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MARGINALIZATION THROUGH A CUSTOM OF DESERVINGNESS: SOLE-SUPPORT MOTHERS AND WELFARE LAW IN CANADA

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INTRODUCTION

Despite the reluctance of most liberal states to provide forms of income security and social supports to those in need, some from within their ranks have managed to be seen as more “deserving” of modest forms of support. Canada’s welfare system has always been structured using a “custom of deservingness.” Historically, sole-support mothers were among those considered, however precariously and unevenly, to merit the status of most “deserving” as recipients of public funding. Unfortunately, however, extensive welfare law and policy reforms since the neo-liberal re(formation) have effectively erased the category of sole-support mothers as being a “deserving poor.” By synthesizing welfare law then and now, it is possible to identify the continuities and discontinuities that have shaped and reshaped the lives and experiences of sole-support mothers. Analyses of how increasingly punitive treatment has rendered them undeserving can help illuminate the profound changes that have occurred under neo-liberalism. The path from past to present has been marked by shifts from public responsibility to private self-reliance, and from social welfare entitlement rights to individualized support and workfare obligations aimed at combating dependency. The “custom of deservingness” and workfare system’s emphasis on erasing the “dependent” category has resulted in the marginalization of sole-support mothers.

There has been a large body of feminist historical work that has traced the socio-legal roots and administration of mothers’ allowances and pensions in British Columbia during the first half of the twentieth century through to the current neo-liberal welfare regime. This paper will adopt a historical, feminist lens in order to understand the changes and content of Canadian welfare law, with a focus on British Columbia legislation, as they relate to sole-support mothers. This article will first examine the current reality of sole-support mothers on income assistance in Canadian society. Next, the historical position of sole-support mothers and the way in which the “custom of deservingness” was emphasized will be traced through the pre-Keynesian, Keynesian and neo-liberal periods, resulting in the classification of sole-support mothers as the never deserving poor, whose bodies are subjected to ongoing moral regulation. Finally, the article will examine reactions against and proposed alternatives to the current welfare system in Canada.

I. CURRENT REALITY

As a result of the economic and political restructuring that marked neo-liberalism's arrival in Canada, women have disproportionately experienced increased and more severe poverty, particularly in female-headed households. The reforms, therefore, have not been gender-neutral in impact. For examples, although 15.6% of all families were lone-parent families in 2001, 81.3% of those families were headed by sole-support mothers.¹ In 2002, 37% of Canadian families headed by sole-parent mothers had incomes that fell below Statistics Canada's after-tax "low income cut-offs", compared with 13% of families headed by sole-parent fathers. In British Columbia, the rate of poverty for sole-support mothers is 49%, which is considerably higher from the national average.² It is also important to recognize that welfare, like other governing projects, is often racialized, gendered and classed. Aboriginal women, for example, are twice as likely as other Canadian women to be lone mothers.³

The situation of sole-support mothers in Canada has attracted international criticism. In January 2003, the Committee on the Elimination of Discrimination Against Women conducted its fifth periodic review of Canada, and in the report's concluding comments, the Committee expressed astonishment about the "high percentage of women living in poverty."⁴ The United Nations Committee on Economic, Social and Cultural Rights made a similar statement in 2006.⁵ The current situation of sole-support mothers in Canada, therefore, is an important and disconcerting issue that needs to be examined and addressed.

II. THE 'CUSTOM OF DESERVINGNESS'—SOLE-SUPPORT MOTHERS AND WELFARE: THEN

Canada's welfare programs are centered on a relief custom based on deservingness. A relief custom refers to the unorganized rules that prevail within a welfare system. In Canada, the custom of deservingness derives historically from the fact that its welfare policy has been modeled on the British custom of the Poor Laws.⁶ The welfare institution in Canada is dominated by the distinction made between the deserving poor and the undeserving poor, and creates eligibility rules according to these categories.

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1. Canadian Council on Social Development, *CCSD's Stats and Facts: Families: A Profile of Canadian Families*, online: Canadian Council on Social Development <www.ccsd.ca/factsheets/family/index.htm>.
2. Jane Pulkingham, "Bucking the National Trend: BC's welfare cuts and poverty among lone Mothers" (2006) 9 Canadian Centre for Policy Alternatives BC Commentary, 5.
3. Jane Pulkingham, Sylvia Fuller & Paul Kershaw, "Lone Motherhood, Welfare Reform and Active Citizen Subjectivity" (2010) 30 *Critical Social Policy*, 267 at 273.
4. UN Committee on the Elimination of Discrimination against Women, *Report of the Committee on the Elimination of Discrimination against Women*, 28th Session (13-31 January 2003) UN Doc A/58/38.
5. UN Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant*, UN CESCR, 36th Sess, UN Doc E/Z/15 (2006).
6. Status of Women Canada, *The Insertion Model or the Workfare Model? The Transformation of Social Assistance within Quebec and Canada* by Sylvie Morel (Ottawa: Policy Research, 2002) at 10.

A. The Pre-Keynesian State and the “Deserving Poor”

Welfare reforms that were implemented from the late nineteenth to the mid-twentieth century collectively reformed the public/private divide. The reforms occurred in the context of massive structural change marked by industrialization, urbanization and the passage of two world wars, which apparently contributed to an increased number of “deviant” families in Canadian society. The existence of these “deviant” families, including sole-support mothers and their children, resulted in perceptions that the (nuclear) family was in crisis and under siege. In order to prevent further increases to the number of such families and in order to rehabilitate those already broken, provincial governments created mothers’ allowance or pension legislation aimed at shoring up visions of the nuclear family and providing financial assistance to sole-support mothers.⁷ The legislation, therefore, was based on a maternalist ideology, exalting the valuable role of women as mothers and “keepers of the hearth.”⁸

The concept underlying the new legislation was that the state should provide single mothers with funding equivalent to the missing husband’s contribution to the family wage. The legislation was, therefore, needs-based and means-tested. Along with the provision of missing wages, however, the legislation imposed detailed and demanding conditions for entitlement upon mothers seeking to gain access to the modest allowances provided by the government. In order to benefit from the mothers allowance, the family unit had to include dependent children in the custody of a “fit and proper” mother.⁹ The custom of deservingness according to gender, therefore, is expressed by the adoption of these types of rules. Although the legislative criteria for eligibility gradually expanded, so too did the requirements imposed on women, including longer waiting periods and mandatory efforts to pursue absconding husbands for support. During this time, therefore, the state understood welfare as a “residual concept” where social security was only offered as an alternative of last resort. Government intervention was only justified when the usual remedies of the family and the marketplace had been exhausted.¹⁰

B. Principle of Less Eligibility

The “residual concept” of Canadian welfare programs is demonstrated through the principle of less eligibility. This principle, which had historically characterized the concept of welfare, was left intact through the means-tested nature of the first wave of mothers’ allowances and related welfare legislation.¹¹ The principle implicitly requires that those determined to be deserving of assistance should not be materially better off than the least affluent families among the working poor. Practically, therefore, this meant that the rates of assistance for qualifying mothers remained at subsistence levels. As a result, recipients were generally forced to supplement their state income through home-based or other earnings.

7. Shelley AM Gavigan & Dorothy E Chunn, “From Mothers’ Allowance to mothers Need Not Apply: Canadian welfare law as liberal and neo-liberal reforms” (2007) 45 *Osgood Hall LJ* 733 at 738.

8. Status of Women Canada, *supra* note 6 at 24.

9. Gavigan & Chunn, *supra* note 7 at 742.

10. Status of Women Canada, *supra* note 6 at 16.

11. Gavigan & Chunn, *supra* note 7 at 747.

III. SOLE-SUPPORT MOTHERS AND WELFARE: THE KEYNESIAN TRANSITION

Even considering the relatively meager and conditional aspects to the assistance for sole-support mothers, however, the allowances did represent a qualitative moment in Canadian welfare's legal history, since provinces assumed a form of direct fiscal responsibility. Some of the reformed legislation, too, incorporated provisions intended to ameliorate some of the forms of social stigmatization that "welfare" mothers faced in society, attempting to categorize sole-support mothers as a class of "deserving" recipients. Sole-support mothers, for example, were not discursively constituted as charity cases, but rather as government employees on contract deemed to be responsible for raising 'good' citizens. Allowance cheques were often mailed, thus sparing sole-support mothers the indignity of having to collect their allowance at the public welfare office.¹²

During the Keynesian transition, which began in the postwar era, Canadians were introduced to the idea of a comprehensive social security system. The welfare policies that emerged during this period were universal in nature, based on a notion of welfare as a right of citizenship rather than a privilege.¹³ In 1966, provincial mothers' allowance legislation was incorporated into the federal Canada Assistance Plan Act, which was a federal cost-sharing program that established general criteria for social assistance programs across Canada. The Act was declared to be a "war on poverty" by Prime Minister Lester B. Pearson, and was designed to remove any remaining arbitrary eligibility restrictions in the provincial legislation by removing categories of deservingness.¹⁴ The new federal legislation markedly expanded the scope of social assistance programs beneficial to sole-support mothers across the country, including the inclusion of child welfare benefits. The Keynesian period of welfare "liberalization," however, was relatively short-lived – just under a decade—which is barely long enough to be regarded as an "era." By 1975, there was already a growing concern about budget deficits and increased public spending.¹⁵

Many welfare scholars see the Keynesian welfare state expansion, although brief, as marking the end of the conditional and moral social programs that defined the pre-Keynesian era. The welfare state, as a result, had become an objective institution through the removal of the historical arbitrary eligibility restrictions. The "residual concept" of welfare programs, in other words, was replaced by an "entitlement concept."¹⁶ As Margaret Little has argued, however, although state administration of welfare during this period appeared less moralistic than that of previous decades, the state continued to play a role in ensuring that moral regulation of welfare recipients continued.¹⁷ A sole-support mother receiving a mother's allowance, for example, was not allowed to have a man living in her home. Provincial administrators generally relied upon a variety of charitable organizations to scrutinize and monitor recipients and to report any unacceptable activity.¹⁸ As Little notes, such organizations played a "vital role in scrutinizing the moral behaviour of public welfare recipients."¹⁹ The regulation of sole-support mothers can be understood as a way to ensure that the recipients continued to be "deserving" of the financial assistance they were receiving.

12. Gavigan & Chunn, *supra* note 7 at 741

13. Margaret Little, "Claiming a Unique Place: The Introduction of Mothers' Pension in BC" (1994) BC Studies 80 at 97.

14. Gavigan & Chunn, *supra* note 7 at 752.

15. Status of Women Canada, *supra* note 6 at 22.

16. *Ibid.*

17. Little, *supra* note 14 at 98.

18. *Ibid* at 102

19. *Ibid.*

IV. SOLE-SUPPORT MOTHERS AND WELFARE: NOW

A. Neo-liberal Reforms and the “Never Deserving” Poor

With the adoption of neo-liberal reforms at the beginning of the 1980s and the external and internal pressure to reduce welfare costs, the definition of what constitutes a “deserving” recipient of welfare has narrowed. The “residual concept” of welfare, therefore, was re-introduced. The pressure of globalization in Canada has been expressed in consistent cutbacks to the social security net. Indeed, Canada’s neo-liberal policies seemed to result in a race to the bottom, reducing women’s choices and forcing more and more women into part-time, temporary and low-waged work. In 1984, Brian Mulroney’s conservative government imposed a “cap on CAP” payments to the three wealthiest provinces: British Columbia, Ontario and Alberta. The constitutionality of the CAP legislation was unsuccessfully challenged in *Reference Re Canada Assistance Plan* in 1991.²⁰

Under Paul Martin’s leadership, as well, the Department of Finance redefined the contours of the welfare state. The agenda of this government was clearly more “neo” than liberal, and involved a downsizing and off-loading of welfare responsibilities through a monetarist agenda of policies.²¹ For our purposes, the downsizing of federal responsibility is best illustrated by the introduction of the 1995 Canada Health and Social Transfer provisions, which replaced the CAP and reconfigured the nature of the federal transfer payments in Canada. Entitlements to welfare and family benefits were replaced by a form of short-term financial assistance, placing heavy emphasis on individual responsibility and self-reliance through employment.²² Responsibility for sole-support mothers was first offloaded onto provincial governments, then to municipal governments, and now, in British Columbia at least, to community-based non-profit agencies and individual families.

Through this offloading of responsibility, the federal government reneged on its earlier responsibility of monitoring and evaluating the equality and criteria of provincial government welfare policies. In British Columbia, the restructuring of welfare was legislated almost immediately through the introduction of the *British Columbia Benefits Act*, which cut benefit rates, mandated job participation and forced work searches for single parents.²³ The process of offloading responsibility from the state to individual women and children intensified through the introduction of the *British Columbia Employment Assistance Act* in 2002. Welfare benefit rates for employable single parents were cut by \$51 per month, which resulted in a reduction of the support of social assistance in families in which over 60,000 children live.²⁴ As well, for employable welfare recipients with dependent children, a time limit process was established where recipients are sanctioned through a reduction of support if they remain on social assistance for two years during any five-year period.²⁵ In the 2006 report “Left Behind: A Comparison of Living Costs and Employment and Assistance Rates in B.C.”, the Social Planning and Research Council of British Columbia (SPARC BC) examined the income assistance rates in B.C. and found that current levels do not permit individuals or families, especially sole-support mothers, to meet the basic costs of daily living.

20. *Reference Re Canada Assistance Plan (BC)*, [1991] 2 SCR 525.

21. Gavigan & Chunn, *supra* note 7 at 757.

22. *Ibid* at 758.

23. Jean Swanson, *Poor-Bashing: The Politics of Exclusion* (Toronto: Between the Lines, 2001), at 115.

24. Heather J Michael & Dr Marge Reitsma-Street, “A New Era of Welfare: Analysis of the BC’s Employment and Assistance Acts” (“Cutting Welfare” Public Panel, delivered at the University of Victoria, 13 March 2002), [unpublished] at 23.

25. Pulkingham, Fuller & Kershaw, *supra* note 3 at 269.

B. The Rise of the Workfare Logic of Reciprocity and the “Worker-Citizen” Subject

Through the neo-liberal reforms, a workfare system was introduced in Canada. Workfare is a model of government intervention in the conception and implementation of the contract of reciprocity between the poor and the State. The “recipient-citizen” of workfare is framed as a dependent, who in return for welfare benefits, has a duty to engage in employment integration through job search activities, training and education. Women are now expected to be employed. The workfare legislation is premised on the formal equality and gender neutrality of the freely choosing, self-reliant actor. Thus, like men and fathers, women and mothers are conceptualized and regulated primarily in terms of their relationship to the market. The concept of dependency, however, although framed as such, is not gender-neutral. The discourse surrounding the dependency of female workfare participants often obscures the value of the domestic work they do in raising children alone. Their needs as mothers with responsibility for the care and upbringing of children have become as anachronistic as the very notion of social welfare itself. Now women’s relationship to the (private) family is taken for granted and rendered as invisible.²⁶ A major implication of the welfare reforms, therefore, is that sole-support mothers have disappeared as a category of social assistance recipients.

Social assistance reciprocity is attributable to the establishment of new categories of employable people in the sphere of social assistance. As the National Council of Women has pointed out, the new category of employable people is created through a process of social construction, since employability is not the result of the acquisition of objective characteristics such as skills and qualifications. Rather, it is the result of the evolution of the institution of women’s paid work.²⁷

There are two main ways in which changes to rates, exemptions, eligibility criteria and duration of benefits transformed the principle of “entitlement” to welfare that was bolstered during the Keynesian era into one of narrow contractualism in which state benefits were made contingent on self-sufficiency and individual responsibility. First, the neo-liberal reforms and cuts to welfare programs have forced sole-support mothers into low-waged, exploitive employment. There has been an assumption that has permeated the development of social policy in Canada that severely inadequate benefit rates will provide an “incentive” for people living in poverty to re-join the job market.²⁸

Second, the growing political controversy around welfare has led to legislative mandates aimed at creating “welfare-to-work” programs, where Ministries often require recipients to participate in employment plans. In British Columbia, for example, the government has established a “work first” model of welfare reform.²⁹ Although welfare rights activists have emphasized the importance of a mother having choice about working inside or outside the home, welfare reforms have delegitimized mothering as both an activity and social identity. Through the reformed 2002 legislation, single parents are categorized as “employable” as soon as their youngest child turns three. When these reforms were passed, the new requirements affected approximately 8,900 single parent families in British Columbia when their status changed from “temporarily excused from work” to “expected to work”.³⁰ Poor mothers have been reconstituted as worker citizens. As Lone as stated, “What is jettisoned in the process of...the neoliberal project of welfare reform is not only particular kinds of spheres of activity...but also the particular subjectivities

26. Gavigan & Chunn, *supra* note 7 at 771.

27. Status of Women Canada, *supra* note 6 at 13.

28. Michael & Reitsma-Street, *supra* note 25 at 23.

29. Pulkingham, Fuller & Kershaw, *supra* note 3 at 276.

30. Michael & Reitsma-Street, *supra* note 25 at 25.

of those who engage in these activities and live in these spheres. The individuals carrying these subjectivities are not erased as person per se, but as particular kinds of persons.³¹ Their subjectivities, therefore, are recreated such that they can be seen and treated as possessive individuals who can/must now freely enter the marketplace.

Philosopher Alan Shrift has noted how these neo-liberal reforms have allowed a narrow self-interested form of reciprocal return to dominate current discourses on how the state organizes our obligations to each other. As Shrift writes: “One must wonder what sorts of assumptions regarding gift giving and generosity are operating in a society that views public assistance to its least advantaged members as an illegitimate gift that results in an unjustifiable social burden that can no longer be tolerated.”³² Welfare applicants are viewed as people who take rather than give, who misuse and abuse the welfare system.

The emphasis on self-sufficiency and individual responsibility through the workfare programs have precluded opportunities for full-time education. The employment programs, too, generally only provide minimum-wage positions, especially for women. There is a gender-based occupation streaming through these programs. Two thirds of women, for example, earn less than \$299 per week, compared to only 38% of men.³³ In a study done by Jane Pulkingham, Sylvia Fuller and Paul Kershaw, in-depth interviews were generated through a study of lone mothers in receipt of welfare to explore the ways welfare policy is imbricated in their subjectivity and citizenship. Women in the study face competing interpretations of who they are and what their rights and responsibilities as mothers and citizens should be.³⁴ Many of the women who were interviewed discussed the practical problems they face when participating in the “welfare-to-work” programs. As one woman stated,

I don't want to go to a pre-employment program because they only find jobs that are minimum wage...they just want you to get off...it's like, get a job—see ya!....but, for somebody that wants some kind of goal or career it's not a good place to go at all. No. Because I mean, once you get out there, you can't get back on social assistance to get that support you're going to need to go for your career. You know, and like, it's going to be tough later on.³⁵

Several of the mothers in the study, too, talked about how they feel held back by the emphasis on waiting until their youngest child is three, especially when what they are being held back for is a job, any job, and not meaningful education. For example, one woman was dissuaded from taking technical skills-related courses in favour of attending “self-help” and self-esteem” workshops for sole-support mothers and cashier training. As soon as her child turned 3, *they told her that she had to go and work full-time, without having access to technical skills courses.*³⁶

Women, therefore, must contend with contradictory messages from “welfare-to-work” policies that simultaneously demand independence and self-sufficient and unquestioned obedience to welfare rules that seem to preclude opportunities for longer-

31. C Kingfisher, “Part I The Big Picture: Globalization, Neoliberalism, and the Feminization of Poverty” in C Kingfisher, ed, *Western Welfare in Decline: Globalization and Women's Poverty* (New York: New York University Press) 3 at 38.

32. AD Shrift, “Introduction: Why Gift?” in AD Shrift (ed), *The Logic of the Gift: Towards an Ethic of Generosity* (New York: Routledge, 1997), at 19.

33. Pulkingham, Fuller & Kershaw, *supra* note 3 at 278.

34. *Ibid* at 268.

35. *Ibid* at 276.

36. *Ibid* at 276.

term advancement. As some authors have suggested, however, these assumptions are not contradictory if you understand welfare reforms to be directed at creating deferential and obedient worker citizens and not active citizens.³⁷ The current system, therefore, succeeds in forcing sole-support mothers into any job, regardless of quality or security.

C. The Sole-Support Mother and Forced Dependency: “Spouse in the House” Rule

As discussed, welfare reforms introduced a shift of focus towards individual rather than state responsibility, which can be understood as encompassing a notion of responsibility for “family.” In the context of the reforms to welfare, this has been enacted through the introduction of an expansive definition of “spouse.” The 2002 welfare reforms in British Columbia saw an implementation of a two year independence rule, where applicants age 19 and over are required to demonstrate that they have been financially independent for two consecutive years before they are eligible to apply for income assistance. The “fit and proper” requirement from the pre-Keynesian welfare system, therefore, was replaced by a “single person” concept. Although this might initially seem like a more objective and less intrusive test, many authors have argued that this is not the case in fact. Rather, the inquiry now focuses upon whether a woman is involved in a “marriage-like” relationship, which once again subjects women to invasive scrutiny of their intimate relationships and to explicit moralizing. Under section 1.1 of the *British Columbia Employment and Assistance Act*, a spouse is defined as follows:

- 1.1 (2) Two persons who reside together, including persons of the same gender, are spouses of each other for the purposes of this Act if
- (a) they have resided together for at least
 - (i) the previous 3 consecutive months, or (ii) 9 of the previous 12 months, and
 - (b) the minister is satisfied that the relationship demonstrates
 - (i) financial dependence or interdependence, and (ii) social and familiar interdependence consistent with a marriage-like relationship³⁸

As well, the concept of “marriage-like” is as malleable and ambiguous as that of the “fit and proper” person.³⁹ In practice, limited attention is paid to the economic, social and familiar aspects of the relationship and instead the focus is on sexual factors in all but the most exceptional cases. If a sole-support mother is not found to be living as a “single person,” they are ineligible for benefits. It has mattered little that the spouse has no legal obligation to support her or no financial means to support her.⁴⁰ It is clear, therefore, that the “custom of deservingness” is still prevalent in Canadian welfare legislation.

As discussed before, feminist legal scholars have been attentive to the familial and ideological dimensions of welfare law. The definition of “spouse” has been continually expanded to include same-sex relationships and an ever-widening net of cohabitating relationships.⁴¹ As a result, the nuclear form of the family has retained its hegemony. As one author has argued, through its emphasis on marriage and its asserted importance to the children of same-sex couples, the same-sex marriage campaign has in fact contributed to the further marginalization of sole-support mothers. There has been a reformation,

37. *Ibid* at 277.

38. *British Columbia Employment and Assistance Act*, SBC 2002, C40, s. 11

39. Janet Mosher, “Intimate Intrusions: Welfare regulation and women’s personal lives” in Shelley A.M. Gavigan & Dorothy E. Chunn, eds, *The Legal Tender of Gender: Law, Welfare and the Regulation of Women’s Poverty* (Oregon: Hart Publishing, 2010) 165 at 170.

40. *Ibid*.

41. Gavigan & Chunn, *supra* note 7 at 767.

therefore, of the privatization principle in which patriarchal norms and values have remain unchanged.⁴²

Yet for sole-support mothers, forming an intimate relationship—something that is socially valued—has devastating consequences, since it opens them to the risk of being cut off from benefits. The determination of spousal status entails a significant incursion into not only the private lives of sole-support mothers, but also into their day-to-day social interactions. Sole-support mothers are required to fill out a questionnaire about their relationships and cohabitation arrangements. As one mother wrote for a Woman and Abuse Welfare Study:

I can't begin to tell you how humiliating and intrusive some of the questions were on this form. They asked what I called Reid's mother and what Reid called mine; they asked what my son called Reid, and if Reid ever bought him presents for his birthday; they asked if Reid ever babysat my son and whether he had any contact with my son's school, they asked who did the grocery shopping and who did the laundry.⁴³

These invasions of privacy, however, are not only limited to what an applicant is required to personally disclose, since landlords, neighbours and teachers are often asked to provide information and offer their opinions about a recipient's intimate life. A routine letter that is mailed out to solicit information about a neighbour explains:

We are conducting inquiries relating to a...recipient and require information with respect to the above address. If you have any information regarding the tenants of the above address i.e.: number of occupants, sexes, names, employment, length of residence, or any other relevant information, please do not hesitate to contact me. Your anonymity can be assured in responding to this inquiry.⁴⁴

Although it is beyond the scope of this paper to examine in any detail, it is also important to note that the government cuts to welfare rates and the restructuring of welfare for women has had serious ramifications for women attempting to flee abusive relationships. Inadequate benefits, workfare, increased scrutiny and the changed definition of spouse have all operated to make it even harder for women to leave their abusers and re-establish their lives.⁴⁵ The State's offloading of responsibility to the private sphere, in other words, has contributed to a re-creation of situations of dependency and has increased the threat of economic ramifications for women wanting to leave relationships.

V. MORAL REGULATION THROUGH CONCEPTS OF WELFARE AS 'FRAUD'

The shift from welfare as an entitlement to an emphasis on self-reliance, responsibility and accountability to taxpayers, as we have seen, has led to a significant reduction in benefits, the introduction of workfare and a revised definition of "spouse." These three concrete examples have had significant implications for the concept of welfare fraud. There has been an increasingly common discursive construction of welfare recipients, including sole-support mothers, as people who "do nothing" and as a result are "paid

42. *Ibid* at 767.

43. Mosher, in Gavigan & Chunn, eds, *supra* note 40 at 170.

44. *Ibid* at 175.

45. Gavigan & Chunn, *supra* note 7 at 760.

to do nothing”.⁴⁶ In other words, sole-support mothers are not understood as deserving. Governments have therefore adopted extensive measures to control social assistance fraud in order to address and instill public confidence in the welfare system.⁴⁷ The discourse around welfare fraud systematically targets the bodies, social relations and self-identities of women.

This culture of fraud has extended beyond the traditional discourse of “welfare cheats” to encompass everyone who is on welfare. Welfare fraud has come to include all forms of overpayments, whether resulting from administrative errors or not. The discourse and politics of welfare fraud have obscured the imprecision of what is considered to be fraud and by whom. As Dorothy Chunn and Shelley Gavigan have noted, “the government’s own ‘Welfare Fraud Control Reports’ tend to collapse categories, frequently failing to distinguish between benefit ‘reduction’ and ‘termination’ and the reasons therefore.”⁴⁸

Rules and reporting requirements have become increasingly difficult and intrusive. Many governments have passed “zero tolerance” policies in the form of permanent ineligibility imposed upon anyone convicted of welfare fraud. They have set up anonymous snitch lines that are designed to encourage people to report suspected welfare abuse by their neighbours.⁴⁹ Recipients are also required to consent to broad releases of personal information. With this sweep and depth of surveillance, the ready acceptance of demeaning stereotypes and the pervasive characterization of non-criminal conduct as “fraud” has created a dense, intractable surveillance web of control over women’s relational lives.

The normative character of welfare “crime” has been identified by Janet Mosher and Joe Hermer in a report prepared for the Law Commission of Canada. As the authors note, this normative character is revealed by the disparities that exist between welfare fraud regulation and other forms of economic misconduct. In almost every respect, tax evasion and employee standards violations are viewed in a much less punitive light in terms of the moral culpability attached to the conduct, the range of detection, the enforcement tools utilized, and the penalties that follow upon conviction. This disparity “suggests a clear normative distinction at work, one that is aligned with neo-liberal values that views poor people as not deserving of support, but rather of intense scrutiny and inequitable treatment”.⁵⁰ The authors also identify the gendered nature of this criminalization, since the majority of people on social assistance are women and the majority of these women are sole-support mothers.⁵¹

In 2001, Kimberly Rogers, an eight-month pregnant Ontario woman who had been serving six months of house arrest for welfare fraud, was found dead in her apartment. Ms. Rogers had pleaded guilty to defrauding the government by taking student loans while still collecting welfare cheques. Although her benefits were initially cancelled, they were reinstated at a paltry \$468 a month. Her rent was \$450, which left her \$18 a month. And because she was on house arrest, she was unable to work to supplement her social assistance benefits. Ms. Rogers died of an overdose of a prescription antidepressant. During one of her court appeals earlier that year, Ms. Rogers wrote, “I ran out of

46. *Ibid* at 759.

47. Dorothy E Chunn & Shelley AM Gavigan, “Welfare Law, Welfare Fraud, and the Moral Regulation of the ‘Never Deserving’ Poor” (2004) 13(2) *Social & Legal Studies* 219 at 229.

48. *Ibid* at 228.

49. *Ibid* at 220.

50. Janet Mosher & Joe Hermer, “Welfare Fraud: The constitution of social assistance as crime” (Ottawa: Law Commission of Canada, 2005), at 8.

51. *Ibid* at 9.

food this weekend. I am unable to sleep... I am very upset and I cry all the time.”⁵² A representative of the Elizabeth Fry society who worked on Rogers’ case stated that: “The word ‘persecution’ isn’t strong enough to call what happened to her. This tragic case is a symptom of a government putting policies into practice without doing any research.”⁵³

An inquest into Ms. Rogers’ death was started in 2002 and the coroner who presided over the investigation observed that “overpayments...may occur for a number of reasons, most of which are related to administrative items and the settlement of supplementary income received in previous periods; while overpayments are common, overpayments due to fraud are very uncommon.”⁵⁴ The welfare system is rife with hundreds of complex rules, and errors on the part of both recipients and bureaucrats are not only common but often unavoidable. Yet it is these unintended rule violations that continue to be characterized as fraud within the system.⁵⁵

VI. PUSHING BACK: REACTIONS AGAINST THE NEW WELFARE SYSTEM

A. Charter Challenges

In order to push back against the neo-liberal reforms, some groups have attempted to launch *Canadian Charter of Rights and Freedoms* (“*Charter*”) challenges against the new welfare legislation. The definition of “spouse” in the Ontario welfare legislation, for example, was constitutionally challenged in the case of *Falkiner et al v. Director, Income Maintenance Branch, Ministry of Community and Social Services and Attorney General of Ontario*.⁵⁶ The Ontario Court of Appeal found the definition to be overly broad—capturing relationships which do not resemble marriage-like relationships—and deeply ambiguous. The Court also acknowledged that the sweeping changes to social assistance have had a disproportionate impact on poor women and noted that although women accounted for only 54% of those receiving social assistance, they accounted for nearly 90% of those whose benefits were terminated by the new definition of spouse. The government of Ontario, however, abandoned its appeal to the Supreme Court of Canada, even though leave had been granted, and instead introduced a new definition. The new definition, according to Janet Mosher and Joe Hermer, mirrors its predecessor in most respects and arguably fails to comport with the ruling of the Court of Appeal.⁵⁷

Courts have also been rejecting challenges to social assistance legislation under section 7 of the *Charter*, holding that these challenges in effect seek to entrench the right to receive an economic benefit. In the Ontario case of *Masse v. Ontario (Ministry of Community and Social Services)*,⁵⁸ for example, the Court considered whether a reduction in social assistance benefits violated the rights protected in section 7 of the *Charter*, and concluded that section 7 does not provide applicants with any legal right to minimal social assistance nor affirmative right to governmental aid.

52. Darren Yourk, “Inquest into mother’s death begins” *The Globe and Mail* (15 October 2002), online: Prison Justice <www.prisonjustice.ca/politics/1019_kimrogers.html>.

53. *Ibid.*

54. Chunn & Gavigan, *supra* note 48 at 228.

55. Mosher & Hermer, *supra* note 51 at 10.

56. *Falkiner v Ontario (Ministry of Community and Social Services)* (2002), 59 OR (3d) 481 (CA), at para 77.

57. Mosher & Hermer, *supra* note 51 at 25.

58. *Masse v Ontario*, (1996), 134 DLR (4th) 20 (Ont Div Ct).

B. Welfare Rights Campaigns

Although *Charter*-based litigation has been widely unsuccessful, advocacy campaigns have enjoyed more success. Welfare rights campaigns are often led by sole-support welfare mothers and draw attention to the impact of the extremely low welfare rates and the clawbacks of welfare benefits from the very poorest families. The advocacy groups have attempted to re-assert the need for a mother's allowance in order to meet the needs of children with mothers on welfare, and have re-inserted the relationship between poor mothers and their children into the public discourse about social assistance. In "From Mothers' Allowance to Mothers Need Not Apply: Canadian Welfare Law as Liberal and Neo-Liberal Reforms", Shelly Gavigan and Dorothy Chunn stated that, "These groups have reminded the public of the vulnerability of sole-support mothers who continue to be relegated to the lowest ranks of the poor."⁵⁹

VII. TOWARDS A SOCIAL INSERTION MODEL

Canada's current approach to welfare, which is focused on a custom of deservingness and a workfare model, has resulted in the marginalization of sole-support mothers. Maureen Baker, for example, did a comparative study on patterns of work and economic well-being in three welfare states—Australia, Canada and New Zealand. Her study concludes that although Canada has the highest levels of maternal employment, it also has the highest poverty rates. Furthermore, sole-support mothers lead the households with the lowest earnings and assets and the highest debt level.⁶⁰ The intensified individualization of poverty has had major implications and is exacerbated by the retraction from any notion of entitlement to social assistance. Welfare recipients are increasingly being identified as partial or failed citizens through the concept of dependence on the system. The contractual notion of exchange encouraged by the workfare system, and its belief in the solution to poverty being found in the labour market, is displaced. Because *Charter* challenges have been largely ineffective, welfare rights advocates are forced to push for change through the legislative system.

In order to improve the status of sole-support mothers, welfare policies need to be reoriented to adopt more aspects of a social insertion model aimed at combating exclusion and to shift away from a custom of deservingness. A social insertion model differs from a workfare model in that rather than simply being an employment integration model, insertion combines the social and employment dimensions of integration, and as a result, is much less restrictive in terms of integration of the poor into society. The logic of insertion is consistent with a reinforcing of the social rights structure, which is much more likely to increase the economic and social status of sole-support mothers, rather than that of workfare, which is aimed at its gradual dismantling. Insertion legislation should include measures enabling recipients to regain or develop their social autonomy through appropriate ongoing social support, participation in family and civic life, and access to better housing.⁶¹ These social insertion measures would provide women with a gradual process of social integration based on their differentiated needs.

59. Gavigan & Chunn, *supra* note 7 at 765.

60. Maureen Baker, "Working their Way Out of Poverty? Gendered Employment in Three Welfare States" (2009) *Journal of Comparative Family Studies*, 617 at 629.

61. Status of Women Canada, *supra* note 6 at 12.

CONCLUSION

Over the last century, there has been a gradual erasure of sole-support mothers as a category of deserving welfare recipients. The “custom of deservingness” structure on which Canada’s current welfare programs rest has resulted in sole-support mothers being relegated to one of the lowest economic strata in society. The neo-liberal restructuring, and the new emphasis on gender-neutral workfare programs, has had disproportionate impacts on sole-support mothers, most notably because the rise in employment of women has not been accompanied by the change in the transfer of family responsibilities. Despite the legislative changes to welfare programs, however, there have been historical continuities between social control and moral regulation as analytic constructs. Women’s subjectivities have been continuously regulated through categories of eligibility, like the “fit and proper” and “spouse in the house” rules, and through the expanding emphasis on and regulation of welfare fraud.

To counter this regime of disappearance, and to halt the shift from public responsibility to private self-reliance, changes in both the form and content of Canadian welfare law must occur. The challenge for those who remain committed to the principle of substantive equality and to the possibility of progressive social change is to continue to work to create social conditions and relations in which the poverty of single mothers and their children is neither inevitable nor denied. The hard lives of sole-support mothers and their children impel us to resist any form of welfare program and legislation that is not also attentive to the way in which the jagged edges of previous coercive laws played a central role in condemning them to the ranks of the never deserving poor. The realities and struggles of sole-support mothers need to be made visible.