

FEDERAL-PROVINCIAL COST SHARING
IN SOCIAL ASSISTANCE:
ASPECTS OF THE CANADA ASSISTANCE PLAN

by

Suzanne Lynne Bezanson

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Department of Economics
as satisfying the thesis requirement for the degree of
Bachelor of Arts with Honours

Approved by Thesis Supervisor

Paul Hobson
Dr. Paul Hobson

Date April 6, 1992

Approved by the Head of the Department

R. French
Dr. R. French

Date April 6, 1992

Approved by the Honours Committee

John Daves

Date 28/4/92

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S. Bezanson
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Paul Holson
Signature of Supervisor

24 April, 1992
Date

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Abstract

Basic responsibility for social welfare is constitutionally assigned to the provinces. However, the federal government has been involved in providing funds for this purpose since the late 1920s. The Canada Assistance Plan 1966 details the terms of federal-provincial cost-sharing for certain social assistance programs. This use of federal spending power can be justified by equality of opportunity provisions introduced in the Constitution Act 1982.

An important issue in financing social assistance programs is the per capita case load each province faces and its ability to meet that demand at levels consistent with national standards. Indicators of need generated in this thesis show that those provinces which face the highest need are those least able to finance social assistance programs at a level comparable to other provinces.

This thesis also reviews the federal government's unilaterally imposed limit on growth of Canada Assistance Plan expenditures in its 1990 budget, resulting in a court challenge by British Columbia. The decisions of the British Columbia Court of Appeals and the Supreme Court are described. Ultimately the Supreme Court upheld the doctrine of Supremacy of Parliament. The implications of this for cost-sharing programs are discussed.

CHAPTER 1

Introduction

Canadian society has come to rely on the "social safety net" which has been evolving and becoming more comprehensive since the end of World War II. The desire to enhance this feature of Canadian life has resulted in a number of measures undertaken by various levels of government, one of which, the Canada Assistance Plan (1966), envelopes the bulk of social welfare-type programs.

Basic responsibility for social welfare is constitutionally assigned to the provinces. However, the federal government has been involved in providing funds for this purpose since the late 1920s, and today shares the burden almost fully with the provinces. This use of federal spending power can be justified on the basis of the equality of opportunity provisions introduced in the Constitution Act, 1982, which are a joint commitment of both levels of government. The Canada Assistance Plan, which was enacted in 1966, details the terms of federal-provincial cost-sharing for certain eligible programs in social assistance as being 50/50.

A serious concern of the "have not" provinces has always been their limited ability to participate in cost-sharing arrangements. This results from their limited fiscal capacities and also, in the case of social assistance, their relatively high level of claimants as a percentage of population.

The support for continuing, indeed strengthening, the commitment to social welfare in Canada is strong. In fact, various groups are attempting to entrench the commitment to ensuring adequate social programs for all individuals explicitly in the Constitution through some form of social charter.

The federal government, guided by deficit-reducing motives, has limited growth of its spending on social assistance in some of the

wealthier provinces. This resulted in legal action against the federal government, the outcome of which has interesting and important implications for future fiscal arrangements.

The Canada Assistance Plan has been thoroughly examined by two federal task forces in the last decade: the Parliamentary Task Force on Federal-Provincial Fiscal Arrangements, 1981 (hereafter called the Breau Report) and the Task Force on Program Review, 1985. In addition, Ontario commissioned a study on social assistance, the report for which, Transitions, was released in 1988.

All three of these support continuing the cost-sharing feature of the Canada Assistance Plan, as social welfare is the concern of the country as a whole. However, each of the studies indicates some concerns with the Plan, for the most part revolving around the issues of need disparities across regions of the country and adequacy of program generosity. This issue is crucial to future inter-governmental fiscal arrangements, as the provinces are concerned with obtaining some measure of security regarding future revenues.

This thesis discusses the development of social assistance spending with emphasis on the Canada Assistance Plan, its administration and operation. In addition, the Constitutional justification for federal spending in social assistance and the call for a social charter are considered.

The 1990 Federal Budget culminated in a court challenge initiated by the province of British Columbia against the federal government. The distinct judgements which came out of the initial case are discussed and their range of interpretation and implications for future fiscal arrangements are evaluated.

The common thread through all these considerations is the issue of disparities in need and opportunity. Indicators and indices of need and generosity are generated and analyzed in this thesis. These kinds of indices have an important role in the current constitutional negotiations.

The Evolution of Canadian Social Assistance Spending

Responsibility for the needy fell originally to private organizations such as the church or to the community. In the Maritimes, local authorities were responsible for the poor because of the Poor Law, while in Upper Canada voluntary organizations, fraternal orders and hospital boards administered care of the sick and needy. In the west, provinces relied on municipal programs for health care and relief for the poor (Task Force on Program Review 1985, 57).

The first federal social assistance measures were instituted in 1927 when Canada agreed to share 50 per cent in the cost of provincial pension plans for individuals over seventy in financial need (Task Force on Program Review 1985, 57)¹. This Old Age Pension Act was the first federal-provincial cost-shared program in the area of social assistance and allowed Ottawa a hand in this area of provincial jurisdiction.

The federal government was called upon to provide relief during the Great Depression because the large increase in the demand for social assistance left some provinces unable to cope with the financial burden. Voluntary aid was provided by some of the better off areas, but this was inadequate. The federal government made relief payments to provinces in each year from 1930 to 1939 to enable them to meet the needs of the large numbers of unemployed persons (Task Force on Program Review, 57). In 1935 the federal government attempted to expand social

¹ For a more detailed explanation of the history of federal-provincial cost-sharing and social assistance spending see Osborne's "Evolution of the Canada Assistance Plan" in Service to the Public: The Canada Assistance Plan, Study Team Report to the Task Force on Program Review, 1985 and J. Harvey Perry's A Fiscal History of Canada- The Postwar Years, 1989.

measures with the Employment and Social Insurance Act. These attempts were unsuccessful as they were thrown out by the courts as being beyond federal powers.² A constitutional amendment was enacted in 1940 to give the federal government authority over unemployment insurance, enabling them to enact the Unemployment Insurance Act in 1941.³

At the same time the provinces agreed to forgo income taxes for the duration of the war. These tax rental agreements provided for transfers from the federal government to the provinces as compensation for taxes forgone. Income tax continues to be a major source of revenue for the federal government today, and it is this revenue which, in large part, enables the federal government to make specific purpose transfers, such as those under the Canada Assistance Plan, to the provinces.

Economic literature identifies several justifications for transfers in a federal system: fiscal gap, fiscal inequity, fiscal inefficiency, and interprovincial spillovers.⁴ At the time of the tax rental agreements, the fiscal gap rationale was adequate reason for transfers. A fiscal gap occurs when a level of government has inadequate taxation powers to support its expenditure responsibilities. When the provinces gave up their right to collect income taxes, their spending responsibilities were not decreased, thereby necessitating transfers from the federal government.

In addition to unemployment insurance, Canada introduced family allowance (1945) and five provinces commenced health care programs for

² See Perry, p.607-609 for further detail.

³ The relevant provision is found in Section 91.2A which was added to the Constitution by the Constitution Act, 1940.

⁴ See Boadway's "Federal-Provincial Transfers in Canada: A Critical Review of the Existing Arrangements" for a complete analysis of the rationale for intergovernmental transfers in Canada.

welfare recipients between 1935 and 1950. The federal government put forth its Green Book proposals to the Conference on Reconstruction in 1945 which offered the provinces social assistance programs in exchange for ceding tax powers. The proposals suggested federal responsibility for pensions at age seventy, cost-shared pensions at sixty-five, full responsibility for aid to unemployed employables, and cost-shared health insurance. The provinces rejected these proposals (Task Force on Program Review, 58).

Three cost-shared welfare programs were introduced between 1951 and 1954. Old Age Assistance and Disabled Persons' Allowances were cost-shared at fifty percent, and the federal government paid seventy-five percent of the Blind Persons' Allowance. All persons falling into one of the applicable categories for these programs were required to pass a means test to be eligible for assistance.

As in the 1930s, unemployment problems resulted in federal action in the mid-fifties. As unemployment rates rose, individuals who had exhausted their unemployment insurance became in need of further financial aid. In 1956 the Unemployment Assistance Act was passed whereby provinces could be reimbursed fifty percent of their expenditures on unemployed employables who did not qualify for unemployment insurance. Until 1958 payment for the first 0.45 percent of the provinces population was not shared because they were deemed non-employable (Perry 1989, 693).

The Unemployment Assistance Act introduced several features which, in retrospect, led to the development of the Canada Assistance Plan. Unemployment Assistance replaced the means test of income and assets with a needs test which assessed an individual's budgetary requirements in relation to their means. Assistance was given to fill the gap between needs and resources. In addition, provinces were to

agree that they would not require a period of residency to be eligible for assistance. Residency was reinterpreted to mean residence in Canada, rather than in a given province.

The Act provided assistance only for "unemployed employables" which gave the provinces the incentive to broaden the definition of this term in order to qualify for additional federal funds. The provisions of unemployment assistance did not include cost-sharing for individuals receiving mothers' allowance, in homes for special care or institutionalized. Unemployment assistance ceased in 1966 when the Canada Assistance Plan allowed cost-sharing for individuals in all of the above categories.⁵

In 1957 the Hospital Insurance and Diagnostic Services Act was passed. This act was intended to alleviate the problem of debt burdens accumulated by hospital patients which often contributed to the need for longer term social assistance once these patients were released.

The stage was set for a more comprehensive federal-provincial social assistance plan by the Canadian Welfare Council's policy statement, "Social Security for Canada," released in 1958. The council recommended improvements to old age security, public assistance, and unemployment insurance.

Recommendation seven of the statement was:

There should be a federal Public Assistance Act which would be, in effect, an extension of the Unemployment Assistance Act and which would enable the Dominion government to share the aggregate costs to a province, and to the municipalities in a province, of providing financial assistance to all persons who are in need...

The Act should also stipulate that:

- a. Length of residence shall not be a condition for the receipt of assistance.
- b. The proportion of cost carried by the Domin-

⁵ In actuality not all "categorical" programs ended with the inception of CAP. Minor amounts continued to be paid to the blind and disabled for some years. See Perry, p.748.

ion government shall progressively increase as the total number of persons on public assistance in a province mounts beyond predetermined percentages of its population. (Task Force on Program Review 1985, 60)

The federal government waged its war on poverty with five pieces of major social policy legislation enacted between 1964 and 1966. The Canada Assistance Plan (CAP) was one of those. The others were Youth Allowances (1964), the Canada Pension Plan (1965), the Guaranteed Income Supplement for old age pensioners (1966), and the Medical Care Insurance Plan (1966).

The Canada Pension Plan established pensions as a joint federal-provincial responsibility.⁶ The provinces agreed to guarantee the pension fund a rate of interest equal to that on long-term government bonds, and the federal government agreed to pay all surplus pension payments to the provinces in the proportion they were collected from each province. Provinces were given freedom to invest the pension money as they wished, thus were deemed to have paramountcy in the jurisdiction of public pensions.⁷

Being a cost-shared program, CAP was controversial from its inception. Supporters felt that giving the federal government a hand in funding social welfare programs (technically a provincial jurisdiction) would enable them to channel expenditures into those programs which might alleviate provincial disparities.

By adopting new social-welfare programs which appeal especially to specific regions or provinces, the federal government could attract

⁶ Section 94A, added to the Constitution by the Constitution Act 1964, permits the federal government to make laws in relation to pensions, however; the federal laws may not affect the operation of any provincial law.

⁷ See The Financing of Canadian Federation, by Moore et al. for a comprehensive discussion of the workings of the Canada Pension Plan.

provinces with a lesser capacity to fund programs on their own to these cost-shareable programs. Because the federal government is able to set the terms of such programs, and only the provinces which agree to these terms will receive federal funds, Ottawa can conceivably tailor programs specifically for the benefit of those provinces which require it most. Provinces would be encouraged to promote federal interests because the federal government is able to determine which programs are eligible for cost-sharing.

Critics saw federal fiscal power over these provincial matters as an intrusion, insinuating that the federal government knew better how to meet the needs of each province's residents than did the various provincial governments. "For the federal government to offer financial support only to those provinces that agree with it, and deny it to those who do not, means that all Canadians are taxed to provide services that are available only in some parts of the country" (Task Force on Program Review 1985, 68). This can be viewed essentially as opting out without compensation.⁸ Despite this controversy, the provinces strongly supported the Canada Assistance Plan, with all signing agreements by August, 1967.

The Canada Assistance Plan Act

The Canada Assistance Plan was enacted on July 15, 1966, retroactive to April 1, 1966. The preamble to the Act states:

⁸ Opting out provisions are included in federal-provincial cost-shared programs to allow provinces to refuse to participate in the program but still receive additional funds. These funds are provided in the form of additional tax room. Only Quebec has exercised the right to opt out so far. The five tax points awarded to Quebec under CAP stem from earlier fiscal arrangements and a tax transfer under EPF in 1977. See Boadway and Hobson for a complete assessment of opting out.

...The Parliament of Canada, recognizing that the provision of adequate assistance to and in respect of persons in need and the prevention and removal of the causes of poverty and dependence on public assistance are the concern of all Canadians, is desirous of encouraging the further development and extension of assistance and welfare services programs throughout Canada by sharing more fully with the provinces in the cost thereof....

Assistance under CAP is based on a needs test for each potential recipient, as was introduced in the Unemployment Assistance Act in 1956. Need is assessed in relation to the gap between resources and budgetary requirements, rather than on income and assets alone.

The maximum allowable income levels and value of fixed and liquid assets varies across provinces. In 1989, for example, only personal property valued at \$500 or less could be exempt from conversion into liquid assets in Saskatchewan. In Quebec, the value of personal property could not exceed \$1500 for an individual. Specific items exempt also vary. In most provinces, clothing, furniture and the value of the principal home are exempt. Some allow a car, though the availability of public transportation is taken into account in the decision.

This same lack of uniformity applies to the assessment of liquid assets. The maximum allowable value of liquid assets in order to qualify for federal cost-sharing is \$2500 for a single individual and \$5000 for a person with one dependent with an additional \$500 for each additional dependent. The maximum in each province is at or below this level.⁹

Budgetary requirements include food, clothing, shelter and other necessities based on provincial criteria. Non-exempt income is

⁹ In Welfare Incomes 1989, the National Council of Welfare describes in detail the treatment of assets across provinces and the level of welfare incomes.

subtracted from budgetary requirements to determine the level of assistance required.¹⁰

The Canada Assistance Plan was intended to provide assistance to those in need regardless of the cause of that need. Categorical programs to provide aid for individuals with certain characteristics (such as allowances for blind or disabled persons) were to be phased out as all persons deemed to be in need could obtain assistance under CAP. Implicit in providing assistance based on need was the notion that accepting employment was not to be a requirement for eligibility (Moscovitch 1988, 274).

The provision of "adequate" assistance as stated in the preamble to the Canada Assistance Plan Act (1966) was not specifically determined by the federal government. Rate structures are determined by each of the provinces, though the eligibility of specific programs to be cost-shared likely affects both the generosity of a program and whether it is offered at all. In its definition of assistance, the Act includes aid for basic requirements such as food, clothing, utilities and personal requirements, items necessary to carry on a trade or employment, care in homes for special care, travel, funerals and burials, health care, comfort allowances for hospital patients and other prescribed welfare services (CAP Act 1966).

The Canada Assistance Plan Act (1966) consists of four main parts: General Assistance and Welfare Services, Indian Welfare, Work Activity Projects, and a General section which allows for cost-sharing of Mothers' Allowance. All ten provinces signed agreements under Part I of the Act within thirteen months of its enactment. This section states that Canada is willing to enter into agreements to share in the

¹⁰ Examples of exempt income are family allowance and the federal sales tax credit, though they are not exempt in all provinces. See Welfare Incomes 1989.

cost of assistance provided by or at the request of provincially approved agencies, and welfare services (also provided by approved agencies).

Part I also details the contributions to be made by Canada. All provinces have chosen the method of calculating contributions wherein the federal government pays fifty percent of the costs to provinces and their municipalities of providing social assistance and fifty percent of the cost of welfare provision exceeding that cost in the fiscal year ending March 31, 1965. The Plan does not provide cost-sharing for capital costs incurred in providing either social assistance or welfare, equipment operating costs of welfare programs, insurance premiums, or any cost which Canada is required to share under any other agreement or legislation.

Provinces could have chosen an alternative which would have the federal government contributing fifty percent of the cost of both social assistance (as in the chosen arrangement) and the employment of persons by provincially approved welfare agencies in positions filled after March 31, 1965 (CAP Act 1966). Neither capital nor operating costs were included in this option either.

Under Part I, the provinces must agree to provide assistance to anyone deemed in need (on the basis of the needs test discussed above); may not require a period of residency, must establish an appeals process for claimants within one year of signing an agreement. Provinces must also must maintain and supply to the federal government accounts regarding the provision of welfare and assistance and any related provincial acts and regulations.

Part II, Indian Welfare, allows for the option of extending welfare services to status Indians in the provinces. Thus aid to Native Canadians would be cost-shared under the Canada Assistance Plan

rather than administered by the Department of Indian Affairs and Northern Development.¹¹ In the past, only Manitoba has participated in this part of the Plan.

Under Part III, Work Activity Projects, the federal government will contribute fifty percent of the cost of projects undertaken by provinces or municipalities to retrain or rehabilitate recipients to enable them to return to the work force. This part includes the stipulation that no one be denied assistance should they refuse to participate in the projects. As of the fiscal year 1988-89, no agreements with the territories had ever been signed under Part III. In that same year, a total of twenty-nine work activity projects were undertaken in the country, with 4014 participants in all (CAP Annual Report 1988-89).

Mother's Allowance is eligible to be cost-shared with the federal government under Part IV of the Canada Assistance Plan. The only requirement is that the province provide written notice to the federal government for inclusion of this allowance.

Also contained in Part IV General of the Canada Assistance Plan Act are changes to other pieces of legislation, such as the Old Age Assistance and Blind Persons Allowance programs. These amendments allow the provinces to provide individuals receiving these categorical payments a comparable level of assistance under the provisions of the Canada Assistance Plan. As previously mentioned, these categorical programs were to be phased out with the inception of CAP.

¹¹ This federal department operates a program which provides services similar to those offered under CAP to Indians as defined under the Indian Act.

Applicable Services

CAP provides cost-sharing for several categories of activities under the auspices of social assistance and welfare. These include general assistance, homes for special care, children's institutions, child welfare, welfare services and work activities, and health care. General assistance is classified as financial aid to those deemed needy. While the provinces make distinctions between short and long term programs in offering this aid, the federal government is not concerned with such distinctions, only that the province does not apply restrictions on eligibility contrary to the Canada Assistance Plan.

General assistance is apportioned the largest share of the CAP dollar. In 1985-86 nearly 5.9 billion dollars, 70 percent of payments, went to general assistance from federal and provincial governments combined. Tables 1.1 and 1.2 detail expenditures and the percentage of payments they represent for the years 1980-81 to 1985-86.

With the creation of EPF in 1977, funding of nursing homes was removed from CAP. Homes for special care now include those which offer services for a shorter time period such as shelters for battered women and half-way houses for persons who were previously institutionalized. Children's institutions include group homes, treatment centres and homes for the mentally retarded. Funding for adoption, foster care and protection of children is available under the category of child welfare. Administrative costs for both child welfare and other welfare services are funded under the welfare services and work activity category.

Eligible services include individual and family counselling, mediation and others. Work activity projects have been described previously as programs to help return welfare recipients to the work force. Cost-shared health care covers items such as prescriptions,

TABLE 1.1
 CAP PAYMENTS BY EXPENDITURE CATEGORY
 (millions of dollars)

	I	II	III	IV	V	VI
1980-81	2842	193	351	217	110	744
1981-82	3215	218	436	242	119	928
1982-83	4223	250	470	262	150	1105
1983-84	5001	268	551	259	188	1089
1984-85	5439	290	504	247	224	1237
1985-86	5898	274	466	258	326	1331

- I - GENERAL ASSISTANCE
- II - ADULT SPECIAL CARE HOMES
- III - CHILDREN'S INSTITUTIONS
- IV - CHILD WELFARE
- V - HEALTH CARE
- VI - WELFARE SERVICES AND WORK ACTIVITY

Source: Program Services, CAP Directorate,

TABLE 1.2
 CAP PERCENTAGE COMPOSITION
 BY EXPENDITURE CATEGORY

	I	II	III	IV	V	VI
1980-81	63.6%	4.3%	7.9%	4.9%	2.5%	16.8%
1981-82	62.3%	4.2%	8.5%	4.7%	2.3%	18.0%
1982-83	65.4%	3.9%	7.3%	4.0%	2.3%	17.1%
1983-84	68.0%	3.0%	7.5%	3.5%	2.5%	14.8%
1984-85	68.5%	3.7%	6.3%	3.1%	2.8%	15.0%
1985-86	70.0%	3.2%	5.4%	3.0%	3.8%	15.0%

- I - GENERAL ASSISTANCE
- II - ADULT SPECIAL CARE HOMES
- III - CHILDREN'S INSTITUTIONS
- IV - CHILD WELFARE
- V - HEALTH CARE
- VI - WELFARE SERVICES AND WORK ACTIVITY

Source: Program Services, CAP Directorate,
 Health and Welfare Canada

dentures and other medical and dental care not funded under the various provincial medical insurance plans, but eligible under provincial social assistance regulations.

Also included in CAP is vocational rehabilitation. This is the only category which does not require a needs test for eligibility; any disabled individual seeking training to return to the work force or to enable them to remain active as a parent at home is eligible for assistance under vocational rehabilitation (Moscovitch 1988, 288-9).

Administration of the Canada Assistance Plan

The territories and all provinces except Quebec have chosen the same method of payment under CAP which entails submission of monthly statements detailing operations and payments to the CAP Directorate. Payments are made monthly on the basis of these statements. At the end of each fiscal year the provinces are required to submit an estimated statement for the upcoming year. Payment for the first month of the fiscal year is calculated as one-twelfth of the estimated contribution of the federal government for that year.

In lieu of transfers, Quebec receives five tax points from the Department of Finance annually.¹² CAP pays one-twelfth of the difference between the value of the tax points and the estimated contribution for the year to Quebec each month.¹³

The Canada Assistance Plan Directorate is a part of the federal Department of Health and Welfare. It is made up of three divisions:

¹² One tax point is equal to one percent of basic federal tax for the year of inception. These abatements are not subject to equalization. See Boadway and Hobson's discussion of opting out.

¹³ These tax points are treated as cash transfers in all subsequent analysis.

Social Assistance and Services; Program Finance; and Field Operations. In 1988-89 the Directorate was responsible for administering agreements under Parts I (general assistance and welfare services) and III (work activity projects). In addition, it was responsible for five related programs: the Vocational Rehabilitation of Disabled Persons Act (VRDP Act); the Alcohol and Drug Treatment and Rehabilitation Agreements; the Young Offenders Agreements; Indian Welfare Agreement with Ontario; and section 44.25 of the Excise Tax Act (CAP Annual Report 1988-89).

The Social Assistance and Services branch of the CAP Directorate reviews provincial submissions for cost-sharing in social assistance and welfare services, and administers the VRDP Act and Alcohol and Drug Treatment and Rehabilitation Agreements. This mandate entails making amendments to schedules to the Agreements under CAP by adding or deleting eligible agencies and applicable provincial laws. During the fiscal year 1988-89 this amounted to adding 173 homes for special care for adults and 25 child care institutions, 69 provincially approved agencies, and 55 provincial laws (CAP Annual Report 1988-89).

The Program Finance Division is charged with ensuring that the financial terms and conditions of the cost-sharing agreements are met. It negotiates final settlements with the provinces for their cost-sharing claims and dictates auditing specifics. This division also prepares forecasts of federal transfer payments under CAP and monitors monthly payments to the provinces. In addition, it offers financial consultation to the provinces on various aspects of the Plan (CAP Annual Report 1988-89).

The Field Operations Division has offices in nine of the ten provincial capitals. Prince Edward Island is administered by the New Brunswick office, North West Territories by Alberta, and the Yukon by the British Columbia office. This division employs nearly half of all

CAP employees and is responsible for maintaining communication with the provinces. They examine provincial claims to ensure that costs are eligible to be shared. Many claims are submitted by the provinces for advances each month. In 1988-89 the Field Operations Division reviewed and certified 1162 CAP claims in total (CAP Annual Report 1988-89).

Claims Processing¹⁴

In order to assess payments owing to the provinces, the CAP Directorate requires a final claim submitted by each Provincial Auditor. These claims are examined by the field office for that province and a report is sent to the federal Audit Service Bureau which prepares a report of discrepancies to be sent to the province. CAP administrators and provincial officials then meet in order to reconcile the discrepancies and reach a settlement. Once a settlement is made an official report is written and signed by the federal Deputy Minister of Health and Welfare and his or her provincial counterpart. The cheque to the province is made on the basis of this report. Should the need arise, this payment may be reassessed at a later date.

It is often necessary for claims to be audited several times because the statements of each provincially approved non-profit agency must be audited. This makes the claims process long and complex. Sometimes claims are delayed for several years as provinces attempt to settle contentious items.

In his article, "The Canada Assistance Plan: A Twenty Year Assessment," Moscovitch cites an important reason for the delay in finalizing many claims. This was the change of extended health care from being included under Established Programs Financing and Fiscal

¹⁴ For a more thorough treatment of claims processing see "The Canada Assistance Plan: A Twenty Year Assessment, 1966-1986," by Allan Moscovitch, in How Ottawa Spends (1988) p.279-280.

Arrangements Act (EPF) of 1977 to being covered under CAP. The guidelines for administering extended health care under CAP took approximately seven years to complete, resulting in large unresolved claims for many years (Moscovitch 1988, 279).

Federal government contributions under the Canada Assistance Plan now total over \$6 billion per annum. Table 1.3 indicates the total CAP cash transfers by province and 1.4 gives the rate of growth of these payments. These expenditures have been growing rapidly, from \$2.2 billion in 1980-81 to \$5.6 billion in 1989-90, representing .05 and .10 percent of GDP, respectively.¹⁵ The value of special abatements to Quebec is shown in Table 1.5. Total transfers to Quebec under the auspices of CAP is the sum of the abatement and cash transfer for each year.

¹⁵ GDP in 1986 dollars. Source: National Income and Expenditure Accounts Annual Estimates 1979-1990 Statistics Canada

TABLE 1.3

TOTAL CAP CASH PAYMENTS
BY PROVINCE
1980-81 TO 1989-90

	1980-81	1981-82	1982-83	1983-84	1984-85
NFLD.	52.5	59.5	66.0	71.3	74.1
P.E.I.	12.5	16.2	18.3	16.6	17.6
N.S.	60.5	70.7	86.5	93.1	104.7
N.B.	78.5	90.0	107.7	111.7	126.2
QUE.	586.7	678.7	807.2	1043.8	1147.9
ONT.	533.5	618.7	742.3	830.9	943.5
MAN.	69.3	84.7	91.8	108.9	132.2
SASK.	72.2	87.0	119.9	142.5	143.5
ALTA.	155.0	239.7	305.7	326.0	334.3
B.C.	313.6	341.4	473.7	531.2	598.8
TOTAL	1934.2	2286.7	2818.9	3275.9	3622.6
	1985-86	1986-87	1987-88	1988-89	1989-90
NFLD.	75.7	85.5	88.4	91.3	101.0
P.E.I.	20.7	19.8	21.7	22.6	23.9
N.S.	104.5	124.4	128.2	153.9	157.2
N.B.	136.9	145.1	152.4	149.8	158.9
QUE.	1198.3	1107.8	1100.7	1129.0	1106.4
ONT.	1052.3	1132.2	1319.8	1511.0	1906.2
MAN.	141.3	154.6	164.2	197.8	194.5
SASK.	148.6	160.7	157.1	155.2	152.9
ALTA.	389.8	427.3	442.9	487.9	517.0
B.C.	593.5	632.1	652.8	663.1	720.0
TOTAL	3861.7	3989.4	4228.2	4561.4	5037.9

Source: Federal-Provincial Fiscal Relations and Social Policy Division, Department of Finance, Ottawa.

TABLE 1.4

RATE OF GROWTH OF CAP CASH PAYMENTS
1981-82 TO 1989-90

	1981-82	1982-83	1983-84	1984-85	1985-86
NFLD.	13.3%	10.9%	8.0%	3.9%	2.2%
P.E.I.	29.6%	13.0%	-9.3%	6.0%	17.6%
N.S.	16.9%	22.3%	7.6%	12.5%	-0.2%
N.B.	14.6%	19.7%	3.7%	13.0%	8.5%
QUE.	15.7%	18.9%	29.3%	10.0%	4.4%
ONT.	16.0%	20.0%	11.9%	13.6%	11.5%
MAN.	22.2%	8.4%	18.6%	21.4%	6.9%
SASK.	20.5%	37.8%	18.8%	0.7%	3.6%
ALTA.	54.6%	27.5%	6.6%	2.5%	16.6%
B.C.	8.9%	38.8%	12.1%	12.7%	-0.9%
TOTAL	18.2%	23.3%	16.2%	10.6%	6.6%

	1986-87	1987-88	1988-89	1989-90
NFLD.	12.9%	3.4%	3.3%	10.6%
P.E.I.	-4.3%	9.6%	4.1%	5.8%
N.S.	19.0%	3.1%	20.0%	2.1%
N.B.	6.0%	5.0%	-1.7%	6.1%
QUE.	-7.6%	-0.6%	2.6%	-2.0%
ONT.	7.6%	16.6%	14.5%	26.2%
MAN.	9.4%	6.2%	20.5%	-1.7%
SASK.	8.1%	-2.2%	-1.2%	-1.5%
ALTA.	9.6%	3.7%	10.2%	6.0%
B.C.	6.5%	3.3%	1.6%	8.6%
TOTAL	3.3%	6.0%	7.9%	10.4%

Source: Federal-Provincial Fiscal Relations
and Social Policy Division, Dept. of Finance
Ottawa

Table 1.5: Quebec Abatements:

YEAR	VALUE OF ABATEMENT (millions of dollars)
1980-81	\$264.6
1981-82	314.3
1982-83	358.1
1983-84	355.3
1984-85	365.2
1985-86	407.5
1986-87	438.0
1987-88	480.3
1988-89	524.8
1989-90	574.7

Source: Federal-Provincial Fiscal Relations and Social Policy Division,
Department of Finance, Ottawa.

CHAPTER 2

Constitutional Provisions for Social Assistance

The preamble to the Canada Assistance Plan Act 1966 makes clear the notion that social assistance is a concern of the country as a whole and, thus, the federal government, despite the fact that the Constitution assigns this responsibility to the provinces.¹

In the 1982 Constitution Act, the federal commitment to equalization was explicitly stated:

Parliament and the Government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation (Section 36.2).

Further, the 1982 Act expressed the country's expectation that more than regional or provincial equalization was a priority. Section 36.1 of the Constitution Act 1982 states that all levels of government are committed to:

- (a) promoting equal opportunities for the well-being of Canadians;
- (b) furthering economic development to reduce disparity in opportunities; and
- (c) providing essential public services of reasonable quality to all Canadians.

This section effectively outlines the desire for and expectation of actions to promote individual economic equity.² Section 36 of the 1982 Constitution Act provides the justification for federal intervention in the provincial jurisdiction of social assistance and welfare: the desire for equality of opportunity for individuals and provinces.

¹ Refer to page 7 for the preamble to the CAP Act.

² A comprehensive discussion of individual and provincial equity can be found in "The Constitution and the Social Contract," by Norrie et al. (1991).

The Dobbie-Beaudoin Report (1992) prescribes a Social Covenant which entails amending Section 36.1 of the Constitution Act (1982) to include a specific commitment to "providing adequate social services and benefits to ensure that all Canadians have reasonable access to housing, food and other basic necessities..."(p.122). In addition, they suggest amending Section 36.2 to make explicit reference to "ensuring that all Canadians have a reasonable standard of living" (p.123).

By entrenching these ideals in the Constitution, the government would be forced to address inter-provincial disparities in opportunity. This entails "levelling the playing field" for all provinces with respect to revenues and ensuring that each is able to fully cope with the demand for social assistance.

Recipients, Generosity and Need

The Report of the Parliamentary Task Force on Federal-Provincial Fiscal Arrangements 1981 (the Breau Report) recommended that "fiscal arrangements recognize interprovincial differences in cost arising from differing levels of need for social assistance payments to individuals" (p.149). Thus, the issue of need disparities is not a new one; however, in these times of federal deficit-reducing measures and Constitutional negotiations the matter is of great importance.

In analysing the data on CAP transfers per capita (Table 2.1) we see that Quebec receives considerably more than any other province in each year. It is important to keep in mind that these transfers represent amounts equalling the province's expenditures on eligible programs because CAP is a matching grant, so those provinces with

TABLE 2.1
TOTAL CAP PAYMENTS PER CAPITA
1980-81 TO 1989-90

YEAR	1980-81	1981-82	1982-83	1983-84	1984-85
NFLD.	92.8	104.7	116.5	124.7	129.4
P.E.I.	101.5	132.1	149.8	133.8	140.5
N.S.	71.6	83.5	101.8	108.6	121.1
N.B.	112.9	129.2	154.6	158.8	178.2
QUE.	133.3	154.2	180.3	216.1	233.1
ONT.	62.3	71.7	85.3	94.4	106.0
MAN.	67.6	82.6	88.8	104.1	125.3
SASK.	75.2	89.9	122.7	144.1	143.4
ALTA.	72.4	107.1	132.1	139.4	142.9
B.C.	117.6	124.4	169.9	188.8	210.3
TOTAL	91.7	107.1	129.6	146.9	160.1
	1985-86	1986-87	1987-88	1988-89	1989-90
NFLD.	132.4	150.4	155.6	160.6	177.0
P.E.I.	164.6	156.2	170.7	175.9	183.7
N.S.	119.9	142.5	146.0	174.5	177.4
N.B.	192.9	204.3	213.9	209.7	221.2
QUE.	246.5	236.4	239.8	249.0	251.2
ONT.	116.8	124.2	142.5	160.2	199.0
MAN.	132.8	144.3	152.2	182.4	179.3
SASK.	147.4	159.1	154.7	153.1	151.7
ALTA.	166.0	179.9	186.3	204.2	213.4
B.C.	206.8	218.8	223.2	222.5	235.8
TOTAL	170.2	175.1	184.4	196.9	214.7

Source: Federal-Provincial Fiscal Relations and Social Policy Div., Dept. of Finance, Ottawa

higher transfers from the federal government are the ones whose expenditure on social assistance is higher.³

Ontario received transfers lower than any other province each year until 1988-89 and 1989-90. The cause for this could be that Ontario's strong economy prevented large demand for social assistance expenditures, or that Ontario offered several programs which were not cost-shareable, and so are not represented here.⁴

Rates of growth of transfers, shown in Table 2.2, illustrate Ontario's large increases in expenditures since 1980-81. Except for 1989-90, Newfoundland's CAP payments have been increasing at a decreasing rate over the last decade. The effects of the recession of the early 1980s is indicated by the high rate of growth of per capita CAP payments in 1981-82 and 1982-83.

Appendix I details the number of recipients of general assistance (the largest category of CAP) by province since the inception of the Canada Assistance Plan. The total number of beneficiaries increased from 1.19 to 1.85 million between 1967-68 and 1987-88, while Canada's population grew from 20.581 to 25.787 million.⁵ Thus, the number of beneficiaries as a percent of population increased from 5.78% to 7.17% over these years. The number of recipients for three representative years is found in Table 2.3.

It is perhaps more revealing to view these numbers on a per capita basis. The resulting indicator of need by province, Indicator

³ Total social assistance and welfare-type expenditures may be higher than these numbers indicate because some provinces administer programs which are not eligible to be cost-shared. However, those expenditures are beyond the scope of this paper.

⁴ An example of such a program is the income supplement paid by the province to senior citizens receiving the federal guaranteed income supplement. See Transitions, p.495.

⁵ Population data is Statistics Canada measure for January, 1968 and 1988.

TABLE 2.2

RATE OF GROWTH OF TOTAL CAP
PAYMENTS PER CAPITA

YEAR	1981-82	1982-83	1983-84	1984-85		
NFLD.	12.8%	11.3%	7.0%	3.8%		
P.E.I.	30.1%	13.4%	-10.7%	5.0%		
N.S.	16.6%	21.9%	6.7%	11.5%		
N.B.	14.4%	19.7%	2.7%	12.2%		
QUE.	15.7%	16.9%	19.9%	7.9%		
ONT.	15.1%	19.0%	10.7%	12.3%		
MAN.	22.2%	7.5%	17.2%	20.4%		
SASK.	19.5%	36.5%	17.4%	-0.5%		
ALTA.	47.9%	23.3%	5.5%	2.5%		
B.C.	5.8%	36.6%	11.1%	11.4%		
TOTAL	16.8%	21.0%	13.3%	9.0%		
					1985-86	1986-87
NFLD.					2.3%	13.6%
P.E.I.					17.2%	-5.1%
N.S.					-1.0%	18.8%
N.B.					8.2%	5.9%
QUE.					5.7%	-4.1%
ONT.					10.2%	6.3%
MAN.					6.0%	8.7%
SASK.					2.8%	7.9%
ALTA.					16.2%	8.4%
B.C.					-1.7%	5.8%
TOTAL					6.3%	2.9%
					1987-88	1988-89
					3.5%	3.2%
					9.3%	3.0%
					2.5%	19.5%
					4.7%	-2.0%
					1.4%	3.8%
					14.7%	12.4%
					5.5%	19.8%
					-2.8%	-1.0%
					3.6%	9.6%
					2.0%	-0.3%
					5.3%	6.8%
						10.2%
						4.4%
						1.7%
						5.5%
						0.9%
						24.2%
						-1.7%
						-0.9%
						4.5%
						6.0%
						9.0%

Source: Federal-Provincial Fiscal Relations and Social Policy Div., Dept. of Finance, Ottawa

TABLE 2.3

NUMBER OF BENEFICIARIES
OF CAP
GENERAL ASSISTANCE

	1980-81	1984-85	1989-90
NFLD.	50.4	49.1	42.3
P.E.I.	10.1	9.6	8.0
N.S.	62.4	73.6	74.3
N.B.	67.4	69.1	66.5
QUE.	532.9	708.7	576.5
ONT.	389.8	485.8	583.0
MAN.	46.9	62.8	66.8
SASK.	43.8	64.0	56.0
ALTA.	78.1	124.1	144.8
B.C.	128.0	267.6	232.8
TOTAL	1409.8	1914.4	1850.8

Source: Health and Welfare Canada, Ottawa

N, provides interesting insights into the issue of inter-provincial need disparities in social assistance.⁶ The complete table of Indicator N is found in Appendix II. For the purpose of discussion, Table 2.4 illustrates the indicator for the representative years.

It should be noted that Indicator N is based solely on registered numbers of recipients. The actual incidence of need may be considerably higher as the number of registered cases depends greatly on program delivery and generosity, which itself varies across provinces. It is probable that a significant portion of the population in any province would qualify for aid but is not receiving social assistance or welfare.

In examining Indicator N for the representative years we can identify an east-west distinction, most noticeable in 1980-81. Quebec and the Atlantic provinces having need ranging from 7.34% (in Nova Scotia) to 9.63% (in New Brunswick), while provinces west of Quebec average 4.43% need.

The decline of the resource sector, on which British Columbia's economy is so dependant, is in large part responsible for that province's great increase in need (at its peak of 9.38% in 1984-85). Newfoundland, meanwhile, experienced a decline in need until 1989-90, by which time it had reached a level only slightly above national average, and below the level of British Columbia (a "have" province). Alberta had the distinction of having the lowest need in all three fiscal years (in fact, in almost every year).

The incidence of need is not particularly surprising, though Indicator N serves to dramatically illustrate the extent of variation in the demand for social assistance-type programs across the country.

⁶ Indicator N = $\frac{\text{number of recipients in a province}}{\text{provincial population}} \times 100$

TABLE 2.4

INDICATORS OF GENEROSITY AND NEED
FOR SELECTED YEARS

	1980-81	
	NEED	GENEROSITY
NFLD.	8.91%	2083
P.E.I.	8.14%	2493
N.S.	7.34%	1952
N.B.	9.63%	2344
QUE.	8.35%	3195
ONT.	4.55%	2738
MAN.	4.59%	2948
SASK.	4.59%	3279
ALTA.	3.64%	3974
B.C.	4.80%	4899
NAT. AVG.	6.45%	2990
	1984-85	
	NEED	GENEROSITY
NFLD.	8.46%	3060
P.E.I.	7.94%	3538
N.S.	8.50%	2851
N.B.	9.66%	3691
QUE.	10.83%	4295
ONT.	5.43%	3901
MAN.	5.95%	4212
SASK.	6.36%	4512
ALTA.	5.28%	5417
B.C.	9.38%	4485
NAT. AVG.	7.78%	3996
	1989-90	
	NEED	GENEROSITY
NFLD.	7.40%	4784
P.E.I.	6.15%	5970
N.S.	8.38%	4233
N.B.	9.25%	4781
QUE.	8.61%	5832
ONT.	6.09%	6539
MAN.	6.15%	5828
SASK.	5.56%	5457
ALTA.	5.97%	7144
B.C.	7.62%	6187
NAT. AVG.	7.12%	5676

Sources: Per capita CAP transfers, Federal-Provincial Fiscal Relations and Social Policy Division, Dept. of Finance, Ottawa
Recipient data, Health and Welfare Canada.

The lack of national standards with regard to rates and the assessment of each potential recipient's need hampers the ability of this indicator to portray the true picture because each province provides different services and assesses recipient need at different levels. The matter of effective national standards will be discussed later in this chapter.

It may seem reasonable to assume that those provinces exhibiting greater need as identified by Indicator N should receive larger transfers from the federal government; however, this is not the case. For example, in 1980-81, British Columbia, Alberta, and Saskatchewan all exhibited lower need than Nova Scotia, yet they received higher per capita transfers.

Indicator G helps explain a large part of the reason for lower transfers to higher-need provinces.⁷ This indicator is measured in dollars per recipient.⁸ Referring again to Table 2.4, Indicator G is shown along side Indicator N for the representative years. It can generally be observed that provinces with lower need exhibit higher generosity and vice versa. Additionally, the western provinces tend to have higher generosity, while eastern Canada lags behind. For example, in 1980-81 Newfoundland paid an average of \$2083 to its recipients and British Columbia awarded more than twice that at \$4899. In 1984-85 Nova Scotian recipients received \$2851 on average, while Albertans received \$5417.⁹ Thus, it appears that low need is often offset by

⁷ This indicator can be found in Appendix II with Indicator N.

⁸ Total per capita expenditures for each province were calculated by doubling the federal per capita transfers as the provinces contribute an equal amount.

⁹ Just as total expenditures on social assistance and welfare-type programs is probably greater than indicated by CAP transfers, actual dollars received by recipients may be higher than Indicator G suggests because of programs not cost-shared under CAP.

higher generosity which is reflected in the observations regarding the level of per capita transfers.

It could be argued that the cost of living varies across provinces and, therefore, so should the benefits. However, the validity of this statement is difficult to assess. Finding a proper index of costs with which to facilitate calculation of the actual disparities in generosity is no simple task. The Consumer Price Index and similar indices are based on baskets of goods which would not properly represent the expenditures of social assistance recipients, who spend an inordinately large portion of their income on housing and food. In addition, there is the issue of the urban vs. rural poor.

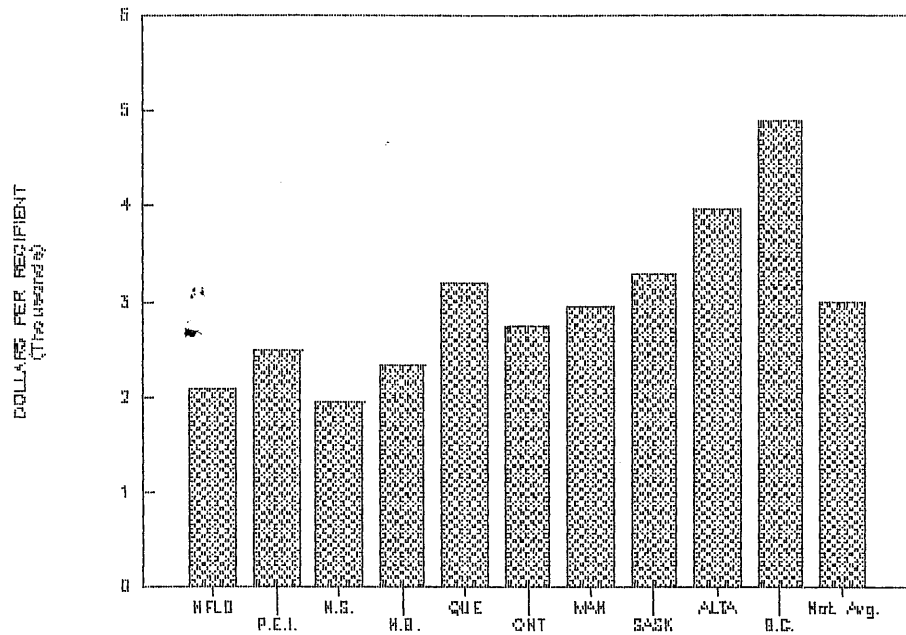
Suffice it to say that some of the variation in generosity could perhaps be explained by differences in the cost of living across provinces and/or the proportion of the needy residing in high-cost urban areas. However, these factors are unlikely to account for all or even most of the disparity.

The inter-provincial variation in need and generosity in 1980-81 is depicted in Figures 2.1 (a) and (b). In comparing the graphs, the relationship between need and generosity is more clearly seen. The upward trend of Indicator G from eastern to western provinces contrasts sharply with the mostly downward sloping need trend. The graphs are somewhat changed for the other two chosen years, though with the exception of British Columbia, whose need has grown substantially, the general trends can still be observed.

Another view of the data on need and generosity is obtained by calculating the index for each province as a percent of national average. In Appendix III these versions of need and generosity are detailed and the data for the representative years can be found in

FIGURE 2.1

INDICATOR G 1980-81



INDICATOR N 1980-81

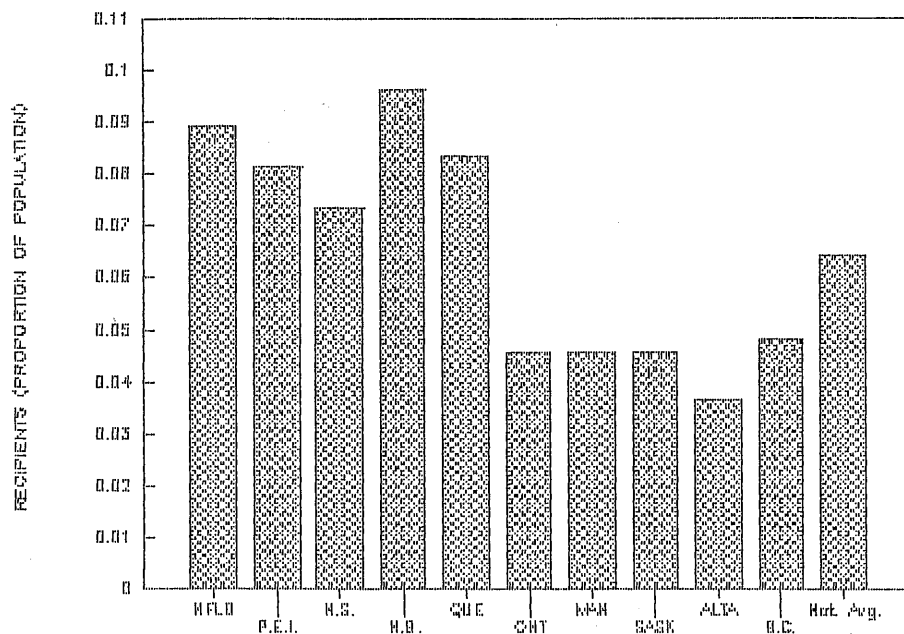
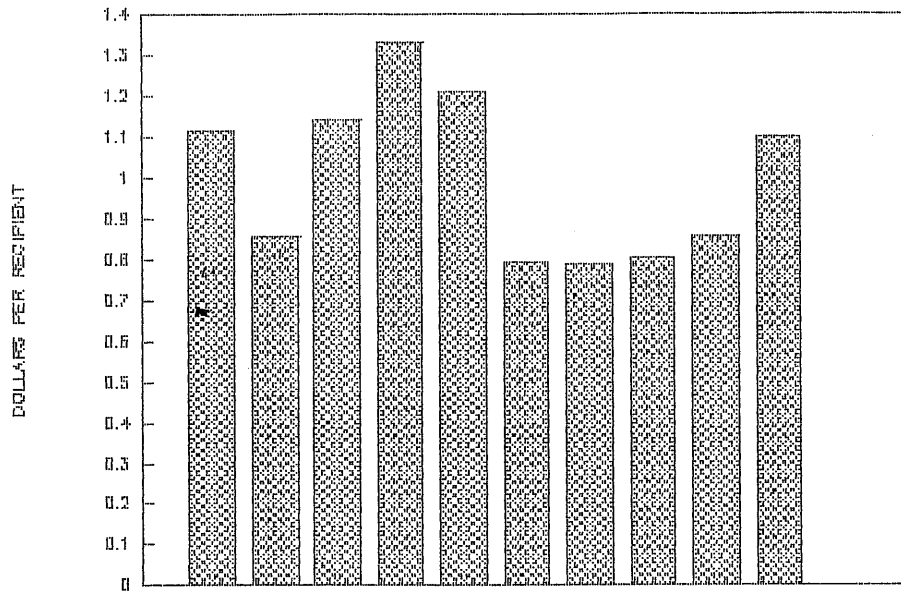


FIGURE 2.2

INDICATOR G 1984-85



INDICATOR N 1984-85

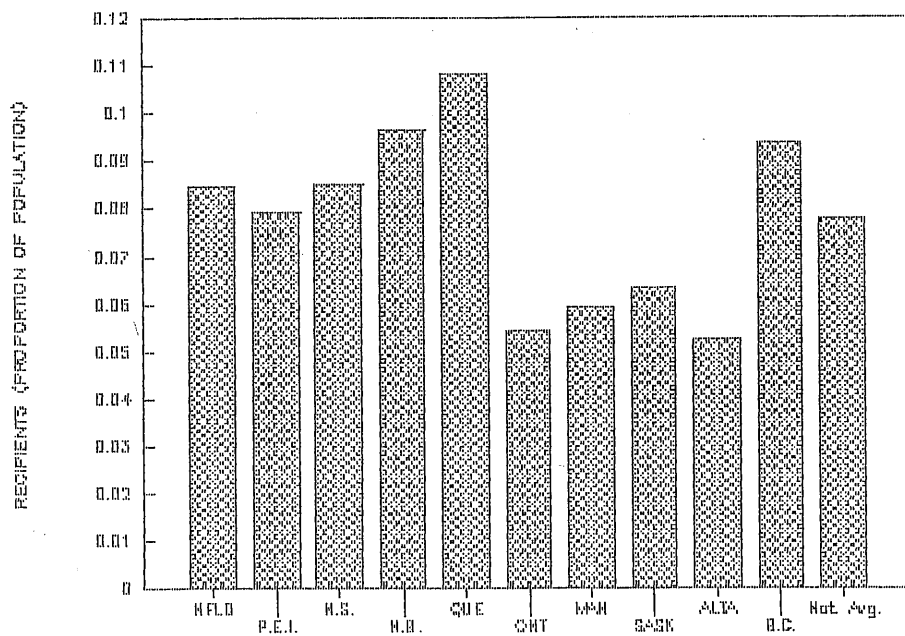


FIGURE 2.3

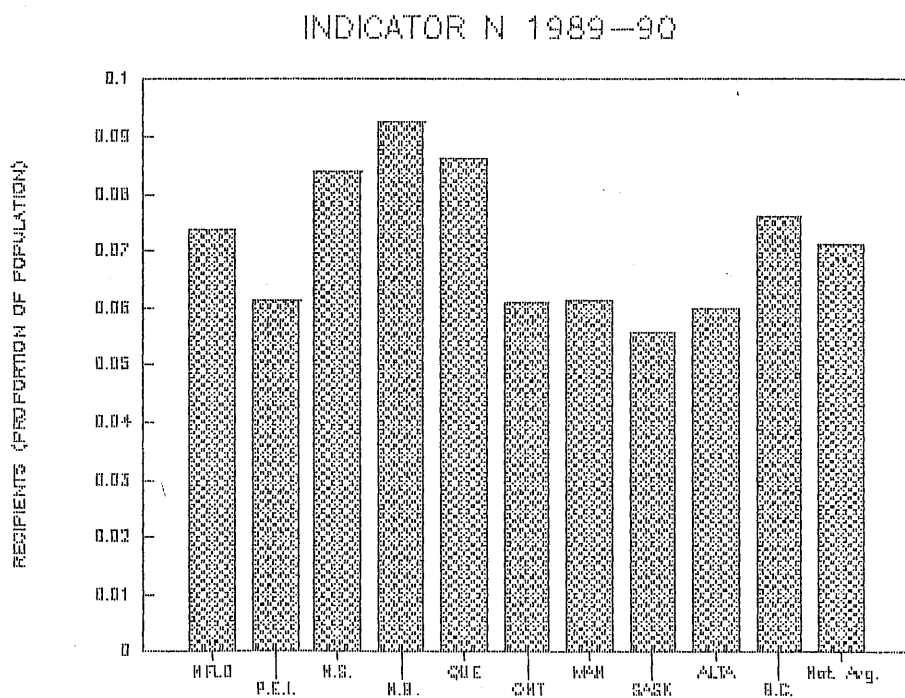
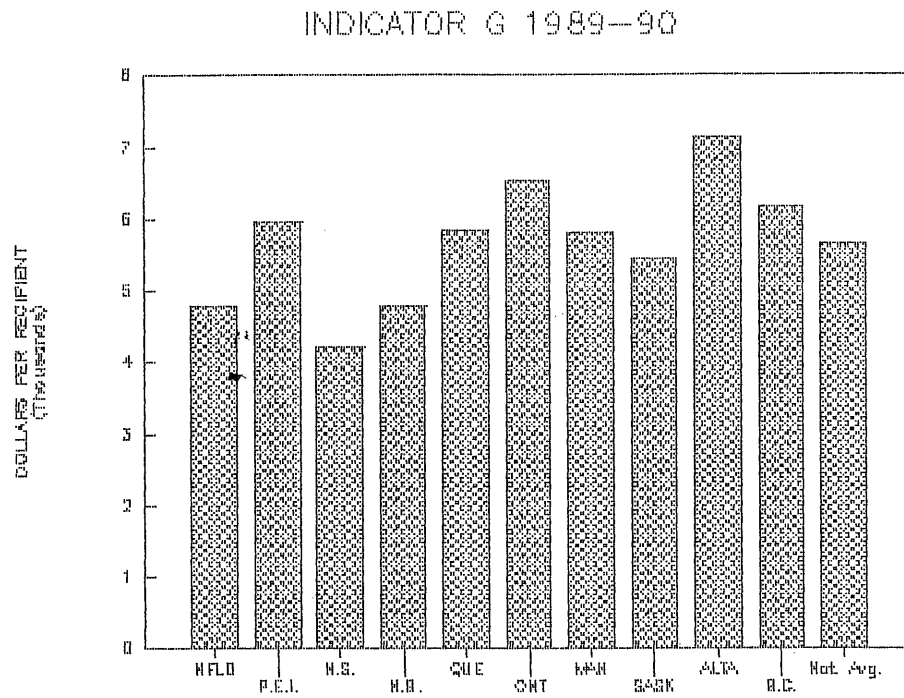


Table 2.5. National average equals 100, so those provinces with need or generosity lower than 100 are below the national average.

This calculation of the indices facilitates need-generosity comparisons for each province over time. Graphical illustrations of such comparisons can be found in Figures 2.4 through 2.7 for Alberta, Nova Scotia, British Columbia and Newfoundland.

These graphs serve to reiterate the low need-high generosity relationship observed earlier, a major concern of the Breau Report, 1981. The important issue is that the incidence of higher need is found mainly in the "have not" provinces which lack the resources to participate in cost-sharing at national average generosity levels.

National Standards and Equalizing Aspects of CAP.

A serious problem with the Canada Assistance Plan, and indeed the other major transfers in Canada, is the program's inability to address the issue of need disparities across the regions.¹⁰ Specific purpose matching grants, such as CAP, may become more prevalent as the trend toward more decentralized federal government and tax powers becomes effective. While the "have" provinces are relatively more capable of funding programs once given additional tax room because of their larger tax base, the "have not" provinces lose on two counts. First, these provinces are less able to fund such programs even with greater taxing powers, and second, they tend to have a higher incidence of need, leaving them with lower generosity for the same per capita expenditure. Unless need indices are incorporated into future fiscal arrangements, the regional disparity in Canada will go largely untreated.

¹⁰ If Canada's equalization program actually equalized the fiscal capacities of all provinces fully (i.e. equalizing the "have" provinces down and the "have not" provinces up) then transfers such as CAP would be able to address the issue of variations in the incidence of need completely.

TABLE 2.5

INDICES OF GENEROSITY AND NEED
SELECTED YEARS

	1980-81	
	NEED	GENEROSITY
NFLD.	138.07	69.65
P.E.I.	126.18	83.36
N.S.	113.67	65.27
N.B.	149.28	78.37
QUE.	129.32	106.84
ONT.	70.51	91.56
MAN.	71.05	98.59
SASK.	71.06	109.66
ALTA.	56.46	132.88
B.C.	74.39	163.81
	1984-85	
	NEED	GENEROSITY
NFLD.	108.75	76.57
P.E.I.	102.12	88.53
N.S.	109.22	71.35
N.B.	124.14	92.37
QUE.	139.28	107.47
ONT.	69.87	97.62
MAN.	76.5	105.39
SASK.	81.72	112.91
ALTA.	67.83	135.55
B.C.	120.57	112.24
	1989-90	
	NEED	GENEROSITY
NFLD.	103.92%	84.30%
P.E.I.	86.43%	105.19%
N.S.	117.72%	74.59%
N.B.	129.97%	84.23%
QUE.	120.99%	102.76%
ONT.	85.48%	115.22%
MAN.	86.42%	102.68%
SASK.	78.08%	96.16%
ALTA.	83.91%	125.88%
B.C.	107.06%	109.00%

Sources: Per capita CAP transfers, Federal-Provincial Fiscal Relations and Social Policy Division, Dept. of Finance, Ottawa
Recipient data, Health and Welfare Canada.

FIGURE 2.4
INDICES OF GENEROSITY AND NEED

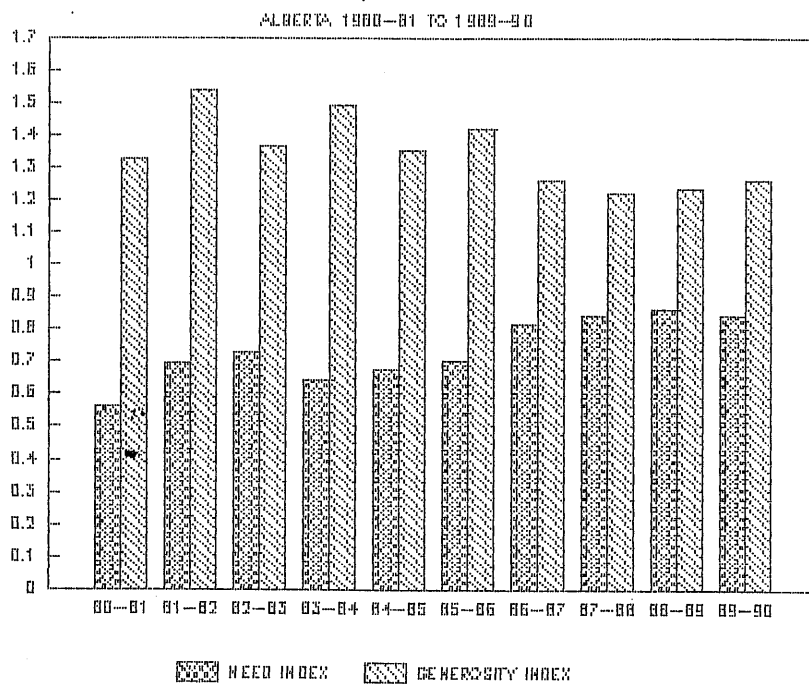


FIGURE 2.5

INDICES OF GENEROSITY AND NEED

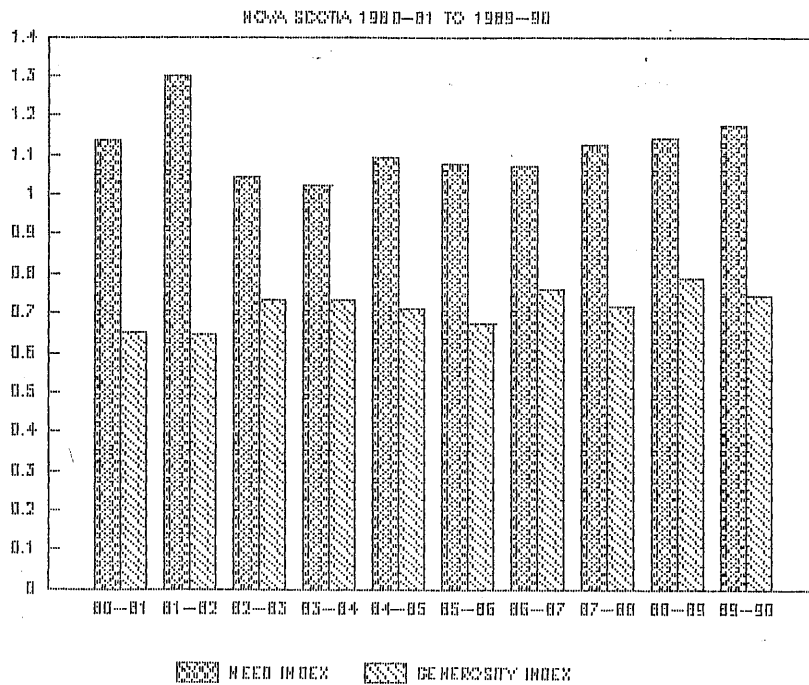


FIGURE 2.6
INDICES OF GENEROSITY AND NEED

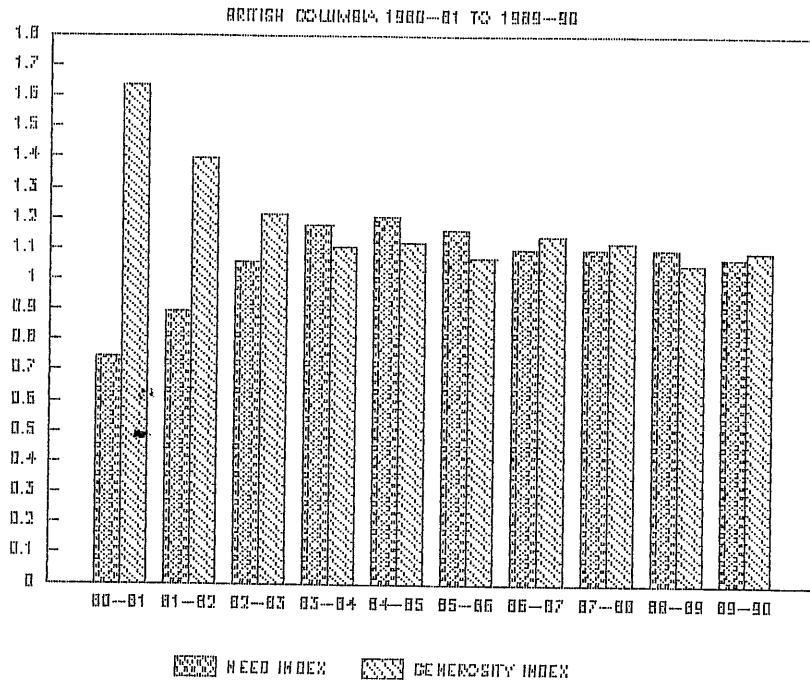
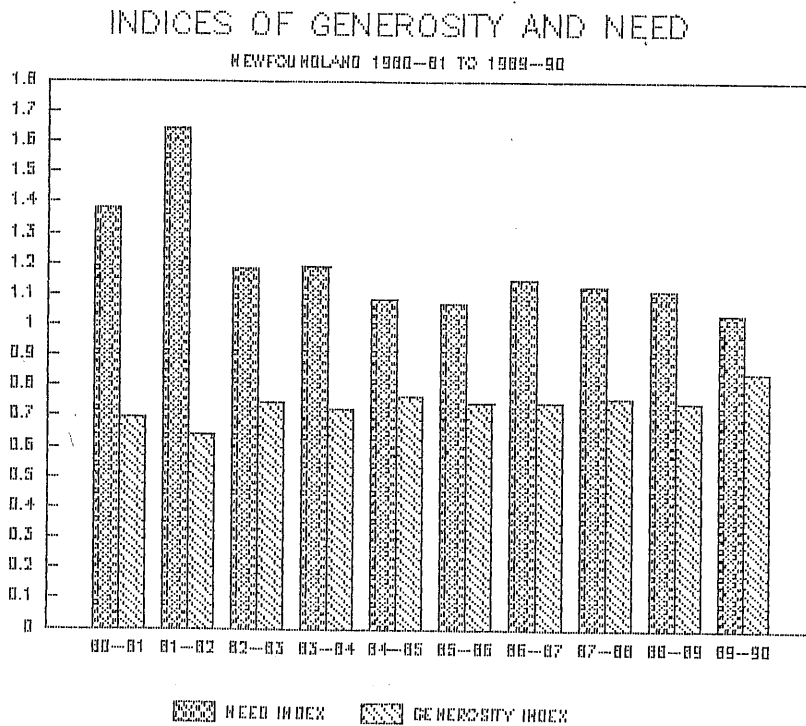


FIGURE 2.7



The issue of national standards arises from the variation in CAP payments across provinces and differing service provision and needs assessment for recipients. As mentioned earlier, provinces must agree not to impose residency requirements on recipients in order to be eligible for cost-sharing with the federal government. This has the effect of promoting mobility of individuals across provinces. However, because Ottawa does not specify levels of social assistance or welfare, provinces are free to determine what and how much they will provide.

The lack of national standards was a concern Ontario's Social Assistance Review Committee expressed in their 1988 report, Transitions. The report concedes that the prohibition of residency requirements, stipulations that assistance be given without conditions such as liens or accepting employment, and the required appeals structure for recipients constitute something akin to a set of national standards. However, the Committee agreed that these are not sufficient. They recognize that social assistance-related issues are a provincial matter constitutionally, but insist that this need not preclude national standards for rates and recipient needs testing.

Their report recommended significant changes to Ontario's social assistance and welfare services, including increases in many rates. The Committee expressed concern that any province acting unilaterally to increase rates may affect inter-provincial migration, thereby increasing the demands for that province's services. Alternatively, a province might choose to under-spend on these types of programs in an effort to reduce their caseload through out-migration.

To remedy this, they recommend enhanced spending by all provinces facilitated by national standards for rates and eligibility. Because some of the "have not" provinces may be unable to increase

their spending to the desired level, Transitions urges enriched funding from the federal government for these provinces (p.499).

This plan would require amendments to the existing CAP legislation or creation of another means of providing enriched funding to those provinces with high need and lacking the fiscal capacity to provide adequate assistance to meet that need. The effect of additional funding for the "have not" provinces would be to make the Canada Assistance Plan an explicitly equalizing program. That it has not been has been seen as a deficiency of the program from its inception. In August, 1968 the federal Deputy Minister of Welfare recognized that CAP did not address the problem of differing "regional needs, nor the additional burdens of dependency that exist in lower income areas. It also failed to compensate provinces with more generous rates for net in-migration," (Task Force on Program Review 1985 69) the same concern expressed in The Breau Report (1981) and in Transitions (1988).

Thus, need- and generosity-related issues have been given voice before with little effect. The indices generated for this paper make explicit the validity of such concerns, especially with the deadline fast approaching for a constitutional proposal which will satisfy Quebec and the rest of Canada. Provinces with need significantly above national average will be considering the types of indices contained here in an effort to reinforce the requirement for continued cost-sharing in the area of social assistance and welfare.

CHAPTER 3

The 1990 Federal Budget

In an effort to control the rapidly growing federal government deficit, the 1990 Budget contained a series of freezes, cutbacks and expenditure growth caps affecting several programs. The Canada Assistance Plan became subject to a cap in expenditure growth for the fiscally stronger provinces, specifically those for which "no equalization payment is payable... for the year ending on March 31, 1991," (Bill C-69) namely Ontario, British Columbia, and Alberta. The cap was expected to save the federal government \$155 million over the two years it was to be in effect.¹ Regular cost-sharing was to resume on April 1, 1992, however the 1991 Budget extended the life of the cap for three additional years.

In order to implement this spending cut, the federal government introduced Bill C-69, the Government Expenditures Restraint Act 1990, which amended the Canada Assistance Plan and other programs. Specifically, the Act stated that, for the applicable provinces, the contribution for the fiscal year 1990-91 "shall not exceed the product obtained by multiplying the amount of the contribution payable... for the fiscal year 1989-90 by 1.05" (Bill C-69). The contribution payable for the 1991-92 fiscal year was also limited to an increase of 10.25% over 1989-90.

¹ See the 1990 Federal Budget for a more detailed discussion of the expected savings gained from the cap on CAP.

The Challenge

Following the 1990 Budget announcement, the Government of British Columbia began legal action against the federal government. Ontario, Alberta, and Manitoba along with the Native Council of Canada and the United Native Nations of British Columbia intervened in the case. The reasons for intervention are fairly obvious: Ontario and Alberta were specifically named as "capped" provinces and Manitoba objected on principle. The native groups became involved because the Budget also limited expenditure growth on some native programs and because natives receive a large amount of welfare-type payments.

Two Questions

As the challenge was presented to the British Columbia Court of Appeal (B.C.C.A.) it was in the form of two questions:

1 Has the Government of Canada any statutory, prerogative or contractual authority to limit its obligation under the Canada Assistance Plan Act... and its agreement with the Government of British Columbia... to contribute fifty percent of the cost to British Columbia of assistance and welfare services?

2 Do the terms of the Agreement...between the Governments of Canada and British Columbia, the subsequent conduct of the Government of Canada pursuant to the Agreement and the provisions of the Canada Assistance Plan Act... give rise to the legitimate expectation that the Government of Canada would introduce no bill into Parliament to limit its obligation... without the consent of British Columbia?
(B.C.C.A. Decision 012098 1990)

The matter was heard by five British Columbia Court of Appeals judges. Three distinct judgements came out of the case.

Responses- The First Question

The judgements noted that, with regard to the first question, Counsel for the Attorney General of Canada did not contend that the

federal government had the statutory, prerogative or contractual authority to limit its contribution under the Canada Assistance Plan. In fact, the introduction of Bill C-69 into Parliament supports the conclusion that, without new legislation, the Government of Canada did not have the authority to limit its contribution. On this basis each of the five judges answered "no" to the first question (B.C.C.A. Decision 012098 1990).

The Second Question

The second question refers to legitimate expectations. This doctrine has been evolving in Canada for the past thirty years, and concerns procedural fairness regarding public administration.

Judge Toy

Judge Toy explained that the terms of the Plan and the Agreement clearly state that Canada would not amend the Agreement except by mutual consent of British Columbia. He goes on to say that by introducing Bill C-69, Canada was moving unilaterally to amend the Plan, thereby providing a defense against breach of the Agreement. Toy explained that the case for British Columbia was that the province had the legitimate expectation that the federal government would act according to the existing legislation and the Agreement.

According to British Columbia, the introduction of Bill C-69 was a procedural impropriety because it violated the province's private law right with respect to the Plan and Agreement. The province argued that if the Government of Canada was made aware that implementation of the cap on CAP was not only a breach of Agreement, but also a breach of law because British Columbia was not given opportunity to be heard on the matter of the amendment, then Canada would cease its efforts to enact

the bill.

The position of the Attorney General for Canada was that legitimate expectation referred to a political rather than a legal question, and so the Court should not answer the second question. Judge Toy rejected this argument and proceeded to consider the question.

The Attorney General for Canada then introduced the claim that the sovereignty of Parliament was a sufficient response to the second question. British Columbia countered that the Government of Canada was duty-bound by the Plan and Agreement not to proceed unilaterally.

Judge Toy stated that under the doctrine of legitimate expectations, the Government of Canada was required to obtain the consent of British Columbia before amending the Plan, and so he answered "yes" to the second question. Two of the four other judges agreed with Toy's reasons and answer.

Judge Lambert

Before answering the second question, Lambert made two points concerning the 1990 Budget and ensuing movement to enact Bill C-69. He stated that British Columbia argued that a cap of five percent must be judged by the same principles as if Canada had reduced its contribution to the "capped" provinces to one dollar, and noted that Counsel for Canada did not disagree. Lambert then reiterated that British Columbia was not consulted about the cap or Bill C-69. The province was not asked for, nor did it give consent.

On question two Lambert reasons that the heart of the matter is whether there was a binding obligation for the federal government to contribute fifty percent of those expenditures approved under the Canada Assistance Plan. He said that if there was a binding obli-

gation, then British Columbia had a legitimate expectation that Canada would not introduce legislation to break it. Furthermore, with respect to Bill C-69 being introduced into Parliament, the Parliament of Canada cannot undo a breach of a binding agreement if it has been committed.

Lambert goes on to describe federal-provincial agreements as "interlocking obligations" and compared them to agreements between individuals. On this basis, Lambert maintained that there was a binding obligation for the federal government to pay the agreed upon proportion, and any contribution less than fifty percent constitutes a breach of the agreement. Since a binding obligation was in effect, according to Lambert, British Columbia did have the legitimate expectation that the Government of Canada would not introduce legislation to limit its contribution under the Canada Assistance Plan without the consent of the province.

Judge Southin

Madame Justice Southin's interpretation of the second question differed greatly from that of the other judges, and it is this interpretation that the Supreme Court of Canada accepted in considering the appeal by the Government of Canada. Southin approached the question as asking whether there was any legal impediment to the Governor in Council asking Parliament to enact Bill C-69, or any legal impediment to Parliament enacting the bill.

She said that she was unaware of any decision since Confederation that indicated any limitation on the Executive Power of the Governor General in Council, except for those limitations detailed in the very definition of the position. Southin reasoned that British Columbia was seeking a limitation of Executive Power, yet the province could find no support for this in the Constitution Act. In addition, she stated that

"British Columbia was asking the Court to engraft onto the Executive Power of the Constitution Act a doctrine of legitimate expectations" (B.C.C.A. Decision 012098 1990). She continued that in matters of confrontation between the federal government and a province, the Courts are limited to interpreting the Constitution Act.

In Southin's view, fiscal arrangements disputes ought to be resolved by political means rather than judicially. She said,

This is a quarrel about the spending or non-spending of money. It is a quarrel which may be resolved at the conference table or by the House of Commons and the Senate, or in the Legislature...but it is not a quarrel to be resolved by the judges (B.C.C.A. Decision 012098 1990).

Judge Southin rejected the idea of applying the doctrine of legitimate expectations to the Constitution Act, and so answered "no" to the second question.

The Government of Canada was granted an appeal and the case was reviewed by the Supreme Court of Canada, with the decision being released August 15, 1991. Despite the fact that a final decision had yet to be made on the matter, the federal government extended the cap in the 1991 Budget, as mentioned earlier.

The Supreme Court Ruling

The Supreme Court of Canada (S.C.C.) addressed two matters concerning the cap on Canada Assistance Plan contributions. The first was the issue of jurisdiction of the court with respect to "political" questions, and the second was the doctrine of legitimate expectation as applied to the federal government's power to enact legislation.

On the first matter, Canada argued that the Courts ought not answer the original second question because it was a political rather than legal question, and as such was not justiciable.

The Supreme Court stated in its reasons for judgement that in

determining whether a matter is justiciable, it must decide if the question is "purely political in nature and should, therefore, be determined in another forum or whether it has a sufficient legal component to warrant the intervention of the judicial branch" (S.C.C. Decision 835-01 1991). In this case the Court deemed the matter to be of sufficient legal content, "and as only a Court can authoritatively resolve a legal question...the question should be considered and answered" (S.C.C., Decision 835-01 1991). Thus, the Supreme Court of Canada ruled that the second question was justiciable.

The second matter considered by the Court was to answer the original two questions posed in the British Columbia Court of Appeals. In answering the first question, the Supreme Court judgement pointed out that, by the Constitution, "the Government [of Canada] has the power to introduce legislation in Parliament; it has the exclusive right to introduce "money bills"; the Government Expenditures Restraint Act is a "money bill"." The Court supported the Supremacy of Parliament by ruling that the Government of Canada did have the authority to limit its obligation under the Plan and Agreement with British Columbia.

With regard to the second question the Court adopted Madame Justice Southin's interpretation of the question (i.e. whether there is any legal impediment...). They restricted the doctrine of legitimate expectations to apply only possibly in the sense that "the province may have had the legitimate expectation that it would be consulted before any amendment was made, not that its consent should be obtained" (S.C.C. Decision 835-01 1991). The Supreme Court of Canada answered "no" to the second question.

The Courts and Inter-governmental Agreements

The role of the courts in determining "political" questions is a matter of significant concern in the current flurry of constitutional considerations. The judgements discussed above indicate the wide range of interpretation possible in federal-provincial relations. The legal interpretation of inter-governmental fiscal arrangements extended from Judge Lambert's notion of "interlocking obligations" akin to agreements between individuals, to the Supreme Court of Canada's ruling that they can be altered unilaterally by the federal government, thereby distinguishing them from private agreements.

The fact that the Courts have decided that such fiscal arrangements can be unilaterally altered will have an impact on future federal-provincial negotiations, as the provinces will attempt to secure the status of programs and contributions from Ottawa. The current Social Charter movement, strongly supported by Ontario, is indicative of the type of agreements that the provinces will be seeking. By entrenching social welfare-type programs in the Constitution, provinces may expect that it will be increasingly difficult for the federal government to restrain spending on these kind of programs.

The judgements discussed herein make it clear that the Courts have a role in interpreting the Constitution. In fact, Madame Justice Southin asserted that this was the only role for the judicial branch in matters of inter-governmental disputes.

As a result, the current constitutional debate will have an impact on the interpretation of future federal-provincial agreements. By entrenching a Social Covenant, as prescribed by the Dobie-Beaudoin

Report (1992), or a Social Charter in the Constitution, the courts will be forced to consider the explicit commitment to adequate social services when settling future disputes.

Conclusion

The Canada Assistance Plan, which became effective in 1967, is one of the major transfer programs in Canada today. The Plan provides for federal-provincial cost-sharing in the area of social assistance. Provinces are given freedom to choose rates and eligibility within minimum federal guidelines. However, Ottawa determines which programs will be eligible to be cost-shared.

An important issue related to financing social assistance programs is the level of need each province faces and its ability to satisfy that need relative to other provinces. This thesis has defined need as the number of recipients as a percentage of population. It has been shown that the "have not" provinces exhibit relatively high need, while, by definition of "have not," they lack the revenue base to participate in cost-sharing at the national average generosity level.

Generosity has been defined as dollars per recipient. The lack of national standard with respect to rates and eligibility is a major contributor to the variation in generosity across provinces. In addition, those provinces with low need generally exhibit higher generosity. As a result, national average generosity is pushed up by low-need provinces, making that level increasingly difficult for the "have not" provinces to achieve.

The Constitution assigns responsibility for basic social assistance to the provinces. However, federal spending power in this area is justified by Section 36, which describes the commitment to providing equality of opportunity as a mandate of both levels of government. Equality of opportunity entails equalization payments to provinces in order to enable all to participate fully in cost-sharing.

Equalization in the Canadian system, however, does not equate the fiscal capacities of all provinces because it fails to equalize the

"have" provinces down to national average. Even if fiscal capacities were fully equalized, the "have not" provinces would be at a disadvantage because they face relatively high demand for social assistance programs.

The nation's formidable debt burden prompted the federal government to limit the growth of expenditures under the Canada Assistance Plan to the "have" provinces. The province of British Columbia challenged the federal government in the British Columbia Court of Appeals. This court agreed that the actions of the federal government were contrary to the terms of the Canada Assistance Plan. However, the Supreme Court of Canada supported the Supremacy of Parliament and overturned the B.C. Court's decision. The Supreme Court ruling is sure to have a profound impact on future intergovernmental fiscal arrangements as the provinces seek to insure against such spending cuts, and the federal government attempts to leave that option open for itself.

One method of safeguarding against federal transfer reductions which several groups are currently attempting is to entrench a social charter in the Constitution. The Dobbie-Beaudoin Commission suggests that an explicit commitment to providing an acceptable level of social assistance should be added to the Constitution. This might make it more difficult for the federal government to reduce its expenditures on such programs in the future and provide the provinces with some sense of fiscal security.

APPENDIX I

BENEFICIARIES OF CAP (GENERAL ASSISTANCE)
1967-68 TO 1989-90

YEAR	1967-68	1968-69	1969-70	1970-71	1971-72
NFLD.	99.9	84.5	83.7	91.9	80.6
P.E.I.	7.4	11.5	9.0	10.6	15.9
N.S.	40.5	41.3	47.9	45.6	52.3
N.B.	50.7	45.2	50.7	65.8	61.7
QUE.	520.8	534.0	433.9	489.1	462.6
ONT.	228.8	265.8	334.8	364.0	333.6
MAN.	39.3	42.8	49.6	75.8	78.5
SASK.	30.0	51.6	52.2	68.3	69.6
ALTA.	68.8	70.5	77.0	94.0	89.0
B.C.	104.7	111.0	105.4	154.6	134.2
TOTAL	1190.9	1258.2	1244.2	1459.7	1378.0
	1972-73	1973-74	1974-75	1975-76	1976-77
NFLD.	70.9	63.3	63.1	61.0	52.4
P.E.I.	7.2	7.3	8.4	8.8	8.7
N.S.	52.9	47.6	52.4	54.2	55.9
N.B.	58.6	51.9	55.6	52.5	67.1
QUE.	406.5	395.8	416.6	428.7	457.1
ONT.	307.9	317.3	336.4	367.9	338.9
MAN.	70.4	60.7	56.6	57.6	55.3
SASK.	56.7	44.4	45.3	43.5	38.8
ALTA.	85.5	80.6	78.0	78.2	86.5
B.C.	104.0	137.2	162.3	162.1	162.0
TOTAL	1220.6	1206.1	1274.7	1314.5	1322.7

BENEFICIARIES OF CAP (GENERAL ASSISTANCE)
1967-68 TO 1989-90
(CONT'D)

	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	
NFLD.	53.8	39.3	48.5	50.4	54.7	51.9	
P.E.I.	8.3	8.4	9.4	10.1	11.3	11.3	
N.S.	49.8	50.1	51.2	62.4	64.6	69.0	
N.B.	63.4	65.0	66.3	67.4	62.7	70.1	
QUE.	464.5	478.3	511.9	532.9	561.9	675.8	
ONT.	356.3	382.2	354.8	389.8	406.8	471.2	
MAN.	52.5	47.6	45.6	46.9	47.8	55.9	
SASK.	41.4	42.1	41.4	43.8	48.4	59.7	
ALTA.	85.1	80.8	76.1	78.1	91.7	130.6	
B.C.	141.0	146.9	122.8	128.0	144.9	228.8	
TOTAL	1316.1	1340.7	1328.0	1409.8	1494.8	1824.3	
	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90
NFLD.	53.3	49.1	47.0	50.5	47.9	46.3	42.3
P.E.I.	9.9	9.6	9.2	9.3	8.9	8.0	8.0
N.S.	67.5	73.6	72.1	73.0	73.8	73.5	74.3
N.B.	68.6	69.1	68.8	73.7	70.6	69.3	66.5
QUE.	705.9	708.7	693.9	649.6	594.0	585.3	576.5
ONT.	484.6	485.8	485.8	518.4	533.5	546.8	583.0
MAN.	59.2	62.8	62.6	60.6	62.7	62.3	66.8
SASK.	63.7	64.0	62.7	62.1	60.3	59.3	56.0
ALTA.	117.1	124.1	126.6	150.5	149.8	149.5	144.8
B.C.	257.1	267.6	255.7	247.7	241.1	238.3	232.8
TOTAL	1886.8	1914.4	1884.4	1895.4	1842.6	1838.3	1850.8

Source: Health and Welfare Canada, Ottawa

APPENDIX II

Provincial Indicators of Generosity and Need
1980-81 to 1989-90

INDICATOR N	1980-81	1981-82	1982-83
NFLD	8.91%	9.69%	9.15%
PEI	8.14%	8.98%	8.96%
NS	7.34%	7.67%	8.10%
NB	9.63%	9.05%	10.02%
QUE	8.35%	8.73%	10.43%
ONT	4.55%	4.72%	5.40%
MAN	4.59%	4.68%	5.41%
SASK	4.59%	4.96%	6.13%
ALTA	3.64%	4.11%	5.65%
BC	4.80%	5.28%	8.20%
NATIONAL AVG	6.45%	6.79%	7.75%

INDICATOR G	1980-81	1981-82	1982-83
NFLD	2083	2161	2547
PEI	2493	2492	3342
NS	1952	2177	2513
NB	2344	2856	3087
QUE	3195	3533	3454
ONT	2738	3039	3157
MAN	2948	3532	3281
SASK	3279	3627	4005
ALTA	3974	5210	4676
BC	4899	4709	4142
NATIONAL AVG	2990	3379	3420

Provincial Indicators of Generosity and Need
1980-81 to 1989-90 (cont'd)

INDICATOR N	1983-84	1984-85	1985-86
NFLD	9.20%	8.46%	8.22%
PEI	8.05%	7.94%	7.94%
NS	7.89%	8.50%	8.27%
NB	9.75%	9.66%	9.72%
QUE	10.84%	10.83%	10.65%
ONT	5.50%	5.43%	5.40%
MAN	5.63%	5.95%	5.92%
SASK	6.44%	6.36%	6.25%
ALTA	4.99%	5.28%	5.41%
BC	9.11%	9.38%	8.92%
NATIONAL AVG	7.74%	7.78%	7.67%

INDICATOR G	1983-84	1984-85	1985-86
NFLD	2710	3060	3220
PEI	3326	3538	4148
NS	2752	2851	2901
NB	3257	3691	3969
QUE	3979	4295	4628
ONT	3435	3901	4329
MAN	3699	4212	4486
SASK	4474	4512	4719
ALTA	5591	5417	6139
BC	4144	4485	4637
NATIONAL AVG	3737	3996	4318

Provincial Indicators of Generosity and Need
1980-81 to 1989-90 (cont'd)

INDICATOR N

	1986-87	1987-88
NFLD	8.97%	8.45%
PEI	7.90%	7.07%
NS	8.36%	8.43%
NB	10.42%	9.97%
QUE	9.94%	9.01%
ONT	5.68%	5.76%
MAN	5.69%	5.84%
SASK	6.14%	5.91%
ALTA	6.36%	6.31%
BC	8.58%	8.24%
NATIONAL AVG	7.80%	7.50%

INDICATOR G

	1986-87	1987-88
NFLD	3352	3683
PEI	3957	4829
NS	3409	3465
NB	3923	4292
QUE	4757	5324
ONT	4370	4945
MAN	5068	5213
SASK	5185	5238
ALTA	5660	5906
BC	5098	5418
NATIONAL AVG	4478	4831

Provincial Indicators of Generosity and Need
1980-81 to 1989-90 (cont'd)

INDICATOR N	1988-89	1989-90
NFLD	8.13%	7.40%
PEI	6.23%	6.15%
NS	8.33%	8.38%
NB	9.69%	9.25%
QUE	8.81%	8.61%
ONT	5.80%	6.09%
MAN	5.74%	6.15%
SASK	5.85%	5.56%
ALTA	6.26%	5.97%
BC	7.99%	7.62%
NATIONAL AVG	7.28%	7.12%

INDICATOR G	1988-89	1989-90
NFLD	3950	4784
PEI	5651	5970
NS	4159	4233
NB	4326	4781
QUE	5652	5832
ONT	5527	6539
MAN	6353	5828
SASK	5238	5457
ALTA	6525	7144
BC	5566	6187
NATIONAL AVG	5295	5676

Sources: Per capita CAP transfers, Department of Finance.
Recipient data, Health and Welfare Canada

APPENDIX III

 INDICES OF GENEROSITY AND NEED
 BY PROVINCE
 1980-81 to 1989-90

NEED	1980-81	1981-82	1982-83
NFLD	138.07	142.77	118.08
PEI	126.18	132.32	115.73
NS	113.67	113.03	104.59
NB	149.28	133.31	129.3
QUE	129.32	128.63	134.68
ONT	70.51	69.54	69.76
MAN	71.05	68.92	69.88
SASK	71.06	73.05	79.11
ALTA	56.46	60.58	72.94
BC	74.39	77.86	105.92

GENEROSITY	1980-81	1981-82	1982-83
NFLD	69.65	63.97	74.48
PEI	83.36	87.08	97.71
NS	65.27	64.44	73.48
NB	78.37	84.54	90.26
QUE	106.84	104.58	100.98
ONT	91.56	89.94	92.3
MAN	98.59	104.53	95.92
SASK	109.66	107.35	117.08
ALTA	132.88	154.2	136.71
BC	163.81	139.37	121.09

INDICES OF GENEROSITY AND NEED
BY PROVINCE
1980-81 to 1989-90
(cont'd)

NEED	1983-84	1984-85	1985-86
NFLD	118.88	108.75	107.23
PEI	103.94	102.12	103.49
NS	101.98	109.22	107.79
NB	125.97	124.14	126.74
QUE	140.12	139.28	138.91
ONT	71	69.87	70.36
MAN	72.73	76.5	77.21
SASK	83.22	81.72	81.46
ALTA	64.42	67.83	70.51
BC	117.72	120.57	116.3

GENEROSITY	1983-84	1984-85	1985-86
NFLD	72.53	76.57	74.58
PEI	89.01	88.53	96.07
NS	73.64	71.35	67.19
NB	87.17	92.37	91.93
QUE	106.49	107.47	107.2
ONT	91.93	97.62	100.26
MAN	98.97	105.39	103.89
SASK	119.73	112.91	109.29
ALTA	149.63	135.55	142.19
BC	110.9	112.24	107.4

INDICES OF GENEROSITY AND NEED
 BY PROVINCE
 1980-81 to 1989-90
 (cont'd)

NEED		
	1986-87	1987-88
NFLD	114.98	112.68
PEI	101.18	94.29
NS	107.12	112.4
NB	133.47	132.93
QUE	127.35	120.16
ONT	72.83	76.87
MAN	72.97	77.87
SASK	78.64	78.77
ALTA	81.46	84.13
BC	109.99	109.88
GENEROSITY		
	1986-87	1987-88
NFLD	74.86	76.24
PEI	88.36	99.95
NS	76.13	71.71
NB	87.6	88.83
QUE	106.23	110.2
ONT	97.6	102.35
MAN	113.18	107.91
SASK	115.78	108.42
ALTA	126.4	122.25
BC	113.85	112.14

INDICES OF GENEROSITY AND NEED
BY PROVINCE
1980-81 to 1989-90
(cont'd)

NEED	1988-89	1989-90
NFLD	111.63%	103.92%
PEI	85.47%	86.43%
NS	114.42%	117.72%
NB	133.10%	129.97%
QUE	120.99%	120.99%
ONT	79.59%	85.48%
MAN	78.83%	86.42%
SASK	80.26%	78.08%
ALTA	85.93%	83.91%
BC	109.76%	107.06%

GENEROSITY	1988-89	1989-90
NFLD	74.61%	84.30%
PEI	106.73%	105.19%
NS	78.55%	74.59%
NB	81.70%	84.23%
QUE	106.75%	102.76%
ONT	104.38%	115.22%
MAN	119.99%	102.68%
SASK	98.92%	96.16%
ALTA	123.24%	125.88%
BC	105.13%	109.00%

Sources: Per capita CAP transfers, Department of Finance.
Recipient data, Health and Welfare Canada.

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