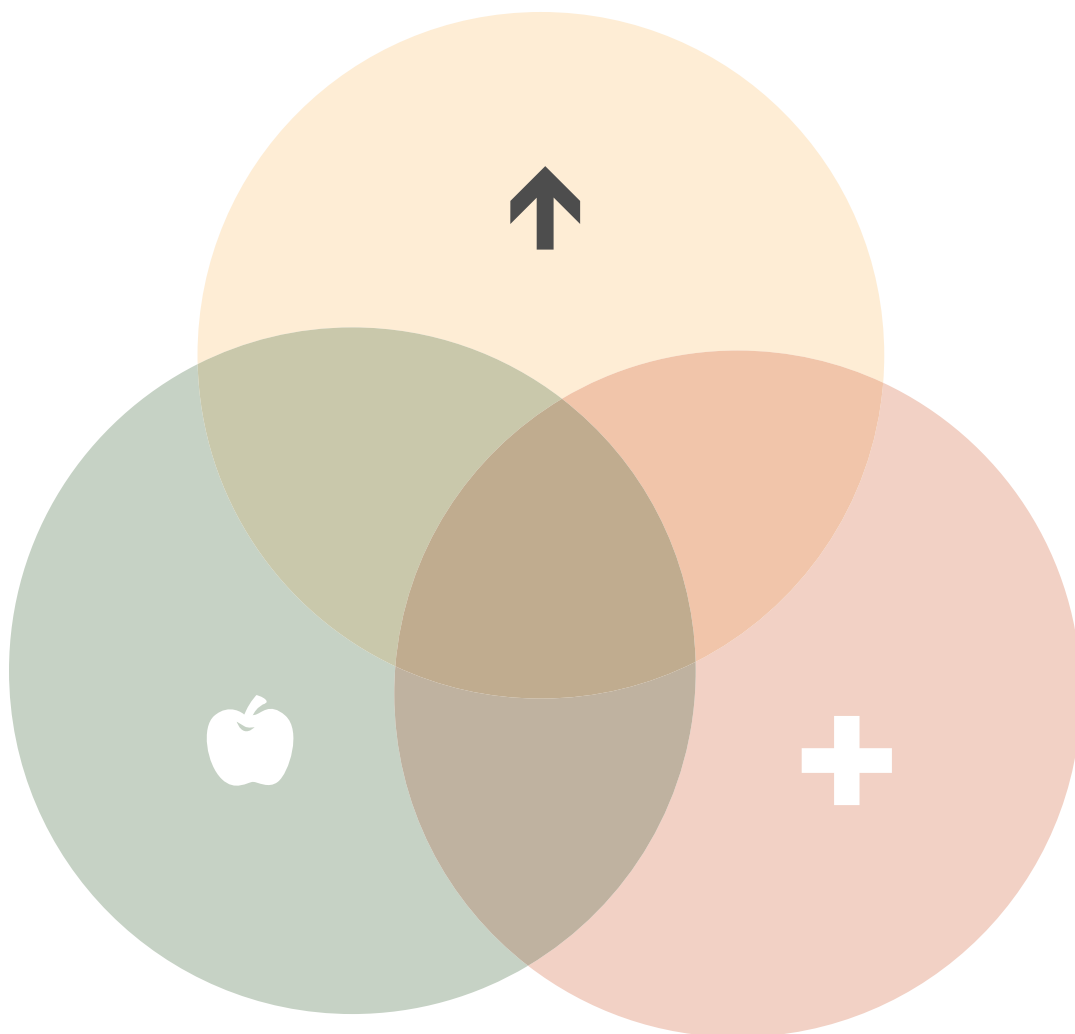


ISSUES OF COST & ACCESS

IN CANADIANS SOCIAL INVESTMENT

LESSONS FOR THE CIVIL JUSTICE SYSTEM



BEYOND SILOS, TOWARDS STRATEGIES

2012 Roundtable Series

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INTRODUCTION

Historically, the dominant discourse within the welfare state was one of redistribution and the paternalistic protection of citizens against social risks such as unemployment, illness, disability and retirement. Over the past few decades, changes in social policy have been introduced which are directed towards “social investment” and empowering citizens rather than protecting them. The social investment model focuses on investing public money and time in social programs such as housing, healthcare, employment insurance, child benefits and education with an eye to providing all citizens with opportunities that will enable them to take responsibility for themselves and their families. In practice, social investment targets marginalized peoples because they are the ones who are believed to benefit the most from small investments in their human capital and are the least likely to generate their own human capital investment. Public funds for social investment are raised through progressive taxation that has the double effect of generating funds for investing in marginal peoples and having a redistributive effect.

The justice system is often portrayed as offering protective services to citizens. But it is worthwhile to explore whether instead, it is better to think of the civil justice system as a type of investment that facilitates and supports citizens to resolve their own legal challenges and problems. Does this alternative way of thinking about the civil justice system provide us with a better lens to make visible the costs to individuals and society of not supporting and facilitating people to resolve their legal challenges and problems? Can the social investment model be expanded to include the civil justice system?

TWO EXAMPLES OF THE SOCIAL INVESTMENT APPROACH

The persistence of high levels of unemployment among certain segments of the population, the expansion of precarious jobs, the polarization of incomes, and the intensification of social exclusion, has created immense insecurity for many Canadians as well as strong pressure on the federal and provincial governments to spend more on social programs that mitigate for this insecurity. Governments have responded in part by spending public funds in a fiscally responsible fashion that often seeks a good return on their investment rather than simply throwing away their money. The central idea of a fiscally responsible social investment is that what is invested should have a pay off in the future.

One concrete example of this sort of social investment is evident from the considerable efforts to keep marginalized youth in high school. The reasoning is that the completion of high school is an important risk factor for predicting a host of other contingencies that affect the employment prospects of an individual, the likelihood that he or she will commit a crime, become entangled in civil justice problems, rely on social assistance, have substance addiction issues, and so on. The spending of public funds targeted towards youth at risk of dropping out of high school makes sense on a social investment model because it will pay dividends in the future for society and those particular youths at risk. For most Canadian youth, completing high school is a rite of passage. There is no need to direct extra public funds to these youth to support them in completing high school; their families and communities already provide this support. It is only warranted from a social investment perspective to focus additional public spending on at-risk youth. Another policy development in Canada that reflects

the influence of the social investment approach concerns employment insurance. Traditionally, unemployment insurance was seen as a type of income security for individuals who lost their jobs and needed bridge funding until they found another job. At some point, should the individual not find another job, this income bridge was envisioned to end and be replaced by social assistance or welfare. Reforms to unemployment insurance in Canada -- renamed employment insurance -- have increasingly made marketable job skills training and upgrading an integral component of the program. Correspondingly, the percentage of income replaced by the program has decreased considerably from as high as 75% in the late 1970s to 55% today. Rather than having the principal purpose of providing individuals with money to enable them to make ends meet in the short term, the employment insurance program has become a vehicle for investing in individuals so that they can secure positions in the labour market that they are much less likely to lose in the future.

LESSONS FOR THE CIVIL JUSTICE SYSTEM

The civil justice system, like the criminal justice system, is characteristically understood to be oriented towards the past, looking backward to right wrongs or resolve problems that have arisen in the course of people's lives. The social investment model is forward-looking, approaching public spending as a form of investment that seeks a dividend or return in the future. Can civil justice in Canada be transformed into a progressive system that is proactive in providing Canadians with opportunities to resolve their civil justice problems?

The example above of keeping at risk youth on track to complete high school captures well how education is a paradigmatic vehicle for social investment. Educational measures are, in one clear sense, always forward-looking. Likewise, making public education and outreach a more central part of the mandate of the civil justice system in Canada – currently public legal education accounts for only about 1% of the total justice budget in Ontario – could be seen as an embrace of the social investment approach. The value of public legal education is not only that it provides citizens with the knowledge and resources to help themselves solve their own legal problems in some cases, but also that ideally it will enable citizens to avoid some of those problems in the first place, much like how in the social investment model keeping at risk youth in high school makes them less vulnerable to certain difficulties later in their lives. Insurance of all sorts is also progressive. This is certainly the case when individuals purchase household insurance that protects fire, theft, or personal injury. It is also the case when people purchase automobile insurance. Likewise, social insurance schemes like Canada's employment insurance

are designed to protect people from future risks in the labour market. This feature of insurance explains in part why employment insurance has been a clear target for government reforms based on a social investment approach. We know from major surveys recently conducted by the Government of Canada that 50% of all Canadians will have some sort of justiciable civil justice problem over a three year span. These results allow us to predict confidently that individuals will need legal assistance of some sort. Does it make sense to have insurance schemes to provide this assistance if individuals need legal assistance? Should Canadians be required to buy insurance for legal services, just like car insurance is mandatory, because they are at risk of having civil justice problems?

The social investment approach is, however, sometimes criticized because of its emphasis on individual personal responsibility and the importance of equal opportunities, as opposed to equal outcomes. In this respect, it strikes some critics as being insensitive to the diversity and inequalities in the circumstances that different individuals face. Is there a similar problem should the civil justice system become too focused on thinking about spending as investments for the future?

QUESTIONS

By sharing common issues and initiatives relating to access and cost in different fields of social services, knowledge silos can be broken down and strategies to address social inequality can be advanced. The following questions about issues of access and cost in early childhood education are intended to spark discussion and advance strategies that remove barriers to access within Canada's civil justice system.

How has the social investment approach impacted marginalized individuals and communities? Has it increased social inclusion?

Does the social investment approach genuinely promote active, responsible citizenship?

Do these questions offer insights for reform of the civil justice system?