

CHILD SUPPORT OR SUPPORT FOR CHILDREN? RE-THINKING "PUBLIC" AND "PRIVATE" IN FAMILY LAW

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"Who has the power to define social problems? Whose definitions of problems prevail? What sort of social response will be made to those problems?"¹

These provocative questions introduced a book of essays in the late 1980s in Britain. As the editor's introduction suggested, social problems are identified when "private griefs" that are experienced by individuals are transformed into "public sorrows" because they are experienced more widely. Thus, public sorrows are recognized when "[individual] experience expands to be the common experience of many, even the majority of, individuals".² Moreover, whereas solutions to private griefs are considered the responsibility of individuals who are experiencing the problems, public sorrows demand solutions on the basis of societal responsibility for them. As the essays demonstrated, however, exactly how and why particular private griefs become transformed into public sorrows are puzzling questions, in part at least depending on who has the power to define social problems and to implement policy responses to them.

Although this collection of essays focused on changes in social and political ideas about the role of the British welfare state, the same questions are useful in examining social policy debates in Canada in the 1990s. In relation to recent proposals for reforming the law of child support, for example, individuals' concerns about child support awards have been transformed into a more widespread social problem. For many separated custodial parents, inadequacy in levels of child support awards and difficulties in collecting them from recalcitrant payers have been experienced as private griefs for a long time.³ Recently, however, child support has arguably

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¹M. Loney, ed., *The State or the Market: Politics and Welfare in Contemporary Britain*, (London: Sage Publications, 1987) at 7.

²N. Manning, "What is a Social Problem?" in *ibid.* at 8.

³For an excellent review of the literature documenting the problems, see D. Pask, "The Effect on Maintenance of Custody Sharing" (1989) 3 C.J.W.L. 155. For an account of the limitations of the legal system in ensuring adequate child support for custodial parents, see N. Blown & S. Milliken, "The Failure of the Legal System to Protect the Economic Rights of Children" (1989) 7 Can. J. Fam. L. 366.

become a public sorrow, with a number of different legal and policy responses including more effective enforcement systems in the provinces⁴ and the 1996 federal proposals for legislatively-defined child support guidelines.⁵ These developments offer an interesting opportunity to identify exactly how and why private griefs that have so long been associated with child support are being re-defined now as public sorrows.

The process of re-defining child support as a public, rather than private, matter for concern demonstrates how the framework for the debate may construct both the problem and the solution. In this lecture, I suggest that governments with the power to define child support as a social problem have constructed the problem as one of “deadbeat dads” and the corresponding solution as a package of mandatory guidelines and more effective enforcement measures. By constructing the child support debate in this way, much critical attention has been focused on complex and highly technical aspects of the proposed solution — child support guidelines — with almost no attention at all directed to the more fundamental question: whether defining the problem as deadbeat dads accurately reflects the dimensions of this social problem as a public sorrow. Although the data about child support awards clearly demonstrate the hardships experienced by custodial parents (frequently mothers) as a result of inadequate awards and late or non-existent payments by payers (frequently fathers), there is less information available about the reasons for fathers’ non-payment. Undoubtedly, some fathers fail to make child support payments for no good reason. However, unless we conclude that all fathers fall into this category, a definition of the problem as deadbeat dads oversimplifies a more complicated problem that is not being fully addressed by the solutions being proposed. As Nick Manning has argued, “then policies based on an understanding of the issues only at the level of appearance will fail”.⁶

At a more fundamental level, moreover, the choice by governments to define the problem of child support in terms of the failure of deadbeat dads to provide for their children constructs this social problem so that there appears to be no overall societal responsibility for the economic well-being of children whose parents have separated.

⁴For an overview of the problems, see F. Steel, “Maintenance Enforcement in Canada” (1985) 17 *Ottawa L. Rev.* 491. See also Y. Atuobi-Danso & H. Brownstone, “Family Support Enforcement: Dawn of a New Era” (1993) 15 *Advocates’ Q.* 91; and R. Langer “Post Marital Support Discourse, Discretion and Male Dominance” (1994) 12 *Can. J. Fam. L.* 67.

⁵See Canada, *Background: New Child Support Strategy* (Ottawa: Department of Justice, March 1996). Child support guidelines were recommended by the Federal/Provincial/Territorial Family Law Committee in *Report and Recommendations on Child Support* (Ottawa: Department of Justice, January 1995). For a critique of the policy-making process, see E. Zweibel, “Child Support Policy and Child Support Guidelines: Broadening the Agenda” (1993) 6 *C.J.W.L.* 371.

⁶Manning, *supra* note 2 at 21.

Pointing to deadbeat dads as the problem effectively “re-privatizes” this public sorrow, masking the state’s abdication of responsibility for children. Instead of recognizing a collective responsibility for child poverty in Canada, governments have assigned blame to deadbeat dads, assuming only the limited responsibility of enforcement and adopting harsh measures to ensure that these private parental obligations are met. In this way, although it appears that the private griefs of child support have been re-defined as public sorrows, the solutions offered by the child support guidelines package will not really transform the continuing reality of child support as private griefs. In terms of the economic well-being of Canadian children, the problem of child support has not been transformed into support for children.

In addition to these concerns about the way that the problem of child support has been constructed in public debates, a focus on the process of its definition shows how difficult it is, in terms of strategy, to confront definitions adopted by those with the power to define social problems. In the context of child support, the definition of deadbeat dads as the problem has all the advantages of simplicity, moral authority, and apparently clear solutions. To suggest that the problem is more complicated and needs more complex solutions is at once a more difficult and more open-ended task. More significantly, such a suggestion risks being misunderstood as supporting the arguments of fathers who do not want to pay child support — for any reasons whatever — and as unsupportive of the real needs of custodial mothers and their children. Indeed, the enormity of these risks, especially for someone who has contributed to public policy debates about the feminization of poverty after divorce for many years, represents a strategic disadvantage, one that I think has contributed to the relative lack of attention to the broader policy implications of the federal proposals concerning child support. In this way, the power to define the social problem of child support and appropriate solutions has been used strategically to narrow the parameters of public critique of these proposals.

In this lecture, I examine how the problem of child support has been constructed in Canada so that the package of child support guidelines appears to be an obvious and appropriate solution. By expanding the context of the debate, the lecture focuses on some aspects of the problem that have been rendered invisible, and some additional issues which would need to be addressed if the private griefs of child support were to be transformed into public sorrows and support for children. In examining the process of defining the social problem of child support, the lecture raises questions about the discourse of privatization as both principle and strategy.

Child Support: Constructing the Problem and the Solutions

The phrase “deadbeat dads” has become widely used in recent years, especially in media stories about child support payments. It has increasingly been adopted by governmental representatives as well. For example, the media report announcing the federal proposals in April 1995 stated: “Parents trying to avoid child support

payments will find it much tougher to hide from their obligations under an ambitious plan to be unveiled by Ottawa and the provinces. The offenders are [97%] 'so-called deadbeat dads'.⁷ Similarly, Ontario's Premier responded to a proposed federal-provincial programme designed to track debtors using the *Income Tax Act* by suggesting a need to target deadbeat dads as the highest priority: "when you start using the *Income Tax Act* as an enforcement mechanism for repayments, the very top priority ought to be deadbeat parents that are not making their support payments right now to spouses and as you know in many cases that's deadbeat dads."⁸

Both these messages, like others in recent years, convey strongly the importance and magnitude of the problem of non-payment of child support in Canada, while at the same time defining the problem as one of deadbeat dads and the solutions in terms of better arrangements for ensuring that these parental obligations are met. Yet, in spite of the simplicity of these explanations, some research about child support suggests that the issue may be more complicated.

The problem of child support first became apparent in the context of a rising divorce rate in Canada after the enactment of the federal divorce legislation in 1968. The legal principles entitling children to continuing financial support from their parents after divorce were outlined in *Paras v. Paras*.⁹ The basic principles were that the level of child support should be set so as to maintain a child at the pre-divorce standard of living and that the costs of achieving this standard of financial support should be shared by the parents according to their respective incomes. These legal principles conform to the requirements of section 15(8) of the *Divorce Act*, 1985, now in force.¹⁰ Yet, in practice, the *Paras* objectives have not always been achieved because of the "obvious disjuncture between the principles articulated and the actual outcomes in terms of the quantum of support. ... The end result is that in

⁷T. Harper, "Dodgers of Child Support Targeted" *Toronto Star* (27 April 1995) A1. "Sources" were quoted as suggesting a need for tougher enforcement measures to ensure child support payments: "We believe we can make it harder to evade making payments There's a willingness out there to be hard on them."

⁸W. Walker, "Hit Deadbeat Dads with Tax Harris Says" *Toronto Star* (15 August 1995) A8.

⁹[1971] 1 O.R. 130 (C.A.). The court stated the principles at 134-135:

Since ordinarily no fault can be alleged against the children which would disentitle them to support, the objective of maintenance should be, as far as possible, to continue the availability to the children of the same standard of living as that which they would have enjoyed had the family break-up not occurred ...

Ideally, the problem could be solved by arriving at a sum which would be adequate to care for, support and educate the children, dividing this sum in proportion to the respective incomes and resources of the parents and directing the payment of the appropriate proportion by the parent not having physical custody.

¹⁰S.C. 1986, c. 4.

the majority of child support cases awards are not set at levels which will meet the *Paras* standard".¹¹ In her review of reported decisions under the *Divorce Act*, 1985 to mid-1989, moreover, Carol Rogerson concluded:

With respect to child support, the problem continues to be, as it has been in the past, not with the basic principles of child support but with their implementation. Courts assert that children should, to the extent possible, be guaranteed the standard of living of the pre-divorce family and that the amounts necessary to accomplish that objective should be shared by the parents in proportion to their respective incomes. However, in most cases the amounts transferred do not ensure that While the data from the cases reviewed suggests that child support awards may be somewhat higher than they were in the past, in many cases the levels are still not adequate. In cases where mothers have custody, children continue to experience lower standards of living than their non-custodial fathers, and custodial mothers are left bearing a disproportionate share of the costs of child-rearing.¹²

As Rogerson's review suggests, the overall pattern of child support reveals frequent departures in practice from the *Paras* principles in setting awards and clear discrepancies between the financial circumstances of children and their non-custodial parents. This research data is important because it shows how the legal principles have not worked well in practice. Moreover, higher levels of awards would appear to be more consistent with *Paras* and might reduce the discrepancy between the incomes of children's households and those of payer spouses.

However, it is important to consider some of the inherent limitations in this data. As Rogerson herself was careful to explain, her conclusions were based on a review only of reported decisions involving initial applications for, and applications to vary, spousal and child support. Since reported decisions constitute only a small proportion of all divorce cases in Canada, Rogerson expressed caution about an over-reliance on the outcomes in these cases as representative of all child support awards,¹³ noting

¹¹C. Rogerson, "Judicial Interpretation of the Spousal and Child Support Provisions of the *Divorce Act*, 1985 (Part II)" (1991) 7 *Canadian Family Law Quarterly* 271 at 274.

¹²C. Rogerson, "Judicial Interpretation of the Spousal and Child Support Provisions of the *Divorce Act*, 1985 (Part I)" (1991) 7 *Canadian Family Law Quarterly* 155 at 165.

¹³As Rogerson stated, *ibid.* at 158-159:

Reported cases constitute only a very small subset of divorce cases; in most divorce cases issues of corollary relief are settled by the parties rather than litigated, and even of those cases which are litigated, only a small percentage are reported. Reported cases may be atypical in a number of ways, including the income levels of the parties and the degree of conflict between them, and these factors may affect support outcomes. It is also possible that reported cases are reported for the very reason that they are atypical or unusual.

On the other hand, as Rogerson noted (at 159), it is reported decisions that often establish legal principles used in negotiating spousal and child support so that "one would expect reported cases to exert a significant influence in shaping support outcomes". For additional data, see Canada, Department of Justice, *Evaluation of the Divorce Act, Phase II: Monitoring and Evaluation* (Ottawa: Department of Justice, May 1990).

especially that reported cases under the *Divorce Act* probably involved parents with income levels that are higher than average.¹⁴ In light of this limitation in the reported case sample, one that may occur quite frequently in family law, Rogerson's suggestion about using caution in drawing general conclusions about the impact of child support awards is important, perhaps particularly for separated parents who are poor.¹⁵

If, for example, reported cases generally involve litigants with higher than average income levels, the relative disparity that Rogerson identified between the children's household and that of their non-custodial parent may — or may not — be an accurate picture of the circumstances for other, poorer families at separation. In this way, the construction of the problem as one of deadbeat dads may be inaccurate because it may be over-inclusive, identifying not only those fathers who could afford to pay increased child support and who will not do so, but also those who may have few or no resources and are thus not able to make or increase child support payments. Policy decisions that apparently ignore limitations in the data, lumping together those who won't pay child support with those unable to do so, confirm the need to examine carefully "who has the power to define" child support as a social problem.

In addition to Rogerson's study, other research about the impact of parental separation on the economic well-being of children has tended to confirm a disparity between children's households and those of their non-custodial parents, regardless of overall income levels. For example, Ross Finnie's longitudinal study of income tax returns for couples who divorced in 1982 showed that the incomes of both parents declined in the year of divorce, although women's incomes declined about 2.5 times further than men's, in relation to levels of income in the year of divorce.¹⁶ After three years, Finnie's data showed that men had almost achieved their pre-divorce income levels, and that although women's income levels had also increased, they had returned on average to only three-quarters of their pre-divorce levels. In addition to these comparisons, Finnie's data showed that more women than men had incomes in the transition year (1982) which placed them in poverty and that some women remained in poverty in subsequent years. Although there were some men in poverty

¹⁴Rogerson suggested that applications under the *Divorce Act* which must be decided in superior courts may differ, in terms of parents' income levels, from those decided in provincial courts under provincial legislation. Rogerson, *supra* note 11 at 158.

¹⁵For an analysis of the extent to which family law principles may be shaped by facts in cases involving litigants with relatively higher incomes and then applied to all family law claimants without regard to their differing economic circumstances, see M.J. Mossman, "'Running Hard to Stand Still': The Paradox of Family Law Reform" (1994) 17 Dalhousie L.J. 5 at 17ff.

¹⁶R. Finnie, "Women, Men and the Economic Consequences of Divorce: Evidence from Canadian Longitudinal Data" (1993) 30 Canadian Review of Sociology and Anthropology 205. The research used the Longitudinal Administrative Database constructed from Canadian tax files to track a sample of adults from 1982 to 1986.

after separation as well, other men who were poor before separation were no longer poor thereafter.

Finnie's research results clearly identify a "gender gap" in the experience of divorcing couples in Canada. However, he also identified some possible explanations for such a gap, explanations that take account of factors beyond the divorce process itself. Where a woman had earned income prior to divorce, for example, Finnie noted that the post-divorce income of the custodial mother's family was very close to the level of the woman's reported income before divorce, concluding that one factor contributing to the gender gap was women's relatively lower earnings in the paid workforce, in contrast with men's. In this way, women's poverty was "masked" within marriage and more clearly revealed by divorce.¹⁷ Although he also identified low levels of spousal and child support as key factors underlying the patterns of post-divorce disparity between children's households and those of their non-custodial parents, commending proposed governmental policies to reform current child support arrangements, he also identified a need to consider these reforms in relation to broader policies of economic support for poor families, including social assistance policies.¹⁸

Finnie's interpretation of this research data is interesting. Since the economic consequences of divorce are relatively more severe for women than for men, he concluded that women may be more constrained about choosing to end their marriages, in contrast with men, and that while divorce may reduce women's overall income levels, it may nevertheless increase the degree of their control over available income. On this basis, he stated:

[These discussions] 1) imply that some of the concern we feel towards the difficult position of women (and their children) in divorced situations should actually be directed towards women still in marriages, and 2) highlight the limitations of conventional measures of well-being based on measured family income, and draw attention to issues of intra-family distributions of income and well-being generally.

¹⁷This argument has also been made in the U.S. context. See M. Fineman, *The Illusion of Equality* (Chicago: University of Chicago Press, 1991).

¹⁸Unfortunately, the database used in Finnie's research did not take account of child support payments by non-custodial spouses, but the data included unknown amounts of child support in the income of custodial spouses. That is, the data reflected payers' income levels without regard to deductions for child support payments. However, Finnie argued that these omissions would not alter the general disparity between post-divorce households, even though it might reduce the gap a little. In the United States, empirical research by Maccoby and Mnookin also confirmed the continuing disparity between households after separation, concluding that most fathers could afford to pay more. See E. Maccoby & R. Mnookin, *Dividing the Child* (Boston: Harvard University Press, 1992) at 265.

Finnie was subsequently critical of the 1996 federal proposals for child support guidelines, although he supports the idea of guidelines *per se*: see R. Finnie, *Good Ideas, Bad Execution: The Government's Child Support Package* (Ottawa: Calendon Institute of Social Policy, 1996).

It is especially important to keep in mind that these discussions are relevant not only to actual break-ups, but also to "near divorces" and within-marriage spousal relationships in general.¹⁹

Finnie's analysis thus confirms that low levels of child support contribute to some extent to the economic hardships experienced by custodial parents and children after divorce. At the same time, the data shows how women's relative inequality in earned income levels is also an important factor in assessing their economic well-being after divorce. Moreover, by showing the relationship of women's relative poverty within marriage as well as post-divorce, his research suggests the relevance of the concept of a "family" economy, including the problems created by traditional, gendered patterns of the division of labour within households. Thus, while Finnie's research shows that child support is a factor that contributes to relative post-divorce economic insecurity for women and children, in contrast with men, his research also demonstrates that solutions focused primarily on reforming child support within the family law context will address only part of a much more complex social problem.

These research studies by Rogerson and Finnie clearly confirm problems with the levels of child support awards, problems that would certainly be worsened by patterns of repeated non-payment. At the same time, the studies reveal how limitations in the data preclude complete separation of these factors from other variables that may affect the economic well-being of post-divorce custodial households. As well, they may not fully capture the reality for poor parents who divorce, by contrast with those who have more assets and income. Increased concerns have also been expressed by some family lawyers that judges routinely discount the proved financial needs of children in setting child support awards. According to Miriam Grassby, for example, an "invisible glass ceiling" enters the courtroom at the moment when a judge calculates a child support award:

[The glass ceiling is encountered at] the moment in an application for child support where the judge decides, after having applied the tax tables, that it is impossible for the wife to be required to pay as much tax as the tables indicate, that it really cannot cost that much to raise these children, or that the resulting order would be more than is generally ordered. [At that moment] "a glass ceiling" glides invisibly into the courtroom.²⁰

This analysis suggests that, in addition to the other variables identified by Rogerson and Finnie, there is a need to assess the impact of societal expectations about what are reasonable levels of child support, the usefulness of judicial and legal education

¹⁹Finnie, *supra* note 16 at 230. See also D. Galarneau, "Alimony and Child Support" (Summer 1992) Perspectives (Statistics Canada) 8.

²⁰D. Pask, "Family Law and Policy in Canada: Economic Implications for Single Custodial Mothers and their Children" in J. Hudson & B. Galloway, eds., *Single-Parent Families: Perspectives on Research and Policy* (Toronto: Thompson Educational Publications, 1993) 185 at 189. See also Judge R. Williams, "Quantification of Child Support" (1989) 18 R.F.L. (3d) 234; and A. Morris & S. Nott, *All My Worldly Goods* (Aldershot: Dartmouth Pub., 1996).

programmes about the costs of raising children,²¹ and how the interests of decision-makers may affect reform proposals.²²

In this context, the choice to define the problem as one of deadbeat dads is too simplistic. The proposed child support guidelines and enforcement measures present only partial solutions to the problem. As Margrit Eichler has argued, the fact that reforms offer only partial solutions is not, of course, a fatal objection, especially if more fairness is achieved for a defined group in society. However, "it is most important to recognize its limitations, and to recognize explicitly what problems will not be solved. It is therefore not the limitations of the proposed solutions which are at issue, but the exaggerated expectation as to what they can deliver."²³

In the context of Eichler's warning, it is important to limit our expectations of the new proposals for child support guidelines and enforcement measures. Since they are presented as a solution to deadbeat dads, they are likely to increase the level and regularity of payments on the part of payer spouses who can afford to pay child support. However, they will not affect those who cannot afford to pay, or to pay higher levels of, child support. As well, they do not provide a response to the costs and complexity of a public policy of readily-accessible divorce that leads to two households in place of one and corresponding risks of dependency for some family members. Constructing the problem as one of deadbeat dads does not offer much assistance in understanding this larger problem and its relationship to child poverty more generally.

²¹For an interesting analysis of the costs of raising children in Canada, see Table XII: The Cost of Raising a Child in Vanier Institute of the Family, *Profiling Canada's Families* (Ottawa: Vanier Institute of the Family, 1994). The data shows *average* costs for children by age and gender, based on average prices for consumer goods and daycare in Winnipeg.

²²See Finnie, *supra* note 16 at 232-233:

If it were men who suffered large declines in well-being with divorce, would there be more of a clamour for better documentation of the situation? ... If there were more female judges would there be a shift in decisions commensurate with an alternative perspective regarding inputs to marriages by those who specialize in home production, and to ensure a higher standard of living for the children involved? ... This is part of a more general question: How gender-neutral is our system in terms of identifying and addressing important socio-economic problems?

Finnie's questions are important ones, although there is little agreement about the impact of women as lawyers and judges: see e.g. B. Wilson, "Will Women Judges Really Make a Difference?" (1990) 28 Osgoode Hall L. J. 507. For an analysis of gender and family, see S. Moller Okin, *Justice, Gender and the Family* (New York: Basic Books, 1989).

²³M. Eichler, "The Limits of Family Law Reform or The Privatization of Female and Child Poverty" (1990) 7 Canadian Family Law Quarterly 59 at 81. See also J. Pulkingham, "Private Troubles, Private Solutions: Poverty Among Divorced Women and the Politics of Support Enforcement and Child Custody Determination" (1994) 9 Canadian Journal of Law and Society 73.

Some of the complexity of the child support issue was evident in the judges' differing interpretations of data about the impact of taxation on child support payments in *R. v. Thibaudeau*.²⁴ Although inadequacy in the levels of child support and enforcement measures against payers were not primary concerns in the *Thibaudeau* case, the disparity in living standards of post-divorce custodial mothers and their children, in contrast with their former spouses, was clearly evident in Suzanne Thibaudeau's challenge about taxing child support in the hands of recipient spouses. In the context of applying a *Charter* analysis to the inclusion/deduction system of the *Income Tax Act*, the Supreme Court of Canada reviewed arrangements for child support, including negotiated agreements and court awards, and the impact of taxation arrangements on levels of child support. In their reasons for judgment, members of the court seemed unable to agree about the extent of gendered disparities created by the tax treatment of child support for spouses in separated households, reflecting the great difficulty in applying a *Charter* analysis to a complex policy context. The Court's decision denying Thibaudeau's claim did not really resolve fundamental policy issues about child support in Canada, even though it contributed to the ongoing debate about the plight of children and their custodial parents after divorce. As Lorne Wolfson has stated:

The decision of the Supreme Court of Canada was unsatisfying for all concerned. Because it was essentially a *Charter* case dealing with the *Income Tax Act*, the legal issues and the language of the judgments are extremely complex and incomprehensible to all but the most sophisticated constitutional law lawyer. Those who look to the Reasons for Judgment for some guidance on the policy issues currently being debated in the public press will be greatly disappointed.²⁵

The *Thibaudeau* case was important in Canada, however, in the process of transforming the private griefs of child support into public sorrows. It also ensured that the proposed solutions would include revised arrangements for taxing child support payments for post-divorce parents, although there was little agreement about

²⁴(1995) 12 R.F.L. (4th) 92. For a thorough analysis of the issues arising from the decision in the Federal Court of Appeal (and prior to the decision in the Supreme Court of Canada), see L. Philipps & M. Young "Sex, Tax and the Charter" (1995) 2 *Review of Constitutional Studies* 221.

²⁵L. Wolfson, "Reflections on *R. v. Thibaudeau*" (1996) 13 *Canadian Family Law Quarterly* 163 at 166. Wolfson also expressed disappointment (and embarrassment) that the Supreme Court of Canada divided on gender lines in this case, with the two female members of the Court dissenting, supporting the position of Mme. Thibaudeau, and the male members of the Court in the majority supporting the position of her former husband. Wolfson seemed particularly concerned that this result had occurred as well in a previous challenge under the *Income Tax Act: R. v. Symes* (1994), 110 D.L.R. (4th) 470 (S.C.C.). For an analysis of the issues in *Symes*, see C. Young, "Child Care — A Taxing Issue" (1994) 39 *McGill L. J.* 539, and A. Macklin, "*Symes v. MNR: Where Sex Meets Class*" (1992) 5 *C.J.W.L.* 498. For an analysis of family law bargaining, see D. Majury, "Unconscionability in an Equality Context" (1991) 7 *Canadian Family Law Quarterly* 123.

how these goals might best be accomplished.²⁶ In addition to these differing views, and especially in light of the disagreements in the Supreme Court of Canada in defining exactly how the current arrangements affected custodial and non-custodial spouses after divorce, the government's continued emphasis on the problem as mainly one of deadbeat dads suggests a rather myopic approach to child support policies.

In formulating proposals to respond to this definition of the problem, however, the federal government had the benefit of similar policy initiatives already in place in the United States, the United Kingdom and Australia.²⁷ Research and consultation undertaken by a Federal/Provincial/Territorial Family Law Committee resulted in recommendations for the adoption of child support guidelines.²⁸ These recommendations were reflected in the federal proposals released in early 1996.²⁹ The most significant aspect of the new federal proposals was the introduction of child support guidelines, based on the income of the payer, with limited discretion to adjust amounts to respond to special child-related expenses and in relation to relative "undue hardship" between the two households. In creating the guidelines, federal and provincial tax rates were taken into account, thus eliminating the current inclusion/deduction system. The proposals included measures to ensure better coordination across Canada for the enforcement of child support, including the withholding of federal licenses for those who persistently fail to pay child support. Finally, the proposals included modest increases in the Working Income Supplement to be phased in over several years.

Not surprisingly, the debate about child support in Canada has shifted to focus on these new federal proposals, with a variety of criticisms about their conception and implementation. Ironically, in light of the defined goals of the new proposals, some lawyers and judges have expressed concern that the levels proposed are not as high as some current child support awards, so that the guidelines may have a negative

²⁶See e.g. Canadian Advisory Council on the Status of Women, *The Tax Treatment of Child Support: Preferred Policy Options* (Ottawa: Canadian Advisory Council on the Status of Women, 1994), National Association of Women and the Law, *Submission to the Federal Task Force on the Taxation of Child Support Payments* (Ottawa: National Association of Women and the Law, 1994), and J. Dumford & S. Toope, "Spousal Support in Family Law and Alimony in the Law of Taxation" (1994) 42 Can. Tax J. 1. In the U.S., see B. Wolfman, "Child Care, Work, and the Federal Income Tax" (1984) 3 Am. J. Tax Pol'y 153 at 174ff.

²⁷For a good overview, see A. Kahn & S. Kameron, eds., *Child Support: From Debt Collection to Social Policy* (Newbury Park, Calif.: Sage Publications, 1988); M. Maclean & J. Eekelaar, "Child Support, Wife Support or Family Support" in L. Weitzman & M. Maclean, eds., *The Economic Consequences of Divorce* (Oxford: Clarendon Press, 1992) 239; and M. Harrison, G. Snider, R. Merlo & V. Lucchesi, *Paying for the Children* (Melbourne: The Australian Institute for Family Studies, 1991).

²⁸See Federal/Provincial/Territorial Family Law Committee, *The Financial Implications of Child Support Guidelines* (Ottawa: Department of Justice, 1992); and *Report and Recommendations on Child Support*, *supra* note 5.

²⁹See *Background: New Child Support Strategy*, *supra* note 5.

impact on the problem of low levels of child support awards.³⁰ There have also been concerns about the guidelines because they permit only very limited judicial discretion to achieve fairness in relation to the facts of individual cases, a problem exacerbated by the guidelines' focus on only the income of the payer rather than the incomes of both parents (both incomes can be considered only in assessing standards of living in relation to "undue hardship").³¹ Since the guidelines are mandatory after May 1997 for court-ordered child support, but only guidelines for consideration for negotiated agreements, concerns have also been expressed about application of the federal guidelines to negotiated agreements and orders under provincial child support legislation, as well as the need to assess whether variation may be appropriate for existing agreements and awards.³² Moreover, since the accurate application of the guidelines depends on the payer's income, new practice standards for lawyers are emerging in relation to financial disclosure by clients to enable accurate calculation of child support amounts.³³ The new proposals alter the tax treatment of child support but leave unchanged the inclusion/deduction system for spousal support, creating some uncertainties about how these differences may affect family law bargaining about spousal and child support.³⁴ In part as a response to so many of

³⁰For example, Justice Trussler of the Alberta Court of Queen's Bench reported on her own analysis of interim support awards made in Edmonton from January to April 1995, concluding that 40% of the orders would have been lower under the proposed federal child support guidelines. The formula stipulated higher amounts in 29% of the cases and the same amounts in 16% of the cases. (A few cases are apparently missing from the overall total). Justice Trussler particularly noted the more favourable results achieved by judicial child support guidelines established in *Levesque v. Levesque*, [1994] 8 W.W.R. 589 (Alta. C.A.) and the approach of the dissenting comments in *Willick v. Willick*, [1994] 3 S.C.R. 670. See C. Schmitz, "Proposed Child Support Formula Puts Interest of Parents Over Children: Judge" (8 September 1995) *Lawyers Weekly* at 1. Similar criticisms have been expressed by lawyers in Ontario. According to Ruth Mesbur, for example, the guideline amounts "for low and middle-income families" are lower than "those ordered in court today". See K. Griffin, "Federal Child Support Guidelines take effect in May" (29 July-4 August 1996) *Law Times* at 10.

³¹For example, Justice Trussler suggested that the goal of consistency must be matched by one of fairness, criticizing the guidelines' limits on exercising judicial discretion and their failure to take account of the recipient's income as well as that of the payer:

Any system that does not take into account the incomes of both parties and apportion support accordingly runs the risk of being inherently unfair, ... noting that the formula is "punitive" for custodial parents who earn more than the non-custodial parent.

See Schmitz, *supra* note 30. See also R. Finnie, "Proposed Child Support Rules Seriously Flawed" *The Ottawa Citizen* (5 November 1996) A13.

³²See e.g. P. Epstein, "Variation Proceedings: The Effect of the Guidelines on Previous Agreements and Orders" in CBAO & LSUC, *Child Support Guidelines: The Mysteries Unravalled* (Toronto, Continuing Legal Education Programme: November 1996).

³³J. MacDonald & A. Wilton, *The Child Support Guidelines: A Manual* (Scarborough: Carswell, 1997).

³⁴See G. Feltham & A. Macnaughton, "Renegotiate Now or Seek a Variation Later? — The New Child Support Rules and Existing Awards" (1996) [unpublished]. See also Feltham & Macnaughton "The New Child Support Rules and Existing Awards: Choosing the Best Tax and Family Law Regime" (1996) 44 *Can. Tax J.* 1265.

these different issues, there have also been suggestions that the guidelines should be introduced as of May 1997 as presumptive rather than mandatory guidelines for a "trial period" of up to three years.³⁵

Like many law reform initiatives, the federal proposals for child support guidelines attempt to respond to the problems as they have been defined: problems about low levels of support, difficulties in collecting support regularly, and the impact of tax consequences that may, or may not, have been taken into account at the outset in computing support entitlement. Not surprisingly, the announcement of the federal proposals for child support guidelines responded to the problem as it had been defined:

The financial support of children following family breakdown has become an important public issue. Our society is changing, with far more single-parent households today than only a few decades ago. There is widespread recognition that our present child support system has not always been able to ensure that children are properly supported by both parents following divorce. Awards are varied and unpredictable, sometimes inadequate, and too often unpaid.³⁶

By defining the problem in this way, the proposed child support guidelines appear to respond directly to the need for higher levels of child support that are predictable and non-taxable, with better measures for ensuring the enforcement of awards on a regular basis. Having defined the problems in these terms, the federal child support proposals respond by offering a modest improvement over current arrangements for some recipients of child support.

At the same time, it is important to understand the more fundamental limitations of child support guidelines and their inadequacy as a response to children's needs for support after divorce, and to the larger problem of child poverty in Canada. Because the proposals do not respond more fully, they fail to accomplish fundamental reform. Moreover, by placing the issues in a broader context, the choice to define the problem as deadbeat dads may reveal governmental unwillingness to take more responsibility for the economic well-being of Canadian children. Instead of proposals that would address these problems, child support has been defined simply in terms of the failure of deadbeat dads to take their responsibilities seriously after family breakdown. In this way, the public problem of "support for children" has been re-privatized as the problem of deadbeat dads.

³⁵J. Payne, *Critique of Bill C-41 and of a Working Draft of the Federal Child Support Guidelines* (Ottawa: Danreb Inc., 1996).

³⁶*Backgrounder: New Child Support Strategy*, *supra* note 5 at 2.

Child Support or Support for Children: Re-Thinking More Fundamental Issues

The federal government's proposed child support package thus offers a solution to the problem of child support as it has been defined. In arguing that the problem has been defined too narrowly, so that the proposals will achieve only a partial resolution of the problem, it is important to avoid "exaggerated expectations" as to what the proposals will accomplish. It is also important to understand what these proposals do not address, and the choices that have therefore been made among competing policy options.

First, since the child support proposals are directed only to children whose parents divorce or separate, the more widespread problem of child poverty in Canada is not addressed by these proposals. This concern is especially significant since the child support package seemed, at least for a while, to divert attention away from the more general problem of child poverty in Canada, much of which exists in two-parent families. Second, the proposals reflect assumptions about the extent of financial support that is available post-separation, without considering issues such as relative access to employment opportunities for men and women or parents' respective obligations for child care in the absence of societal support for those who care for dependents, including children. In this way, the child support proposals assume that support for dependency provided by an intact family can be shared by two households post-separation without real and substantial changes in levels of income and in the face of overall costs that are likely to reduce the standard of living of many post-separation families and to lead to real poverty for some. In addition, the proposals do not provide effectively for the processing of support claims in family law, a context in which there may be need for simple and inexpensive variations as the circumstances of children (and their parents) change over time. Finally, by defining the problem in terms of deadbeat dads, the child support proposals strategically distract attention away from all of these issues, suggesting that solutions directed to payer spouses can solve problems which are much more complex and which require broader societal solutions rather than merely the enforcement of private familial obligations.

The Problem of Child Poverty in Canada

Although statistics on child poverty in Canada are often quite well-known, it appears less obvious that many children in families with incomes below the poverty line live in two-parent families. Thus, as Margrit Eichler has suggested, while the risk of poverty is greater for single-parent, mother-led families, the rate of poverty for two-parent families is also high.³⁷ In assessing the potential impact of family law reform on child poverty in Canada, therefore, she concluded that "the majority of women

³⁷Eichler, *supra* note 23.

and children currently living in poverty would not be lifted above the poverty level by reform of the family law, since they are poor within an ongoing marriage."³⁸ After examining statistics on families in poverty, Eichler argued that broader societal reforms must be undertaken, not just family law reform:

[Family law reform] cannot eradicate poverty among women and children. Even with further reform, the majority of women and children who are now poor would remain poor. That is an intolerable situation for a society with the resources that Canada has at its disposal.

To the degree that family law reform is seen as a solution for solving the problem of poverty of women and children at the expense of societal reforms, it does us a disservice to focus our energies in that direction.³⁹

More generally, Philip Girard has argued that Canada lags behind other western nations in its efforts to ensure the well-being of children. Using comparative statistics, he has suggested that the divergence between rates of poverty for all households and those for single-parent households demonstrates a lack of societal support for children:

In Italy, where 22 per cent of households fall below the poverty line, 27 per cent of single-parent households fall in this category. There is a discrepancy, but it is not terribly large. In France, the relative figures are of a similar order, 15 per cent and 22 per cent; but in the United Kingdom the disparity rises to 17 per cent and 30 per cent; in the United States 10 per cent and 50 per cent; and in Canada 11 per cent and 62 per cent.⁴⁰

According to Girard, the large divergence in rates of poverty in Canada reflects the absence of public support for children and over-reliance on private, familial resources that too often are unavailable in single-parent households.

³⁸*Ibid.* at 79. Eichler's analysis started with assumptions that *all* property was shared between spouses at divorce, taking account of the needs of children in their own right, and that *all* support payments were paid.

According to her statistics, 233 000 women heading sole parent families lived in poverty in 1986, as did 16 000 men heading sole parent families. However, there were 309 000 families with two parents who were living in poverty in that year. She also concluded that only 28% of women and children in separated families were likely to be able to live above the poverty line as a result of income-sharing at separation, using the figure of 28% of men in 1985 who were employed in managerial, administrative and professional occupations in Canada.

³⁹*Ibid.* at 83. For another perspective, see M. Garrison, "The Economic Consequences of Divorce" (1994) 32 Family and Conciliation Courts Review 10, who has argued (at 22) that even though divorce law reforms cannot overcome all the problems of poverty for women and children, it can strive to "ensure outcomes that impose the burden of divorce fairly on all family members."

⁴⁰P. Girard, "Why Canada has no Family Policy: Lessons from France and Italy" (1994) 32 Osgoode Hall L. J. 579 at 609.

Similarly, Ellen Zweibel has suggested that policy choices in Canada reflect very modest levels of public support for the well-being of children.⁴¹ Zweibel identified different kinds of policy approaches to providing public support for children. Thus, for example, programmes providing direct financial benefits to families with children to ensure a minimum standard of living represent generous levels of public support. By contrast, state assistance in the collection and enforcement of private familial support obligations represents much more limited public support for children. Clearly, the federal proposals for child support, by establishing levels for support awards and enforcement measures for their collection, reflect an approach to child support as a private familial obligation of non-custodial parents. They do not reflect an overall societal interest in children and a level of public support to ensure their well-being. In this way, the child support proposals confirm the privatization of responsibility for children's dependency in Canada, and the absence of significant public societal responsibilities for Canadian children who are poor.

The trend towards the privatization of responsibility for dependency, illustrated by the proposed *Child Support Guidelines*, is evidenced in other recent developments in family law. As Colleen Sheppard has argued, the decision of the Supreme Court of Canada in *Moge v. Moge*⁴² extended familial responsibility for financial support to a dependent spouse long after the end of the marriage, thereby diminishing Mrs. Moge's need for public assistance.⁴³ According to Sheppard, the decision in *Moge* was important for its recognition of women's economic insecurity after divorce. At the same time, however, the decision solved the problem of economic insecurity by allocating private responsibility to Mrs. Moge's former spouse. Although it would be difficult in the litigation of a spousal support claim to obtain an order for societal support, Sheppard expressed concern that the decision failed to acknowledge the broader, societal context that resulted in Mrs. Moge's disadvantaged circumstances:

The *Moge* case does not address social factors beyond marriage that help to account for Zofia Moge's current economic needs. It does not deal with gender, race, ethnic origin, or language discrimination in the labour force. It does not mention patterns of familial dependence reinforced by immigration law and policy. Nor does it touch upon the absence of affordable and accessible child care or social assistance programs. ... [The] larger questions of the social context of Zofia Moge's economic insecurity remain beyond the realm of the court debate. Relegated beyond the margins, they should be occupying the centre of public debate about economic rights and family roles.⁴⁴

⁴¹Zweibel, *supra* note 5 at 384.

⁴²(1992), 145 N.R. 1 (S.C.C.).

⁴³C. Sheppard, "Uncomfortable Victories and Unanswered Questions: Lessons from *Moge*" (1994-95) 12 Can. J. Fam. L. 284. See also S. Boyd "(Re) Placing the State: Family, Law and Oppression" (1994) 9 Canadian Journal of Law and Society 39 at 71ff.

⁴⁴Sheppard, *ibid.* at 329.

Similarly, the extension of the doctrine of constructive trust in *Peter v. Beblow* ensured that private, familial resources were available to a dependent spouse who might otherwise have required public assistance.⁴⁵ Moreover, statutory definitions of "parent" for purposes of identifying familial responsibilities for child support ensure that there are additional parents with familial support obligations, lessening the likelihood that state assistance may be needed.⁴⁶ Recent cases providing for recognition of partners in same sex relationships as "spouses" under provincial family law statutes also have potential to increase "private" responsibilities for economic dependency, decreasing corresponding obligations for "public" support.⁴⁷ In the context of these developments, the federal proposals for child support guidelines appear quite consistent with the overall trend towards the privatization of responsibility for economic dependency in family law. Moreover, such a policy approach assumes the existence of adequate private resources to meet all these obligations. In assessing the impact of the trend towards privatization in family law, therefore, it is necessary to examine the reality of private family resources available to meet these obligations, including obligations of child support.

Private Resources for Child Support Payments

Privatization of responsibility for economic security of dependents after divorce requires private, familial resources to meet these obligations in two households instead of one. It also requires at least stability in family income levels and may require higher levels to meet the added costs of two households. However, as Sherri Torjman has suggested, "the well-being of families is tied to the health of the economy", with income levels rising and falling "in line with unemployment and interest rates".⁴⁸ Thus, although family income has increased substantially in the past twenty-five years "due primarily to the dramatic rise in the labour force participation rate of women", the overall rise in income levels, in terms of the growth of average "real wages" (wages adjusted for inflation), suggests a very different conclusion.⁴⁹ According to Torjman, there were substantial increases in average real wages in the decades between 1920 and 1970. Indeed, average real wages in 1970 were 224 percent higher than in 1920. In contrast, however:

⁴⁵(1993), 150 N.R. 1 (S.C.C.).

⁴⁶See e.g. *Family Law Act*, R.S.O. 1990, c. F-3, s.1: "Parent" includes a person who has demonstrated a settled intention to treat a child as a child of his or her family".

⁴⁷*M v. H* (1996), 31 O.R. (3d) 417 (C.A.); (1995), 17 R.F.L. (4th) 365.

⁴⁸S. Torjman, "Crests and Crashes: The Changing Tides of Family Income Security" in M. Baker, ed., *Canada's Changing Families: Challenges to Public Policy* (Ottawa: Vanier Institute of the Family, 1994) 69 at 74.

⁴⁹*Ibid.*

[T]he steady and significant growth in real wages began to slow considerably after 1970, due primarily to rapidly-rising inflation. Between 1970 and 1980, the overall increase in average real wages was less than nine percent. The growth slowed even more dramatically between 1980 and 1990 — years marked by recession at both the beginning and close of the decade. Overall, average real wages rose by only two percent during that period ...⁵⁰

This slow-down of increases in average real wages, moreover, was more dramatic for male workers in Canada than for female workers. According to Torjman, the average real wage of men actually dropped slightly from 1980 (\$29 871) to 1990 (\$29 757). At the same time, the average real wage for women grew by 14 percent to \$17 933 in 1990. Even so, “the wage gaps between the sexes [remained] wide; in 1990, women averaged only 60 percent of men’s average wages.”⁵¹ As these figures indicate, the average levels of family income available to support two households during the past two decades were declining for men and increasing only within the context of historically-depressed levels for women. Interestingly, it was during these two decades that the issue of non-payment of child support surfaced in policy debates, suggesting a need to take account of these factors in assessing the availability of family resources to meet the needs of two households after divorce.

In addition to the slowing of average real wage increases after 1970, Torjman also concluded that “Canadian families increasingly are insecure as a result of labour market changes”, including an increase in both “good” and “bad” jobs, but a decline in “middle-income employment”.⁵² Stricter eligibility requirements for unemployment insurance and reductions in welfare assistance as well as the repeal of the Canada Assistance Plan have also tended to increase income insecurity for many workers, male and female.⁵³ In this way, a level of relative security for a family

⁵⁰Torjman, *supra* note 48 at 75.

⁵¹*Ibid.*

⁵²*Ibid.* at 75-76:

“Good” jobs usually are associated with high salaries, a package of benefits and opportunities for training and promotion. “Bad” jobs, by contrast, tend to have limited advancement and on-the-job training opportunities, are often unstable, demand little in the way of formal qualifications and rarely provide private pensions, union membership or job satisfaction, let alone security. Bad jobs not only generate insecurity but also give rise to uncertain, poverty-bound futures.

⁵³The relationship between paid work and poverty levels is complex. Thus, although “one of the main reasons for poverty [among families] is a lack of good jobs”, some families in which both parents work are still poor. In 1994, “some 71,000 families — or seven percent of all poor families ... — were poor even when husbands and wives together worked for 93 or more weeks during the year.” *National Council of Welfare Poverty Profile 1994* (Ottawa: Ministry of Supply and Services Canada, 1996) at 11 and 37.

with both parents in the paid workforce may be quickly and substantially eroded by the costs of two households after divorce, especially if one or other parent loses a job.

Moreover, the existence of two households after divorce may create new problems if both parents wish to continue to work full-time, since child care arrangements for the custodial parent are likely to be more complex than in the original family unit. The lack of an adequate and affordable system of licensed child care in Canada exacerbates these problems for single-parent families, and poorer families generally benefit less than higher-income families from the recently-increased value of child care expense deductions under the *Income Tax Act*.⁵⁴ In addition, other changes to taxation arrangements for parents have reduced public support for children's well-being and transferred more responsibility to parents. As Torjman has explained:

The elimination of family allowances and the non-refundable child tax credit through the introduction of the child tax benefit in 1993 destroyed the principle of horizontal equity — i.e., recognition of the fact that taxpayers who are parents have heavier financial responsibilities than taxpayers at the same income level who do not support children.⁵⁵

As a result of these changes, the real costs of privatized child support have increased and the level of public support for children has declined. As Torjman poignantly concluded, "Canada will have to work hard to make good its signature on the UN Convention on the Rights of the Child that it ratified in 1991."⁵⁶

These factors reveal important connections between family policies and policies affecting labour market activity, connections that are rendered almost invisible in the privatization discourse about child support. In defining guidelines for levels of child support to be paid by deadbeat dads on behalf of their dependent children, the new proposals assume that most non-custodial parents have jobs, that they are likely to have continuing job security and that the levels of real wages available are sufficient to maintain children with little or no help from public support programmes.

These assumptions also contribute to the rather inflexible procedures currently available to reconsider or vary child support awards, either increasing or decreasing

⁵⁴The federal government did not adopt the recommendations of the report of the Special Committee on Child Care, *Sharing the Responsibility* (Ottawa: Queen's Printer, 1987). See also Status of Women Canada, *Report of the Task Force on Child Care* (Ottawa: Supply and Services, 1986); National Council of Welfare, *Child Care: A Better Alternative* (Ottawa: Supply and Services, 1988). For a critique, see Teghtsoonian, "Neo-Conservative Ideology and Opposition to Federal Regulation of Child Care Services" (1993) 26 Can. J. Pol. Sci. 97.

⁵⁵Torjman, *supra* note 48 at 78. See also Vanier Institute of the Family, "Investing in Families with Children" (excerpt from a brief concerning child poverty prepared by the Coalition on Child Poverty) (1988) 18(4) Transition 5.

⁵⁶Torjman, *ibid.* at 85.

payments as the circumstances of children and their parents change. In the context of children's changing needs, as well as the rate of change now experienced by many workers, there is need for an efficient, cost-effective means of re-assessing levels of and other arrangements for child support payments. The use of applications to courts, with attendant need for the parties to obtain legal advice and representation, create significant barriers for both custodial and non-custodial parents.⁵⁷ In jurisdictions where administrative agencies have been empowered to consider requests for variation, by contrast, there has been greater accessibility to decision-making for separated parents, although there have also been serious problems created by the volume of cases handled by some agencies.⁵⁸ It is significant, however, that the new federal proposals for child support allocate funds for the administrative costs of enhanced enforcement measures rather than for the process of defining and varying child support awards. This choice also demonstrates how solutions have responded to the problem as defined in terms of deadbeat dads.

Child Support: Principles and Strategies

[S]ubstantial and substantive improvements to income programs, and to social programs more generally, are unlikely in these times of fiscal restraint. The problem is more serious than simply a lack of funds; the mindset of restraint also generates a poverty-of-ideas mentality that tends to stifle innovation.⁵⁹

Such a comment seems particularly apt as a description of recent policy-making about child support. The new federal proposals address only one part of the problem of child poverty in Canada, and do so by formulating a response that focuses mainly on the enforcement of private, familial obligations of financial support. The limits of these solutions are obscured by the choice to define the problem in terms of defaulting payers, deadbeat dads, without much regard for the reasons for their non-payment, in spite of ample information about job insecurity, down-sizing of workplaces and wage freezes in many parts of Canada that may affect payers' ability to meet ongoing child support commitments. In the context of governments' difficulties in meeting their own job creation goals, the choice to "privatize" the problem of child support as one of deadbeat dads appears to make child support

⁵⁷See M.J. Mossman, "Gender Equality, Family Law and Access to Justice" (1994) 8 Int'l J.L. & Fam. 357.

⁵⁸In the United Kingdom, the caseloads of the Child Support Agency resulted in reforms outlined in United Kingdom, *Improving Child Support* (London: H.M.S.O., 1995). See also G. Craig, K. Clarke & C. Glendenning, "The British Child Support Act in Practice: The State versus Lone Parents?" (Summer 1995) 42 Family Matters 14. In relation to Australia, see L. Alexander, "Australia's Child Support Scheme: Much Promised, Little Delivered?" (1995) 42 Family Matters 6.

⁵⁹Torjman, *supra* note 48 at 84.

payers responsible for all our national economic problems, not just the problems of paying for their children.

Such a strategy of defining problems and solutions is also related to political goals. As Maureen Baker has pointed out, the failure to provide public support for child care and for income security for children shows governmental unwillingness to provide support for the next generation, in spite of frequent words of support:

Although many politicians have pronounced that children are the nation's future resource, it has not always followed that policies have reflected this attitude. A comparison between federal money spent directly on children and money spent on elderly people indicates that children are obviously not taxpayers or voters!⁶⁰

The recent announcement of a federal government proposal to invest in Canadian children, especially children who are poor, suggests a modest effort to define the problem of child poverty more broadly and to address it more directly.⁶¹ However, as some critics have pointed out, "without improved child care and work training for single parents as well, an improved child benefit won't radically alter the face of child poverty" — comments that underscore the complex reasons for economic dependency on the part of some family members, especially after divorce.⁶²

The privatization of obligations for ongoing financial support for children after divorce contrasts with public policies permitting freely accessible divorce to adults in Canadian society. In this context, there appears to be public support for private decisions to separate and divorce, thus ending the family unit. At the same time, the continuation of significant private familial responsibilities for child support to ensure children's well-being shows how "the family" continues to exist post-divorce, as well as the limited extent of public support for the consequences of state policies

⁶⁰M. Baker, "The Effectiveness of Family and Social Policies" in M. Baker, ed., *Canada's Changing Families: Challenges to Public Policy* (Ottawa: Vanier Institute of the Family, 1994) 127 at 133. In the U.S., Beller and Graham similarly identified a lack of political will to put "children's well-being first" in the context of economic support for them. See A. Beller & J. Graham, *Small Change: The Economics of Child Support* (New Haven: Yale University Press, 1993) at 262.

⁶¹Finance Minister Paul Martin announced on *Newsworld*, CBC, 27 November 1996: "I think maybe what this generation of politicians ought to do is to say, 'We're going to do for children what the previous generation (of politicians) did for seniors.'"

See also G. Gherson, "Federal Government, Provinces not Prepared for War on Child Poverty" *The Ottawa Citizen* (8 January 1997) A11. There have also been newspaper reports describing the non-partisan national coalition, Campaign 2000, that has been lobbying in favour of the 1989 all-party House of Commons resolution to end child poverty in Canada by the year 2000. See e.g. the editorial "Child Poverty Not Insurmountable" *Toronto Star* (27 November 1996) A22: "If we are wealthy enough to contemplate tax cuts, then as Campaign 2000 says, we lose all credibility by pleading collective poverty when it comes to ending the unforgiving poverty in which so many of our children now live."

⁶²Gherson, *ibid.* at A11.

ensuring accessible divorce.⁶³ The strategy of defining the problem as one of deadbeat dads both ensures the continuation of post divorce “private” families and distances the state from any “public” responsibility to respond to the problem.⁶⁴

Yet in spite of all of these concerns, the governmental strategy to define the problem in terms of deadbeat dads is unquestionably effective. The choice to target deadbeat dads identifies all of them as the problem and makes all of them morally blameworthy, with all too little concern for differences in their reasons for non-payment — reasons that might distinguish individuals as more or less at fault. The language used conveys moral authority about family values and parental responsibilities that are difficult to disentangle in relation to more complicated arguments about public and private responsibilities for economic security in the late 20th century. In the face of the simplicity of this definition of the problem (deadbeat dads) and the solution (child support guidelines and more effective enforcement measures), finding an argument that defines the problem and the solutions more broadly, taking into account the economic relationships within families and the role of the family as an economic unit of Canadian society, presents a more complex challenge.

Strategically, however, it is difficult to challenge the accuracy of the label without appearing to support fathers who do not accept any responsibility for their children’s economic well-being. In the context of this lecture, it seems critical to record my view that some child support awards are probably much lower than the needs of children and that they are sometimes lower than fathers’ ability to pay. Undoubtedly, there are fathers who could pay higher amounts of child support and it is likely that the new federal proposals will enhance the levels of awards and regularity of payments for some fathers, although the data examined earlier suggest some problems in assessing the results very precisely.⁶⁵ However, my fundamental

⁶³Mary Morton has written about this concept of the “post divorce family unit” from the perspective of gender discrimination. See M. Morton, “Dividing the Wealth, Sharing the Poverty: The (Re)Formation of ‘Family’ in Law in Ontario” (1988) 25 *Canadian Review of Sociology and Anthropology* 254.

⁶⁴In research undertaken some years ago, David Chambers concluded that higher standards of living for post-divorce children would not be achieved by reform of spousal and child support arrangements or by implementing more effective enforcement processes. Instead, he suggested that the solutions lay elsewhere: in state policies that ensured children’s basic needs were met or that redressed women’s inequality in the paid workforce. See D. Chambers, *Making Fathers Pay: The Enforcement of Child Support* (Chicago: University of Chicago Press, 1979).

⁶⁵The assessment of costs and benefits is also complicated, in the U.S. context, according to Harry D. Krause by the fact that a “successful” program will likely increase the rate of voluntary compliance, statistics that may not be included in the enforcement process. In addition, the presentation of figures may sometimes be deceptive if the “easy” cases are skimmed off and the difficult ones left on their own. Finally, as he has argued:

Enforcement should cease when too large a percentage of AFDC-related support collections goes to the enforcers rather than to the families concerned. When what is billed as child support enforcement turns

concern here is the impact of governments' power to define the problem and the solution. By characterizing the problem as one of deadbeat dads, they have privatized responsibilities for children in post-divorce families and, at the same time, masked the failure of public policies to address the bigger issue of child poverty in Canada. Moreover, the definition of deadbeat dads simplifies the problem without really addressing it, and constrains criticism on the part of those who do not wish to risk being misunderstood by appearing to support men who do not adequately share economic advantages and disadvantages at divorce.

In this context, the real issue is how concerned citizens can regain the power to define the private griefs of child support so as to transform them into collective public sorrows in terms of support for children. As Ellen Zweibel has succinctly stated, there is just one fundamental question at stake for children in Canada: "What are children entitled to expect from the world that they are born into?"⁶⁶

into an income transfer program from (mostly rather poor) fathers to lawyers, social workers, and other enforcement personnel, we will have overshot the mark.

See H. D. Krause, "Reflections on Child Support" in A. Kahn & S. Kamerman, eds., *supra* note 27 at 233.

⁶⁶See Zweibel, *supra* note 5 at 382. According to Zweibel, this fundamental question is answered "implicitly by each country's child support strategy when it sets the limits and mix of private (familial) and public (societal) support".