taxpayer for child or dependent care expenses.

²⁷⁰ Cal Rev & Tax Code § 19354.

²⁷¹ For example, the Netherlands: *Act of Income Tax 2001 (Wet Inkomstenbelasting 2001)* cited in NAC Netherlands, *supra* note 114, online:

<<http://www.caregiving.org/intcaregiving/netherlands/netherlands.htm>>. This also appears to be the tax approach taken in Germany and France.

Refundability raises the issue of whether the ideal solution is to add refundability to the existing tax credits that benefit caregivers or create a distinct refundable tax credit for family caregivers.²⁷² The former approach is more straightforward, calling for less complex reform of federal and provincial income tax law;²⁷³ however, it ignores the fundamental problem that no existing federal tax credit is designed to specifically support family caregiving activity or recognize caregiving labour.

VI. Tax Incentives and Caregiving Labour

The new Manitoba Primary Caregiver Tax is both refundable and attached to the labour of a caregiver. It uses the language of caregiver rather than dependency, and defines a primary caregiver as follows:

"primary caregiver", in relation to a taxation year, means an individual who

- (a) is resident in Manitoba at the end of the taxation year;
- (b) without any remuneration other than the tax credit under this section, personally provides care or supervision to a qualified home care client;
- (c) is designated in the client's official home care plan as the client's sole primary caregiver for the purpose of the tax credit under this section; and
- (d) has acknowledged in writing to the responsible regional health authority, in a form acceptable to that authority, his or her role as the client's primary caregiver. (« soignant primaire »).²⁷⁴

The credit is available in respect of individuals requiring daily care, and the value of the credit is calculated by multiplying the base rate by the proportion of days of the year for which the caregiver provided care.²⁷⁵ Manitobans were able to claim the Primary Caregiver Tax Credit in their 2009 return if they had been providing care since October 1, 2008.

In terms of the relationship to caregiving labour, the eligibility requirements dovetail with the provincial home care program guidelines. The care recipient must be assessed at Level 2 or higher and the client must complete a form designating the family caregiver as her sole primary caregiver.²⁷⁶ Caregiving is defined rather broadly. Level 2 care and above is characterized as follows:

Levels 2, 3 and 4 mean that the person requires care and assistance on a daily basis in at least three of the following categories due to significant physical, cognitive or behavioral barriers:

- Assistance or supervision with routine activities like shopping, meal preparation, laundry, or transportation;

²⁷² Lisa Philipps raises this problem in relation to the taxation of people with disabilities, but the same dilemma exists with respect to the design of a caregiver tax credit. See Philipps, "Disability", *supra* note 265 at 105.

²⁷³ *Ibid.* at 107.

²⁷⁴ *Income Tax Act*, S.M. 1988, c. I10, s. 511(1).

²⁷⁵ *Income Tax Act*, S.M. 1988, c. I10, s. 511(2).

²⁷⁶ Manitoba Finance, *supra* note 267.

- Assistance or supervision with personal care tasks like bathing, eating, grooming and hygiene, dressing and medication;
- Arranging for supports and community access like recreational activities, support groups, counseling, or medical appointments; or
- Requiring regular and sustained advice, assistance in decision-making or emotional support.²⁷⁷

If the care recipient is not already a home care client then receipt of the tax credit requires an assessment by the regional health authority under the tax credit's *Level of Care Equivalency Guidelines*.²⁷⁸

The Manitoba approach is in stark contrast with other income tax measures that target the family members of adults with disabilities. In the rest of North America, where tax expenditures appear to form a significant component of caregiving policy, income tax incentives that could benefit caregivers use the language of “dependency” over care, and dependency is defined in monetary terms, by virtue of the low income of the care recipient or the amount of financial support the taxpayer provides to the care recipient.

If the caregiver credit is to be conceived as a measure that is attached to the labour of family caregivers, as according value to caregiving labour in more than symbolic terms, or compensating family caregivers for a loss of employment income, then the Manitoba approach is worth consideration. However, then amount of the credit must be reconsidered with this goal in mind. In Manitoba and Quebec the caregiver tax credit is worth more than in other provinces – \$1,020 and \$1,033, respectively, compared with \$209 in BC – but even these higher numbers may be low in relation to the value of the labour of family caregivers in terms of lost employment earnings, loss of freedom and compromises in their own health and the corresponding benefit to other family members, the health care system and the province.

VII. Reflections on the Income Tax Approach to Compensation

A key question is whether the tax system is the ideal instrument for addressing the compensation of caregivers. One of the reasons tax is an effective vehicle for the administration of benefits and income redistribution is that there are relatively low administration costs associated with this method of benefit delivery.²⁷⁹ This route relies on the existing personal income tax return and the government infrastructure associated with tax filing. In the digital age, application is increasingly simplified from the perspective of tax-filers, insofar as the process requires no attendance at an office. However, the strength of this method depends on the faith one has in the effectiveness of the tax system and its ability to administer caregiving specific benefits – a purpose for which the system was never intended.

²⁷⁷ Manitoba Finance, *supra* note 267. Online at <<http://www.gov.mb.ca/finance/tao/faq.html - question20>>

²⁷⁸ Manitoba Finance, Primary Caregiver Tax Credit, Level of Care Equivalency Guidelines, online <<http://www.gov.mb.ca/finance/tao/caregiver.html>>.

²⁷⁹ Philipps, “Disability”, *supra* note 265 at 92.

The tax method keeps caregiving and any income support provided by the government invisible. Although the federal government has begun to publish an accounting of the revenue forgone with respect to various tax expenditures,²⁸⁰ tax expenditures are not generally conceived as social programs. This invisibility may be a strength or a weakness of the approach. It is a strength in that it insulates the program from public criticism. As Lisa Philipps writes, “[p]olitically tax-based programs are often more viable than direct spending initiatives because they are widely, if wrongly, perceived to involve less government interference in the economy.”²⁸¹ Whereas welfare programs are characterized as government spending to address poverty, and often criticized as expensive and unsuccessful interventions utilizing public funds, tax measures are not considered public expenditures in the same manner, even though they impact significantly on government revenue.

However, the invisibility of social spending to support caregiving is also part of the longer and larger history of the invisibility of unpaid labour in Canada. Although invisibility may appear to be of strategic value in a climate of fiscal restraint and from within a culture that values independence over community and interdependency, it may be a problematic direction to recommend in terms of law reform. Indeed this invisibility is a problem this report seeks in part to address by raising the issue of supporting caregivers and recognizing the value of their labour.

A related problem is that delivering financial benefits to caregivers through income tax means that access to benefits requires a certain amount of tax literacy. Just as the tax approach obscures expenditures in relation to caregiving from public scrutiny, it also adds a layer of inaccessibility. Social assistance and health programs are the more intuitive sites of financial assistance for individuals seeking benefits for supporting people with disabilities, and thus people are more likely to seek support from those government agencies.

At the same time, addressing caregiving as part of the income tax framework has the conceptual advantage of connecting income replacement of caregivers to income. It divorces caregiver support from the welfare system, which is stigmatized in a culture that values independence, financial autonomy and paid employment.

Another problem in terms of timely financial support is that tax measures provide slightly delayed compensation for the short-term financial consequences of caregiving. Compensation is delayed because the vehicle for compensation, the personal income tax return, is generally filed annually, at which time compensation is realized. This delay undermines the system’s capacity to deliver timely assistance to very low-income earners. However, a refundable tax credit could provide more timely compensation depending on the intervals of payment. The child tax benefit could serve as a model.

In addition, the income tax approach may render benefits largely inaccessible to First Nations people living on reserves. Under the *Indian Act*,²⁸² the income that a person who

²⁸⁰ See Department of Finance, *Tax Expenditures and Evaluations 2008*, online: <<http://www.fin.gc.ca/taxexp-depfisc/2008/taxexp08-eng.asp>>

²⁸¹ *Ibid.*

²⁸² *Indian Act*, R.S.C. 1985, c. I-5, s. 87.

meets the definition of Indian under the Act earns on reserve is exempt from federal tax.²⁸³ Consequently, First Nations people in these circumstances may not have any or sufficient taxable income, and thus may not receive all or any of the value of a federal tax credit. Further, there may be no motivation to file a personal income tax return, and in this sense any tax credits may be inaccessible. Tax thus becomes a poor vehicle for assisting this community of caregivers. An argument could therefore be made that the current method of delivery of indirect financial support to caregivers discriminates against First Nations people living and working on reserve.

Insofar as it operates as a disincentive to paid employment, the concept of monetizing care labour through tax policy also presents the danger of ghettoizing caregivers into positions that are not attached to other benefits, such as employment insurance and pensions.²⁸⁴ However, this problem could be addressed through other reform measures that may be required if public policy is to become responsive to the long-term income security of family caregivers (see chapter 7). As one critic has argued with respect to women and tax credits:

A refundable tax credit to compensate unpaid social reproduction labour might enhance women's economic equality and autonomy, but only if it is designed far more carefully than existing proposals. Certainly the credit would have to be substantial, at least approaching the real value of the work being compensated, and it should be conceived as 'essential social infrastructure for the household economy, rather than as 'welfare handouts'.²⁸⁵

VIII. Conclusion

If the goal of the federal Caregiver Tax Credit is to value or recognize the unpaid labour of family caregivers, then this legislative provision completely misses its target. As eligibility is linked to co-residency, disability status and financial dependency rather than caregiving labour specifically, this measure compensates for financial dependency. Financial dependency represents at most one aspect of a caregiving relationship, and as this study and many others point out, caregivers themselves are often in a financially difficult position.²⁸⁶ As long as the credit is non-refundable, it will remain inaccessible to low-income caregivers, arguably the group most in need of support. These characteristics of the tax credit may not make public policy sense in the context of current socio-demographic trends and they highlight potential areas for law reform.

As a result of these and other problems with both the Caregiver Tax Credit and income tax measures more broadly, some sources recommend delivering financial assistance to family caregivers directly, outside the tax system.²⁸⁷ This approach is explored in the next chapter.

²⁸³ Canada Revenue Agency, Information for Status Indians, online: <<http://www.cra-arc.gc.ca/brgnls/stts-eng.html#heading1>>.

²⁸⁴ Kathleen Lahey, *Women and Employment: Removing Fiscal Barriers to Women's Labour Force Participation* (Ottawa: Status of Women Canada, 2005) at 26.

²⁸⁵ Philipps, "Tax Law", *supra* note 256 at 69.

²⁸⁶ Abord-Hugon & Romanin, *supra* note 25; Canadian Home Care Association, *supra* note 26; HRSDC, *supra* note 26; Rajnovich et al, *supra* note 26; *Creating Strategies to Support Canada's Family Caregiver: 2007 and Beyond*, a discussion paper for a consultation meeting hosted by the J.W. McConnell Family Foundation (Ottawa: J.W. McConnell Family Foundation, 2007).

²⁸⁷ See *Beyond Conjugalinity*, *supra* note 217, at 72-74.