



# FACULTY OF LAW

## Family Law

### LAW 433 • 2015

Child poverty, tax and  
family incomes- part 2

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CHiLD  
POVERTY  
ACTION  
GROUP

- Understand the socio-economic context for families in NZ--- Our Children our Choice: Incomes
  - high rates of child poverty and hardship
  - Low wages/high tax/low benefits
  - Emphasis on paid work is the way out of poverty
- Intersection of the rights of the child with social legislation
  - Do we pay lip service to UNCROC
  - Are the courts capable of protecting the rights of the poorest children?
- **Does our view of family/ relationships fit in the 21<sup>st</sup> century?** The complexities of 'relationship' in the welfare system and the consequences for children
  - Family law is intimately connected with this issue
  - Complex legislation but many rules made administratively
  - Quasi-judicial processes can be intimidating/debilitating

# Low income families must negotiate a confusing and threatening system

## Tax system

- high taxes on low incomes

## Financial support for children

- neglected
- badly designed

## **Welfare system**

- Highly targeted
- Stigmatising
- conditional
- entraps low income families

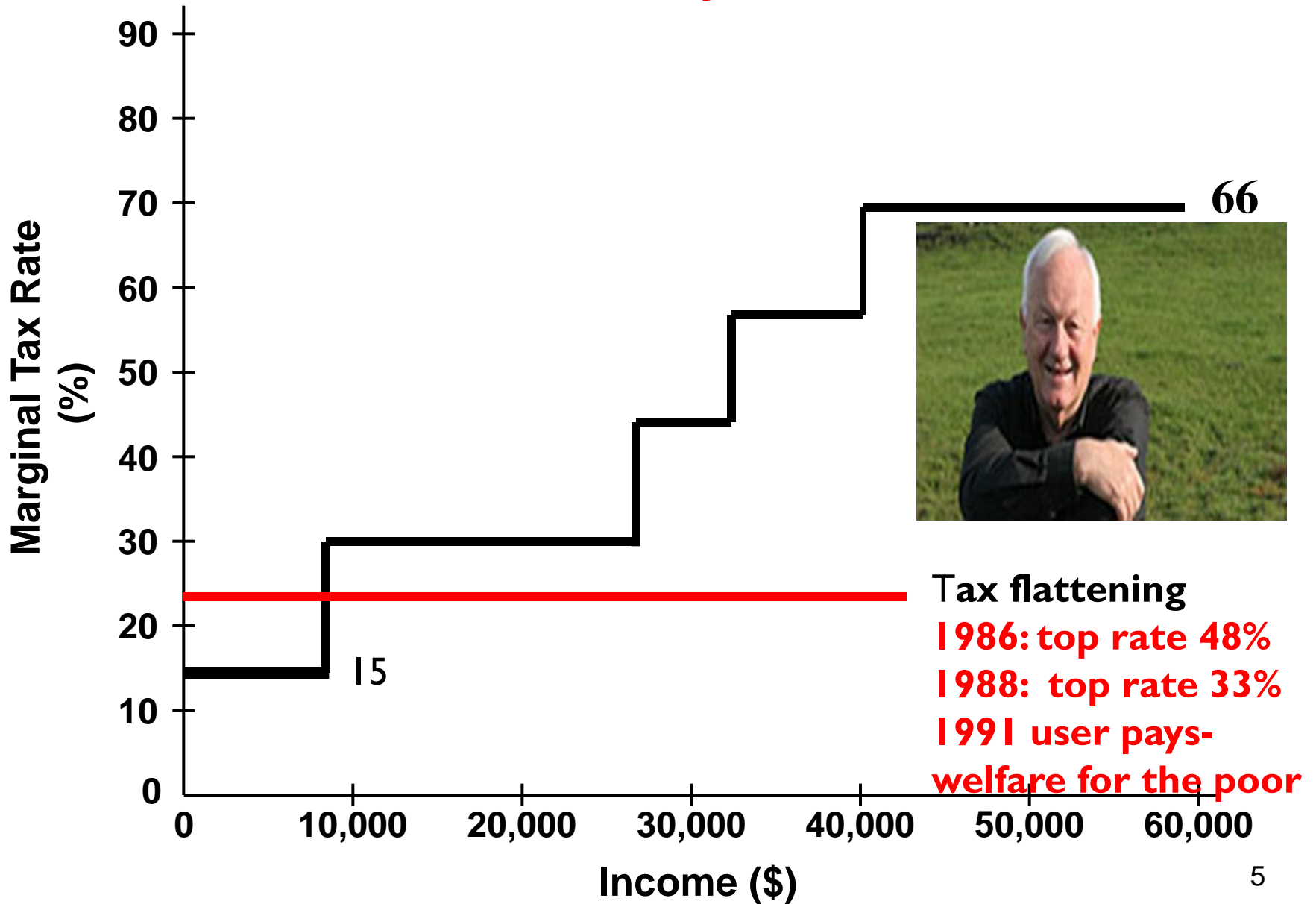
# But first what is welfare?

- **We pay taxes based on how much we earn**
- **We get transfers (welfare payments) based on how little we earn**

**Opposite sides  
to the same coin?**



# Income tax NZ in early 1980s



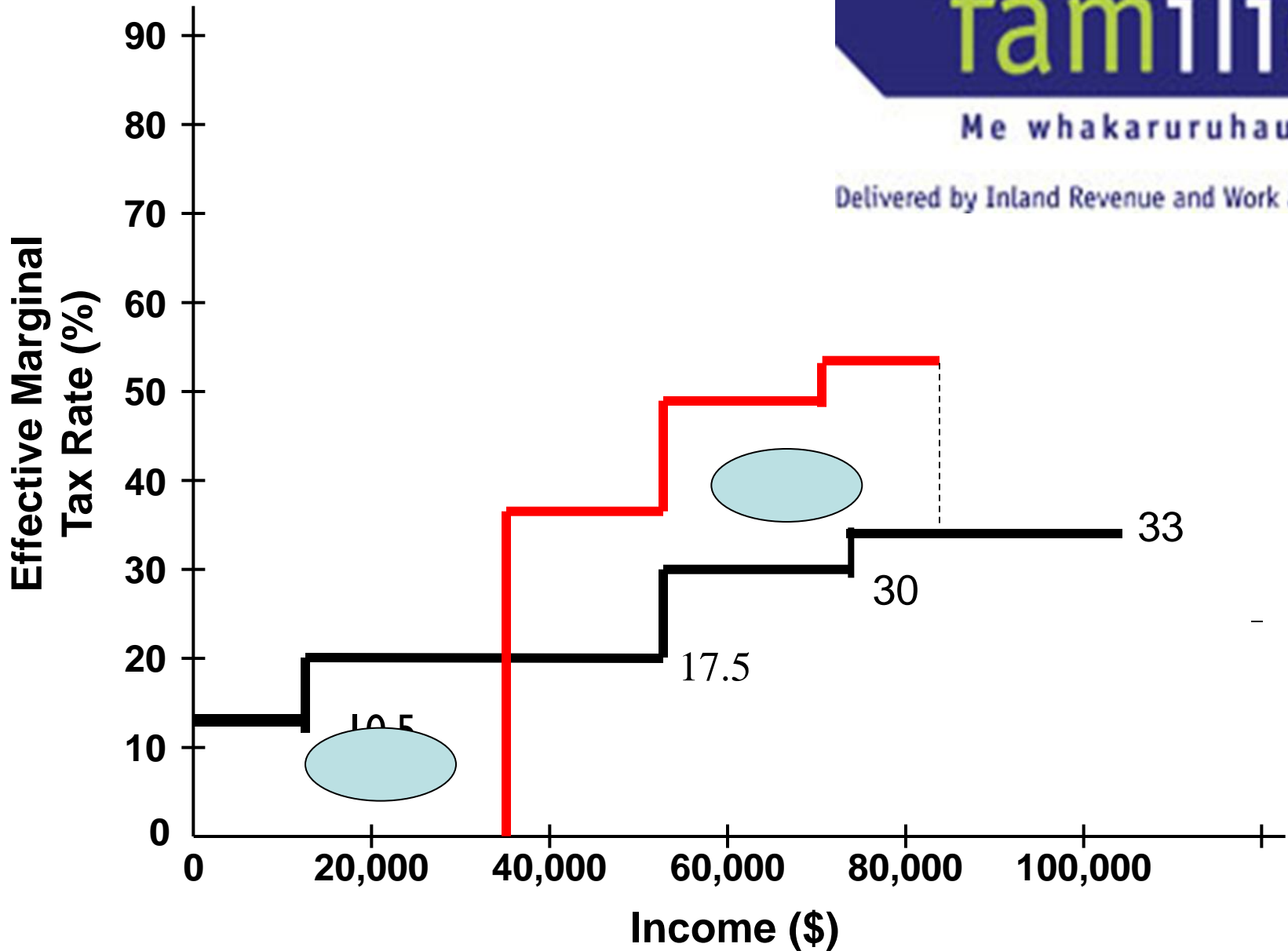
“A low flatter personal income tax rate rewards hard work. It is efficient and fair for all. Everyone gets to keep much more of their hard won earnings and this increases the incentive to earn more and take on more responsibility.”

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**But what about families on low incomes?**

**Or on benefits?**

# Targeting the poor



# Working for Families

- Tax credits for children are received in full up to \$36,860 of income

Then IRD take them away as you earn extra income

Max tax credits for 2 child family = \$11,215

Earn an extra \$1000 and you lose \$215

Tax credits entitlement only \$11,000



## So what happens

- Earn an extra \$1000
  - Tax 175
  - ACC 14
  - Loss of WFF 215
  - Repay stud loan 120
  - Child support?
  - **Total loss \$524**

# Beneficiaries EMTRs?

JobSeeker Earn \$1 over \$80 a week

- Tax 10.5 cents
- ACC 1.4 cents
- Loss of net benefit = 70 cents
- -----
- Total loss 81.9 cents

– LEFT WITH 18 CENTS

– Like having 82% tax rate

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# Sole parent on SPS- about \$17,000 gross

If she earns \$1 over \$200 gross a week.....

	Cents lost
tax	17.5
acc	1.7
Loss net benefit	70
Repayment student loan	12.5
<b>Total</b>	<b>101.7</b>

## What about relationships?

- Tax based on individual
- Welfare based on the idea that the couple can live more cheaply than a single person and that 'married' people ought to support each other
- WHY? Saves state money
- Couples can have only \$80 in total extra before face 82% tax rate
- Who is single? Single sharing? Defacto married? Who decides?
- What are the penalties for getting it wrong<sup>12</sup>?

# Welfare payments and super

Benefit	Marital status	Net weekly
Sole Parent Support	Single	\$299.45
Jobseekers	Single	\$209.06
	Married each	\$174.21
Supported Living Payment	Single	\$261.31
	Married each	\$217.75
	Sole parent	\$343.27
NZ Superannuation	Single living alone	\$366.94
	Single sharing	\$338.71
	Married each	\$282.26



**19th century**

**Women had to marry to survive- little choice about children**

**Her husband w/should support her**

**Work of child bearing/caregiving invisible unpaid**

**Destitute persons laws 1846**

## 20<sup>th</sup> century thinking Post war

### **Women can do anything**

- Contraception- babies a choice
- May be careers for women possible
- DPB- can leave violent marriages
- Marriage act protects her on divorce
- Supported in role as caregiver



## Late 20<sup>th</sup> century **Women can do everything**

- Working permitted
- Hide the children or stop having them

## 21<sup>st</sup> Century **Women should do everything**

- Paid work expected
- Relationships more fluid,
- Children invisible- more sole parents



**The welfare state has not adapted to the 21<sup>st</sup> century**



**To help distinguish the nature of a de facto relationship, Work and Income (2014) suggests that the beneficiary ‘thinks about these issues’:**

- You live together at the same address most of the time.
- You live separately but stay overnight at each other’s place a few nights a week.
- You share responsibilities, for example bringing up children (if any).
- You socialise and holiday together.
- You share money, bank accounts or credit cards.
- You share household bills.
- You have a sexual relationship.
- People think of you as a couple.
- You give each other emotional support and companionship.
- Your partner would be willing to support you financially if you couldn’t support yourself.

**Informants are requested to supply detailed information as detailed on the Work and Income website (2014): Information that helps us when you report a suspected fraud. This includes:**

- Do they live with a partner but say they're living alone?
- If you think they do then we'd like to know:
- the full name of their partner and any other names they're known by
- their partner's age and date of birth
- their partner's address
- whether their partner works and who employs them
- why you think that they're a couple
- how long they've been in a relationship
- whether they have had children together
- the names and ages of any children they have.

## Our report

“A sole mother investigated for ‘relationship fraud’ faces a process that can be protracted and intimidating for both them and their children, and that affords them few rights or protections. When mothers serve custodial sentences, they become separated from their children, wider family and whanau, disrupting their children’s lives and causing on-going distress. Mothers may then emerge from prison with large debts that are not cancelled even when repayments cause extreme hardship. In large part, the media fails to investigate and report these cases with insight and empathy. The harm to children from both their separation from a primary caregiver, and her subsequent debt and diminished income, has been largely invisible. “ (St John et al 2014)

# 2014 New wrong turns in the welfare maze

## Welfare Fraud—Deterrents to Relationship Fraud

- Hon CHESTER BORROWS: Yesterday I announced provisions that would mean that the non-beneficiary party in a relationship fraud situation would be criminally responsible and responsible for the debt if they knew, or should have known, that fraud was being committed.

# Website warns

.....some receiving a benefit, Student Hardship or New Zealand Superannuation are in relationships they haven't told us about.

Up until now when an MSD client was found to have dishonestly claimed a single benefit while in a relationship, that client has been solely responsible for paying back the fraud debt.

You and your partner may now be jointly responsible for paying back benefit debt

# The rules and welfare

Kafkaesque in the extreme

- Marked by a senseless, disorienting, often menacing complexity. ***Kafkaesque bureaucracies***
- Marked by surreal distortion and often a sense of impending danger.
- In the manner of something written by Franz Kafka.

# Media portrayal as benefit cheats



## Recent rhetoric

- ...MSD plans home visits to “check in” on sole parent beneficiaries after 14 weeks to make sure they’re still living alone.
- The Minister has noted “relationships could develop quickly and some people might not be aware of their obligation to tell Work and Income.”



# Difference in treatment of welfare and tax fraud

- Examples courtesy Associate Professor Lisa Marriott
- Tax Judge: *'Your counsel said, well the Inland Revenue is not like a vulnerable person who is a member of a superannuation fund...it is a state enterprise'*
- GST Fraud \$1,400,000

- Judge: *'your career is now devastated. You have given 33 years of selfless service to the law...[your solicitor] submits that you do not have a malicious bone in your body and, if anything, you are too eager to help others'*
- Fraud relating to GST refunds of \$250,000

- Welfare Fraud Judge: *'You have defrauded all of us...this is serious offending. As a principle of sentencing it strikes at the heart of the system put in place by the community, paid for by the taxpayer, to provide sustenance and support for the disadvantaged. You, to coin a modern phrase "ripped the system off". You have to be accountable for that and your conduct denounced and you deterred from acting in this way. A sentence must be imposed that will deter others like minded from acting in this way'.*
- Welfare fraud: Offending of \$30,501.

# Our punitive system

## Continuing the conversation ... the fading star of the rule of law

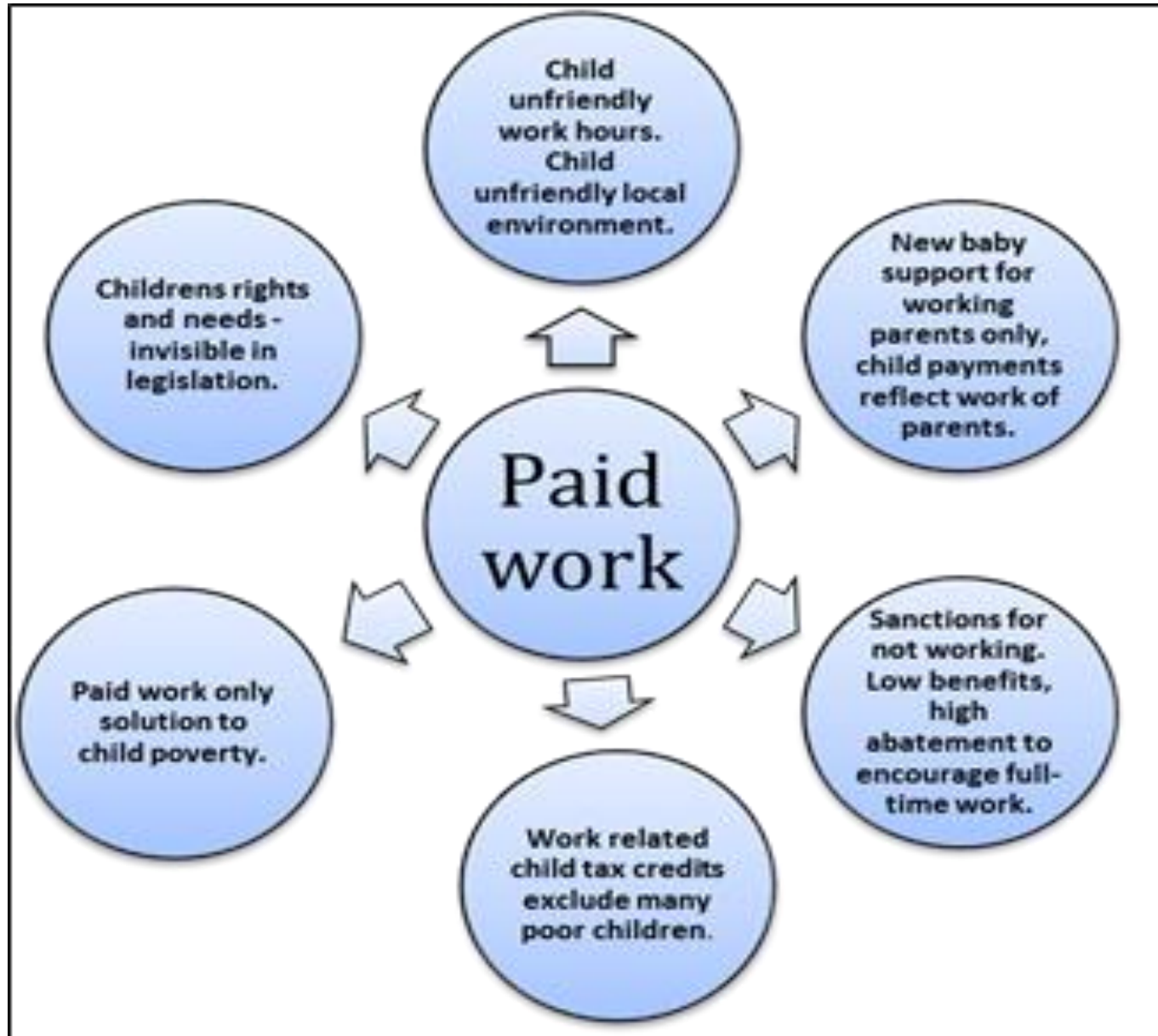
05 Feb 2015 — By Frances Joychild QC

Over the past three years, I have wondered increasingly if I have woken in Charles Dickens' England. ....

Some of the most alarming cases I have dealt with recently come from income-tested beneficiaries. There are increasingly large discretions held by WINZ officials, largely without legal oversight by independent lawyers. I have heard regular complaints of benefits being randomly cut off, without notice. And it taking weeks or even months and numerous phone calls or visits to WINZ offices to get them reinstated. Often these cut-offs are the result of a mistake on the part of the WINZ system (e.g. the medical certificate had been delivered on time but had not made it to the file).

**Clearly, beneficiaries have no money to employ a lawyer. Most of the problems they encounter are not covered by legal aid. Some are lucky enough to have access to unpaid beneficiary advocates. I suspect a very large number do not. It is extraordinary that, in an area of major legal complexity, wide government discretions and deeply disempowered citizens, the rule of law is at its weakest**

# Navigating the maze when Social policies don't reflect the needs of children



# What about help for newborns?

It is incredibly important to support parents in first year of child's life

- Enter Paid parental leave
  - Supports the business focus
  - Pays max \$504.10 gross per week for 16 weeks. Net \$7200
- Parental tax credit for some? Max \$2000
- Poorest newborns get nothing extra



## Who can't get it

You can't get a PTC if your family income for the full 8 or 10 weeks includes:

- paid parental leave
- an income-tested benefit, even if it is suspended
- NZ Super
- a Veteran's Pension
- a student allowance, or
- accident compensation from ACC, unless you get this for less than three months.

## Example IRD

Tina and her partner Temapu are expecting their first child. They are both full-time students but neither of them receives a student allowance. Tina can apply for a PTC when their baby is born.

- Kezi is 20 years old. She has a two year old daughter for whom she receives child support. Kezi's been working for a temp agency for the past 16 months. Two weeks ago, she gave birth to a baby boy and is now at home with him. Kezi's new partner Mark is a student and receives a student allowance. Kezi can't apply for a parental tax credit but she can apply for paid parental leave.

# Meantime ... Last Christmas

This Christmas the City Mission was busier than ever. We experienced record demands for assistance.

Families were queuing from 3am on the first day that we provided our Christmas emergency assistance. They continued to queue from 3am every day right up to December 24th. It was a dismal picture, especially given the unseasonably cold, wet weather that prevailed through the first few weeks of December.

Auckland City Missioner December 2014