Pregnancy and Motherhood: Prejudice, Stereotyping and Discrimination in the Canadian Workplace

by

Shivani Kapur

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ABSTRACT

This thesis analyses discrimination against pregnant women and new mothers in Canadian workplaces, and examines how the current legal framework is insufficient to combat harmful stereotypes surrounding motherhood that result in subtle forms of pregnancy discrimination. It argues that the parental leave policy in Canada has, by failing to disrupt the gendered patterns of parental leave taking, perpetuated traditional sex-role stereotypes that continue to impede women's workplace equality. It suggests father targeted leave to help breakdown these gender role stereotypes, and to degenderize traditional work and family roles resulting in a more egalitarian distribution of employment and family responsibilities. This thesis proceeds in three chapters. Chapter I of this thesis traces the history of discrimination against pregnant workers. Chapter II discusses the social context that led to the emergence of contemporary legal protections available to expectant and new mothers. Chapter III examines how the parental leave policy has failed to challenge the gendered leave-taking patterns, and suggests Québec's paternity leave program as a model for the rest of the nation to allow both parents to equally engage in parenting and paid employment, thus, achieving true gender equality.

DEDICATION

Dedicated to my pillars of strength, my parents, Ashok and Sudha Kapur and my loving husband, Sanchit Gupta. Thank you for your unwavering support and encouragement throughout the course of my master's journey. Thank you for being by my side in times when I doubted myself.

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CHAPTER I

RECOUNTING HISTORY OF DISCRIMINATORY PRACTICES AGAINST PREGNANT WOMEN AND MOTHERS IN THE WORKPLACE

Introduction

"Anyone with a brain at all knows that a career and motherhood don't mix anymore than drinking and driving"…"men are supposed to be the bread-winners in the family"…"[a] woman's place is in the home"…"[w]omen with a few small children should be at home looking after them…"…"[w]omen want to be able to have their cake and eat it too".[1] These statements clearly attest to the fact that many men in Canada were against women combining motherhood and work for much of the twentieth century. And it wasn't just the men, many women thought that way too. In the 1950s, the "emphatic and almost unanimous" answer to the question: "Do you think a mother should work outside the home if the family doesn't really need the money?" was "NO".[2] "I think it's terrible for a mother to work"…"I feel sorry for little children whose mothers work"…"[i]t's up to the husband to provide the material things for the home, and to the wife to help make it a place of happiness"…"[c]hildren need a mother's company…and she should be at home with them", said women who thought motherhood to be a natural and desirable role for women.[3] And those who wished to pursue their careers often faced the dilemma of

[1] See Margaret Weiers, "The status of women: What the men say", *Toronto Daily Star* (26 March 1968) 51; Margaret Weiers, "In 1968, most men still believe a woman's place is in the home", *Toronto Daily Star* (26 March 1968) 52 (the *Toronto Star* published a questionnaire, ahead of the public hearings of the Royal Commission on the Status of Women, asking men readers to reply to questions reflecting concerns related to status of women).
[2] "What do you think?: Should a mother work? Opinion mostly negative", *The Globe and Mail* (20 February 1954) 15.
[3] *Ibid*.

returning to the workforce outside the home: "We have a problem. Should I or should I not go to work at my old job? I have two children, three and five. I do not like housework. I do like interior decoration and I am good at it. I could earn a goodly sum which could be laid aside for the children's education. My mother would look after the children. What do you think?"[4]

Historically, deeply ingrained sex-role stereotypes traditionally relegated women to the confines of the home and restricted their access to the labour market in Canada.[5] The patriarchal breadwinner-homemaker model shaped women's lives as natural caregivers.[6] Cultural expectations and assumptions that dictated women's roles as homemaker and child-rearer placed them at a disadvantaged position in the labour market and contributed to their social and economic subordination.[7] Women's homemaking and childrearing responsibilities prevented many from participating in the labour force.[8]

Yet during the 1950s through the 1970s, the workforce participation for women increased dramatically.[9] Despite the prevalence of ideological perceptions of appropriate gender roles that forced women to stay home, economic need drove many to work.[10] A desire to find "self-fulfillment and enrichment" and to improve skills likewise prompted

[4] Angelo Patri, "Our children: No universal answer to career for mother", *The Globe and Mail* (3 September 1952) 9. See also Helen Catto, "The working mother's dilemma", *The Globe and Mail* (22 December 1966) W1.
[5] Canada, Royal Commission on the Status of Women in Canada, *Report of the Royal Commission on the status of women in Canada*, (Ottawa: Information Canada, 1970) at 10-11 (Chair: Florence Bird) [RCSW].
[6] Canada, Royal Commission on Equality in Employment, *Equality in Employment: A Royal Commission Report*, (Ottawa: Supply and Services Canada, 1984) at 25 (Commissioner: Rosalie Silberman Abella) [RCEE].
[7] RCSW, *supra* note 5 at 20.
[8] *Ibid* at 91.
[9] Rene Morissette, "Canadian Megatrends – The surge of women in the workforce, 1950 to 2014" (17 December 2015) online: Statistics Canada <http://www.statcan.gc.ca/pub/11-630-x/11-630-x2015009-eng.htm#def1> (the labour force participation of women witnessed a rapidly escalating trend, with the participation rate rising from 23.5 percent in 1953 to 60 percent in 1980).
[10] See "Real need", *The Globe and Mail* (2 May 1968) 6; Eileen Morris, "Family Sitter – Grandma's new role: As mothers go to work, children are left with her", *The Globe and Mail* (14 November 1963) 15.

several women to join the paid workforce.[11] Increasing demands for women's labour by both government employers and businesses, who "saw [women] as a flexible, lower-paid and malleable source of labour", also pulled women into the labour market.[12] This period also saw a growing presence of pregnant women and mothers in the workforce.[13] Regardless of this upward trend, society often expected pregnant women to "retire from public or social life".[14] Ambivalent societal attitudes towards working mothers and "the assumption that woman's place is exclusively in the home" caused many employers to discriminate against pregnant women and mothers.[15]

Traditionally, many employers considered pregnancy and motherhood as incompatible with work. The assumption that women would leave the workforce once they became mothers often served as a justification for employers to deny women jobs.[16] Stereotypical notions about women's commitment to work effectively relegated women to lower-level jobs.[17]

Historically, discrimination against pregnant women and women with children has been a common feature in Canadian workplaces.[18] Employers made employment-

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[11] Canada, The Women's Bureau, *Report of a Consultation on the Employment of Women with Family Responsibilities*, (Ottawa: Canadian Department of Labour, 1965) at 7: A survey conducted by the Women's Bureau, Ontario Department of Labour in 1964 found that 52 percent of women cited economic necessity as the reason for working whereas 40 percent indicated "self-fulfillment and enrichment" and the remaining viewed "employment as a means of maintaining or improving skills".

[12] Joan Sangster, "Women Workers, Employment Policy and the State: The Establishment of the Ontario Women's Bureau, 1963-1970", (1995) 36 Labour/Le Travail 119 at 125 [Sangster, "Women Workers"].

[13] See RCSW, *supra* note 5 at 263; Jane Tiel, "5, 6 or 7 months: Expectant mothers hold many jobs", *The Globe and Mail* (1 June 1957) 20; L. Waterland, "Mothers at work", *The Globe and Mail* (1 March 1954) 6.

[14] See generally Josephine Lowman, "Why grow old?: Follow doctor's advice when baby expected", *The Globe and Mail* (3 January 1953) 11. See also Jane Tiel, "On being a woman: A difficult transition: Career to motherhood", *The Globe and Mail* (3 May 1958) 10.

[15] Women's Bureau Report, *supra* note 11 at i.

[16] See RCSW, *supra* note 5 at 91.

[17] *Ibid* at 95.

[18] See generally Mary Kate Rowan, "Bias against women supported in Québec", *The Globe and Mail* (6 March 1975) W8.

related decisions on the basis of pregnancy without regard to the individual employee's capabilities and desires. It was not uncommon for pregnant employees in the 1950s through the 1970s to be fired,[19] forced to take unpaid leave of absence[20] or denied employment benefits.[21]

Similarly, the unemployment insurance system defined pregnant women and women who had recently given birth as "unavailable for work" and denied them access to benefits reinforcing women's economic dependence on men.[22] The general absence of maternity leave laws[23] and the judicial and legal tolerance of discriminatory employment practices fostered the notion that mother and worker were incompatible roles, thereby perpetuating women's subordinate position.[24]

The legal landscape for women workers began to change with the passage of maternity protection and human rights laws, and the judicial redefinition of sex discrimination as including discrimination against pregnant women during the decades of the 1970s and the 1980s. Access to paid maternity leaves has helped women reconcile the competing demands of being a worker and being a mother by making it easier for many of them to retain jobs despite temporary interruptions in employment for childbirth and

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[19] See *United Packinghouse Workers, Local 293 v Quaker Oats Co.* (1960), 11 LAC 87 (Arbitrators: J.A. Hanrahan, M. Eady, D.G. Pyle) [*Quaker Oats*].

[20] See *R v Pacific Western Airlines*, [1975] BCJ No. 58 [*Pacific Western Airlines*]; Sheila Woodsworth, *Maternity Protection for Women Workers in Canada* (Women's Bureau, Canada Department of Labour) (Ottawa: Queen's Printer and Controller of Stationery, 1967) at 14 (the Collective Agreement between the Province of Québec and its Civil Service required pregnant employees to go on unpaid maternity leave at the seventh month of their pregnancy).

[21] See *Gibbs et al. v Board of School Trustees, School District No. 36 (Surrey) et al.* (11 July 1978), British Columbia (BC Bd of Inq) (the school board had a policy denying pregnant employees to draw on their accumulated sick leave benefits for absences from work due to illnesses caused or aggravated by pregnancy).

[22] Woodsworth, *supra* note 20 at 37.

[23] Further discussion of this topic will be found at Part-II of this chapter, below.

[24] Lucinda M. Finley, "Transcending equality theory: A way out of the maternity and the workplace debate" (1986) 86 Columbia Law Review 1118 at 1120, 37.

caregiving. Human rights laws provided protection against workplace pregnancy discrimination by invalidating exclusionary employment policies and practices that traditionally denied pregnant women jobs or forced them to quit. The introduction of the parental leave benefits program has supported women's long-term attachment to paid employment by facilitating the alleviation of work-family conflict faced by numerous working mothers.[25] The legal workplace duty to accommodate requiring employers to reasonably accommodate pregnancy has enabled many women workers to continue working during pregnancy and make full use of their talents and capacities.

Although the introduction of significant legislative and judicial protections has largely proved successful in helping women combine motherhood and paid employment, the existing legal framework is inadequate in dismantling the harmful gender stereotypes that continue to disadvantage women. Sex stereotyping of women as primarily childbearers and primary caregivers continues to hinder women's career prospects, and women in Canada continue to shoulder the disproportionate burden of childcare responsibilities. The persistence of the gender pay gap and the glass ceiling are suggestive of gender stereotyping in the workplace and its resulting discrimination.[26] It is a fairly common experience for many women in some professions, like law, to have their careers "rerouted onto the 'mommy track'."[27]

This thesis sketches the history of discrimination against expectant and new mothers in Canadian workplaces. It studies the contemporary legal protections available

[25] See Jenna Hawkins, "Canadian parental benefits program: Challenging or supporting the gendered organization?" (2012) 3:1 Journal of the Motherhood Initiative for Research & Community Involvement 53 at 59.
[26] See *infra* notes 502-03 and accompanying text.
[27] See Jean E. Wallace, "Can women in law have it all? A study of motherhood, career satisfaction and life balance" (2006) 24 Research in the Sociology of Organizations 283 at 300.

to pregnant workers and mothers that have mostly eliminated the overt forms of pregnancy discrimination. It then examines how the current legal framework is insufficient to combat the stereotypical assumptions that result in subtle forms of discrimination against pregnant women and mothers. In particular, it analyses how the parental leave policy in Canada has failed to challenge the gendered parenting norms that reinforce the traditional work-family structure, which is built on deeply ingrained sex-role stereotypes and which places women at a disadvantaged position in the labour market. It recommends father-targeted leave to help breakdown the gender role stereotypes so as to enable both parents to equally participate at work and at home.

This chapter traces the history of discrimination against pregnant women and women with family responsibilities in the Canadian employment context from the 1950s. In particular, it examines how negative stereotypical assumptions about women's roles manifested in discrimination against pregnant workers and women with children. The historical framework helps reveal the patterns of workplace pregnancy discrimination and illuminates the continuing legacy of stereotyping against pregnant women and mothers. A historical perspective therefore helps remind us of the ongoing struggle for equality for pregnant women and new mothers.

Discrimination against pregnant workers commonly manifests in five areas: maternity rights, dismissal, hiring, promotion and employment benefits. Part I of this chapter explores how pregnancy discrimination played out in the context of employment law and analyses the underlying reasons behind differential treatment towards pregnant workers and working mothers. Part II of this chapter studies and analyses maternity leave

discrimination and discrimination against pregnant women and new mothers in aspects of employment including hiring, firing, promotion and employment benefits.

Part I – Pregnancy Discrimination in the Employment Law Context and Underlying Causes of Discrimination Against Pregnant Workers and New Mothers

A. Unrestricted freedom to exclude pregnant workers

In the era before the enactment of anti-discrimination statutes, the unrestricted freedom of employers to choose an employee permitted "legalized discrimination".[28] The "general principle of the law…[as] that of complete freedom of commerce" declared by the Supreme Court of Canada in *Christie v. The York Corporation*[29] demonstrated the "limitation of the common law protection against discrimination in Canada".[30] In *Christie*, the waiter of a beer tavern denied service to Christie, a black man due to being "instructed not to serve coloured persons".[31] Writing for the majority, Justice Rinfret found that the rule adopted by the tavern owner did not run contrary to "good morals or public order".[32] He further stated: "Any merchant is free to deal as he may choose with any individual member of the public. It is not a question of motives or reasons for deciding to deal or not to deal; he is free to do either."[33] The concept of complete

[28] Eric M. Adams, "Human rights at work: Physical standards for employment and human rights law" (2016) 41 Applied Physiology, Nutrition and Metabolism S63 at S65.
[29] [1940] SCR 139 [*Christie*].
[30] Honourable Mr. Justice W.S. Tarnopolsky, "Discrimination and Equality Rights in Canada" (1993) 19 Commonwealth Law Bulletin 1700 at 1701.
[31] *Christie*, supra note 29 at 141.
[32] *Ibid* at 144.
[33] *Ibid* at 142.

freedom of commerce gave the tavern owner the freedom to only serve customers he liked.[34] The "same logic applied to matters of employment".[35]

The common law principle of freedom of contract within the employment relationship recognizes the freedom of the contracting individuals to "choose a contractual partner" and "to choose the terms of their transactions", "free from legislative restraint or judicial interference".[36] The common law conception of contractual freedom views the contracting parties "as formally equal and autonomous individuals free to accept or reject the terms of a proposed bargain".[37] Pregnancy as a basis for making employment decisions is, thus, "[an expression] of contractual freedom, including an employer's management rights to organize the workplace, and set its rules, policies, and working conditions".[38]

The "unfettered" right to choose a contractual partner implies the right to reject a partner for "good reasons, bad reasons, or no reasons at all".[39] Thus, the common law protected freedom of contract encompassed the right to discriminate.[40] The idea of freedom of contract gave private and public employers an unconstrained ability to refuse to employ, dismiss or exclude pregnant women. As Sangster puts it: "In the 1950s and 1960s the legal right of employers to fire married and pregnant women, as well as the

[34] *Ibid* at 145.
[35] Adams, *supra* note 28.
[36] Hugh Collins, "The vanishing freedom to choose a contractual partner" (2013) 76:71 Law and Contemporary Problems 71 at 71-72; Adams, *supra* note 28 at S64.
[37] Brian Etherington, "The enforcement of harsh termination provisions in personal employment contracts: The rebirth of freedom of contract in Ontario" (1990) 35 McGill Law Journal 459 at 466.
[38] Adams, *supra* note 28 at S64.
[39] Collins, *supra* note 36 at 71.
[40] *Ibid*; Adams, *supra* note 28 at S64.

prevailing social disapproval of pregnant working women, sustained the powerful message that mothers did not belong in the workforce."[41]

B. Limitation of Human Rights Laws to Protect against Pregnancy Discrimination

The arrival of federal and provincial anti-discrimination statutes[42] placed "substantial restrictions" on the employer's freedom to choose a contractual partner, but these proved to be largely ineffective in preventing pregnancy discrimination.[43] Despite the federal *Bill of Rights*[44] affording workers in the federal domain protection against sex discrimination, the Supreme Court of Canada in *Bliss v. Canada (Attorney General)*[45] narrowly interpreted the "equality guarantee" contained in the *Bill of Rights* to deny protection to pregnant women workers by ruling that discrimination on the basis of pregnancy did not amount to discrimination on the basis of sex.[46]

Stella Bliss lost her job on becoming pregnant and was unable to qualify for maternity benefits under the unemployment insurance program, as she could not fulfill the "magic ten" requirement.[47] Bliss unsuccessfully reapplied for regular unemployment insurance benefits. On finding herself disentitled to both maternity and regular benefits,

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[41] Joan Sangster, "Doing two jobs: The wage-earning mother, 1945-70" in Joy Parr, ed, *A Diversity of Women: Ontario, 1945-1980* (Toronto: University of Toronto Press, 1995) 98 at 109 [Sangster, "Doing two jobs"].
[42] For further discussion on advent of human rights legislation, see Part-II-B of chapter 2, below.
[43] Collins, *supra* note 36.
[44] *Canadian Bill of Rights*, SC 1960, c 44 [*Bill of Rights*].
[45] [1979] 1 SCR 183 [*Bliss*].
[46] Judy Fudge, "The Public/Private Distinction: The possibilities of and the limits to the use of Charter litigation to further feminist struggles" (1987) 25:3 Osgoode Hall Law Journal 485 at 505.
[47] See generally Leslie A. Pal & F.L.Morton, "Bliss v. Attorney General of Canada: From Legal Defeat to Political Victory" (1986) 24:1 Osgoode Hall Law Journal 141 at 143. See *Unemployment Insurance Act, 1971*, SC 1971, c 48, s 30(1) [*UI Act, 1971*]: The "magic ten" rule required pregnant women claimants demonstrating labour force attachment for twenty insurable weeks of employment to prove that the "ten or more weeks of insurable employment [fell between] the twenty weeks that immediately precede the thirtieth week before her expected date of confinement".

she argued that Section 46 of *Unemployment Insurance Act, 1971* violated her equality rights guaranteed under the *Bill of Rights*. The Court ruled that the maternity benefits provision denying pregnant women access to regular benefits did not contravene the equality guarantee of the *Bill of Rights*.

Writing for the unanimous Court, Justice Ritchie found that, "[a]ny equality between the sexes in this area is not created by legislation but by nature".[48] He quoted Justice Pratte of the Federal Court of Appeal stating:

> Assuming the respondent to have been "discriminated against", it would not have been by reason of her sex. Section 46 applies to women, it has no application to women who are not pregnant, and it has no application, of course, to men. If section 46 treats unemployed pregnant women differently from other unemployed persons, be they male or female, it is, it seems to me, because they are pregnant and not because they are women.[49]

Justice Ritchie upheld the lower Court's definition of "equality before the law" to conclude that, "where difference in treatment of individuals is based on relevant distinction, the right to equality before the law would not be offended".[50] The Court relied on the "similarly situated" rule[51] to reason that differential treatment based on pregnancy does not constitute sex discrimination because it treated all pregnant women alike.

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[48] *Bliss*, *supra* note 45 at 190.
[49] *Ibid* at 190-191.
[50] *Ibid* at 192.
[51] As Justice McLachlin writing for the Court of Appeal in *Andrews v Law Society of British Columbia*, 27 DLR (4th) 600 at 605 stated: "In my view, the essential meaning of the constitutional requirement of equal protection and equal benefit is that persons who are 'similarly situated be similarly treated' and conversely, that persons who are 'differently situated be differently treated'…"

Bliss "proved to be an unfortunate legal precedent" as numerous courts[52] adopted the narrow definition of sex discrimination to deny pregnant workers protection available under federal and provincial human rights laws.[53]

C. Dominant Social Thinking

The social disapproval of pregnant working women had its roots in Canada's long history of prejudice against women. Most women who entered the labour force before the Second World War considered it customary to leave the workforce upon marriage.[54] As married women began to flood the workforce, the idea of employment after marriage began to be more widely accepted.[55] Some employers, however, emphasized the "negative side" of employing married women and feared the possibility of them getting pregnant.[56] As Ann Porter, an academic political scientist, puts it: "Attitudes toward pregnant women in the labour force changed much more slowly than toward married women in general."[57]

The prevailing ideology of domesticity helped reinforce the notion that pregnant women did not belong in the workforce. As Porter explains, "[t]he ideology of domesticity involved not only the notion that men should be the primary breadwinners, but also that women during pregnancy and early childrearing should withdraw out of

[52] See *Wong v Hughes Petroleum Ltd.*, [1983] 4 C.H.R.R. D/1488 (ABQB); *Canada (Attorney General) v Stuart*, [1983] 1 FC 651 (Federal Court of Appeal); *Commission des Droits de la Personnel v Aristocrat Apartment Hotel*, [1978] C.S. 1073 (Québec Superior Court) [*Aristocrat Apartment Hotel*]; *Evelyn Nye v Robert Burke*, [1981] 2 C.H.R.R. D/538 (Qc Prov Ct) [*Nye*]; *France Breton v Canadian Reynolds Metals Ltd.*, [1981] 2 C.H.R.R. D/532 (Qc Prov Ct) [*Breton*].
[53] Fudge, *supra* note 46 at 505-06.
[54] Woodsworth, *supra* note 20 at 1-2.
[55] Ann Porter, *Gendered States – Women, Unemployment Insurance, and the Political Economy of the Welfare State in Canada, 1945-1997* (Toronto: University of Toronto Press, 2003) at 60-61. See also RCSW, *supra* note 5 at 8.
[56] Sangster, "Doing two Jobs", *supra* note 41 at 107.
[57] Porter, *supra* note 55 at 62.

sight and into the private sphere of the home."[58] Sexist attitudes towards the appropriate role of women in society often forced women to choose between career and family.[59] The social pressure for pregnant women to remain within the confines of their home sometimes led to their withdrawal from the workforce. As Sangster describes, "social disapproval of visibly pregnant women at work" forced numerous to resign on pregnancy.[60]

Dominant societal expectations about sex roles of women as childbearers and caregivers affected the employment prospects of pregnant workers and new mothers.[61] Stereotyping women as primary childcare providers impeded their access to employment opportunities, and occasionally forced them out of the workplace and back into the confines of the home.[62] Women's traditional roles as mothers and childrearers continued to influence employers' decisions. Many employers denied women workers consideration for advancement to higher positions based on the stereotypical assumption that women

[58] *Ibid*.
[59] See RCSW, *supra* note 5 at 4; Women's Bureau Report, *supra* note 11 at 38.
[60] Sangster, "Doing two Jobs", *supra* note 41 at 110.
[61] See RCSW, *supra* note 5 at 11-13; Constance Backhouse, "'We don't hire a woman here': Claire L'Heureux-Dubé and the career prospects for early female law graduates from Laval University" (2014) 39:2 Queen's Law Journal 355. See also Peter Weygang, "A call for women to leave the office and return to homemaking", Letter to the Editor, *The Globe and Mail* (10 October 1970) 7: The author stated: "Let's get the women back to a real job, running a family. Perhaps a few more mothers doing a good job at home would cut down on our social problems. In my opinion career women are quite simply escapists who can't cope with the mental, spiritual and physical demands of building a family."
[62] See "Mother can't be policewoman: Home is not on the beat", *The Globe and Mail* (9 May 1969) 5 ["Mother can't be policewoman"]: The Metro Police Commission refused to hire mothers due to "very strong views" against their employment: "[T]he mother's place is in the home with her child."; Catto, *supra* note 4: A member of a housing committee of Metropolitan Toronto Council, on the topic of expanding the day care program to assist working mothers, stated: "Mothers should stay at home with their children. That's how they can best serve society."

are less committed and less competent employees because their primary commitment lies towards their children and families.[63]

The federal government's approach to unemployment insurance "helped both to sustain the view that pregnant women did not belong in the public sphere and to create a labour market in which pregnant women were, at best, granted a marginal place".[64] The UI Commission viewed pregnant women with suspicion casting doubts on their availability for employment.[65] The program administrators denied access to insurance benefits to both expectant and new mothers, in the period around childbirth.[66] Such exclusion of women from government programs "reinforced women's dependency on a male breadwinner and perpetuated gender inequalities".[67]

To conclude, employers' legal right to fire or refuse to hire pregnant women and new mothers combined with the inability of human rights laws to protect against discrimination, and the prevailing societal attitudes helped sustain the view that mother and worker were diametrically opposite roles that effectively forced women to choose between motherhood and employment.

Part II – Forms of Workplace Discrimination against Pregnant Women and Mothers

A. Maternity Leave Discrimination

[63] See RCSW, *supra* note 5 at 94-95 (employers presumed women to be "short-term" workers, "unwilling to assume responsibilities" and who work "until" marriage or "until" they give birth, or "until" they reach short-term financial goal); Women's Bureau Report, *supra* note 11 at 10-11.
[64] Porter, *supra* note 55 at 62.
[65] Woodsworth, *supra* note 20 at 37.
[66] *Ibid*.
[67] Porter, *supra* note 55 at 62.

Maternity protection[68] is crucial to help women "reconcile" motherhood and paid work.[69] The "reconciliation" of competing demands of being a worker and being a mother "remains a critical issue in the achievement of true equal employment opportunity for women".[70] In the absence of adequate maternity protection, numerous women have to make a "coerced choice" to withdraw from or limit their workforce participation.[71]

Historically, most employers approached the issue of maternity leave[72] in two ways. Employers either provided "no leave" to pregnant workers, thereby requiring them to resign or be dismissed, or forced them to take a mandatory unpaid leave of absence during pregnancy and for an arbitrary period following childbirth regardless of their desires and abilities.[73] As a result, such maternity leave policies typically ensured pregnant women's departure from the workforce, at least temporarily, but sometimes permanently.[74]

Both public and private employers alike had policies that reflected stereotypical views about the proper place of pregnant women in society. In the 1960s, some school boards in Ontario had policies of not granting leaves of absence to pregnant teachers and

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[68] The state must respect and protect a woman's decision to combine employment and childbearing. Women bear "the next generation of workforce participants". See David E. Bergquist, "Who's bringing up baby: The need for a national uniform parental leave policy" (1987) 5:2 Law and Inequality: A Journal of Theory and Practice 227 at 257. Maternity, therefore, "a social function useful to society" must be "fully protected" and recognized as "a basic human right". See International Labour Office, *Equality of Opportunity and Treatment for Women Workers* (Report VIII) (1974) online: <http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/74b09_727.pdf> at 118, 18, 81.

[69] See Ockert Dupper, "Maternity protection in South Africa: An international and comparative analysis (Part Two)" (2002) 13 Stellenbosch Law Review 83 at 83.

[70] See Nancy E. Dowd, "Maternity leave: Taking sex differences into account" (1986) 54 Fordham Law Review 699 at 699.

[71] See Finley, *supra* note 24 at 1128.

[72] Maternity leave is leave of absence from work available to birth mothers before and after childbirth.

[73] Dowd, *supra* note 70 at 706. See *United Electrical, Radio & Machine Workers of America, Local 504 v Canadian Westinghouse Co.* (1954), 5 LAC 1824 [*Westinghouse*] (Arbitrators: E.W. Cross, E. Macaulay & Drummond Wren) (the employer had a policy of not granting leaves of absence to pregnant employees and requiring them to terminate their services).

[74] See RCSW, *supra* note 5 at 84-85.

requiring them to resign as soon as their pregnancy became visible.[75] Similarly, the Canadian Armed Forces had no provision for maternity leaves because of their policy to dismiss women employees with children.[76]

Businesses in Canada had similar policies providing no maternity leave to pregnant women workers. A major telephone company had a policy of not allowing pregnant women employees to work beyond their sixth month of pregnancy and provided no assurance of re-employment after childbirth. Similarly, a life insurance company had a policy of not hiring married women. Women employees who married were only allowed to stay until pregnancy.[77]

Where employer policies offered maternity leaves to female workers, these generally did not guarantee reinstatement to one's pre-leave position. For instance, some education boards in Ontario had maternity leave policies that reassigned teachers to junior positions on return from pregnancy leave.[78] Similarly, women employees of the public service in Alberta and British Columbia had no guarantee of reinstatement on return from maternity leave.[79] Likewise, businesses considered a woman's right to return to work after childbirth as a "privilege" rather than a "right".[80] Some companies where management unilaterally decided upon personnel policies did not always guarantee

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[75] See Leone Kirkwood, "Teacher row on pregnancy", *The Globe and Mail* (6 March 1969) W8 [Kirkwood, "Teacher"]: The author while quoting Ruth Foster, director of a committee appointed by Federation of Women Teachers' Associations of Ontario to study problems encountered by young married teachers, stated: "[F]or some boards lack of maternity leave translates as "Please resign".
[76] See RCSW, *supra* note 5 at 138.
[77] See "Canadian laws lag in maternity leave", *The Globe and Mail* (28 August 1963) 11 ["Canadian laws lag"].
[78] See "Maternity leave rule attacked by trustee", *The Globe and Mail* (6 February 1969) W3 ["Maternity leave rule"]; Kirkwood, "Teacher", *supra* note 75.
[79] See Woodsworth, *supra* note 20 at 14.
[80] Sangster, "Doing two jobs", *supra* note 41 at 110.

women workers reinstatement after leave.[81] Similarly, a telephone company that granted women maternity leaves did not ensure re-employment.[82]

Additionally, where employers provided maternity leaves, the eligibility requirements of some leave policies resulted in no protection or inadequate protection. First, some leave policies made entitlement to maternity leave conditional upon "length of service that translate[d] into no leave" for women employees during that duration of employment.[83] A major retail department store only granted maternity leaves to women employees with 5 or more years of service.[84] Similarly, the Ontario Civil Service considered maternity leave as a right for women employees with one year of service.[85] Likewise, in the 1960s, the Nova Scotia Civil Service generally granted "special leave" for reasons of pregnancy to women employees having two years' service.[86] Second, some leave policies restricted female employees' access to only one maternity leave. Some school boards in Ontario allowed women teachers to take only one pregnancy leave.[87] Likewise, in the 1950s, the Ontario Civil Service did not grant women employees a second maternity leave of absence.[88] Third, some leave policies provided maternity

[81] See Woodsworth, *supra* note 20 at 29.
[82] Sangster, "Women Workers", *supra* note 12 at 137.
[83] Dowd, *supra* note 70 at 711.
[84] Sangster, "Women Workers", *supra* note 12 at 136.
[85] Women's Bureau Report, *supra* note 11 at 21. This is still the case in Alberta, Nova Scotia, Yukon, Northwest Territories and Nunavut. See Alberta *Employment Standards Code*, RSA 2000, c E-9, s 45 [Alberta *ESC*]; Nova Scotia *Labour Standards Code*, RSNS 1989, c 246, s 59; *Employment Standards Act*, RSY 2002, c 72, s 36(1)(a); *Employment Standards Act*, SNWT 2007, c 13, s 26; *Employment Standards Regulations*, RRNWT 2008, s 11; *Labour Standards Act (Nunavut)*, RSNWT 1988, c L-1, as duplicated for Nunavut by s 29 of the *Nunavut Act*, SC 1993, c 28; *Pregnancy and Parental Leave Regulations*, RRNWT 1990, c 8 (Supp) as duplicated for Nunavut by s 29 of the *Nunavut Act*, SC 1993, c 28.
[86] See Woodsworth, *supra* note 20 at 13.
[87] "Maternity leave rule", *supra* note 78.
[88] Women's Bureau Report, *supra* note 11 at 21.

leaves of inadequate duration.[89] For example, the Nova Scotia Civil Service regulated by the 1962 *Civil Service Act*[90] granted pregnant workers maternity leave for a period not exceeding 90 days.[91]

Moreover, many women workers encountered mandatory unpaid leave during pregnancy and for a period after childbirth irrespective of their physical abilities or desires to work.[92] Some employers imposed leave of absence on pregnant workers when

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[89] According to ILO Convention No. 183, the minimum maternity leave period has been mandated at 14 weeks (roughly 100 days). See International Labour Organization, *Maternity and paternity at work: Law and practice across the world* (2014) online: <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_242615.pdf> at 9 [ILO, *Maternity at work*].
It is crucial that maternity leave be of adequate duration so as to allow mothers sufficient time to physically recuperate from "all but the most serious complications arising from childbirth". See Alisa Knobbe, "Beyond Cal Fed: Parenting leave possibilities" (1987) 10 Harvard Women's Law Journal 294 at 303. Inadequate leave duration could frequently mean women "returning to work sooner than medically or emotionally optimal in order to receive needed income or to retain economically essential benefits". See Finley, *supra* note 24 at 1124. Such "a forced premature return to work" can have the potential to negatively impact women's future employment prospects:

> "[A] forced premature return to work can have adverse consequences for a woman's employment future. Under these circumstances, new mothers may need to take a lot of sick leave, or may be unable to concentrate as well or to perform as well on the job because of stress, fatigue, and illness. This may cause a woman to be fired or denied promotions or merit increases, whereas if adequate recuperation time had been guaranteed to her, she would not have had these black marks on her record" (*ibid*).

Also, taking adequate time away from work after childbirth helps mothers spend "quality" time with their newborns. See Maya Rossin, "The effects of maternity leave on children's birth and infant health outcomes in the United States" (2011) 30 Journal of Health Economics 221 at 222. Maternity leave allows working mothers to adapt to the new environment of "providing around-the-clock infant care". See Rada K. Dagher, Patricia M. McGovern & Bryan E. Dowd, "Maternity leave duration and postpartum mental and physical health: Implications for leave policies" (2014) 39:2 Journal of Health Politics, Policy and Law 369 at 370. Also, mothers who take adequate time off from work are "more likely to initiate breastfeeding and to continue breastfeeding for longer periods of time…[and] likely to be in better positions to monitor their children's health and to take their children for doctor's visits". See Lawrence M. Berger, Jennifer Hill & Jane Waldfogel, "Maternity leave, early maternal employment and child health and development in the US" (2005) 115 The Economic Journal F29 at F33. International research indicates that a sufficient duration of maternity leave is beneficial to infants' health and development (*ibid* at F30). Additionally, research suggests that a mother's early return to work is linked with "increases in children's externalising behaviour problems" such as "aggressiveness, impulsivity, and defiance" (*ibid* at F44, F36).

[90] *Civil Service Act*, SNS 1962, c 3.

[91] See Woodsworth, *supra* note 20 at 13.

[92] See *ibid* at 12 (the Civil Service Regulations to the federal Civil Service Act, 1962 required pregnant employees to go on an unpaid leave of absence two months before the expected date of confinement); RCSW, *supra* note 5 at 111-112 (the federal Public Service Terms and Conditions of Employment Regulations permitted the department's deputy head to require pregnant employees to cease work at anytime during pregnancy and proceed on maternity leave if in his opinion the interest of the department so required).

they could not fit into the uniform provided, but could still perform the job without difficulty.[93] Likewise, some police boards mandated pregnant women officers to go on leave before their condition became "obvious" and forced them to resign on childbirth.[94] Some school boards had similar policies requiring pregnant teachers to cease work once "they show signs of pregnancy".[95] Some employers justified these policies on the grounds of the interests of students not being exposed to pregnant teachers.[96] Similarly, several airlines also barred pregnant flight attendants from working on aircraft flights at a certain time during their pregnancy citing potential safety hazards.[97]

Many leave policies required female workers to take a longer duration of maternity leave regardless of their individual desires or capacities to return to work. For instance, some education boards mandated female teachers to take a maternity leave of absence for a minimum of one year.[98] Correspondingly, the federal Public Service regulations provided female employees maternity leave for six months after childbirth.[99] Such maternity leave policies that granted leave beyond the reasonable recovery time following childbirth, in essence, provided "parenting leave" premised on appropriate sex

[93] Wilfred List, "Outgrew her uniform when pregnant, woman wins claim over forced leave", *The Globe and Mail* (6 June 1978) 1 (the Ontario Government Protective Service enforced an unpaid leave of absence on a pregnant security officer).
[94] See "Judge of all things", *The Globe and Mail* (10 May 1969) 6.
[95] Leone Kirkwood, "Confused teachers never get around to maternity leave", *The Globe and Mail* (16 August 1969) 11. See Kirkwood, "Teacher", *supra* note 75; "Maternity leave rule", *supra* note 78.
[96] Kirkwood, "Teacher", *supra* note 75.
[97] See *Pacific Western Airlines Ltd.*, *supra* note 20 (employer forced pregnant flight attendants to go on obligatory leave of absence post the fourth month of their pregnancy). See also *Re Culley et al. and Canadian Pacific Airlines et al.*, [1977] 1 WWR 393 (employer required pregnant stewardesses to cease working after the 13th week of their pregnancy).
[98] See "Maternity leave rule", *supra* note 78; Woodsworth, *supra* note 20 at 57 (a maternity leave provision in a collective agreement between a school board and its teachers required women employees to remain on maternity leave for at least one year).
[99] See RCSW, *supra* note 5 at 111.

roles "that after childbirth [women] would assume primary responsibility for child-rearing", thereby "perpetuating parenting stereotypes".[100]

In addition, numerous employers opposed the idea of legislation governing maternity leaves.[101] As Sangster states: "What worried employers was the potential loss of their right to shape, decide or change maternity policies as they pleased."[102] A survey of large Ontario employers undertaken by the Women's Bureau of Ontario's Department of Labour to gauge their reaction to maternity leave legislation indicated the response to range from "lukewarm to hostile".[103]

Many political actors also did not support legislated maternity leave.[104] In 1964, Ontario's then Premier John Robarts said in a television interview, "the Government does not contemplate legislation requiring employers to give maternity leave. It is really a question employer and employee must work out between themselves".[105] Governments usually left maternity leave issues to be governed by collective bargaining agreements or personnel policies.[106]

Collective agreements were also mostly silent on maternity leave provisions with only a minority of women receiving benefits.[107] Most trade unions were reluctant to support the issue of maternity leaves in contractual negotiations.[108] Some women

[100] Dowd, *supra* note 70 at 708-09, 717.
[101] Sangster, "Doing two jobs", *supra* note 41 at 109-10.
[102] Sangster, "Women Workers", *supra* note 12 at 136.
[103] *Ibid*.
[104] "Robarts plans no maternity leave laws", *The Globe and Mail* (3 December 1964) W11.
[105] *Ibid* (the statement clearly attests to the fact that the common law concept of freedom of contract, that viewed employment as a private contractual relationship between equal contracting individuals with no role of state intervention, governed the minds of some politicians).
[106] See Women's Bureau Report, *supra* note 11 at 22; "Canadian laws lag", *supra* note 77.
[107] See Woodsworth, *supra* note 20 at 27; Sangster, "Doing two jobs", supra note 41 at 110.
[108] *Ibid*.

employees, however, called upon trade unions to fight for maternity benefits.[109] They underlined the importance of maternity protection legislation to secure for themselves equal employment opportunities: "If society allows woman a place in man's world, the state will have to make special provisions for her peculiar female functions as wife and mother."[110]

Furthermore, courts largely refused to recognize employer policies not providing maternity leaves to female workers as discriminatory. In a 1978 case, the Québec Superior Court rejected the argument that the absence of maternity leaves provision in individual employment contracts constituted pregnancy discrimination.[111] The Court ruled that protection against sex discrimination under the *Québec Charter of Human Rights*[112] did not guarantee a "maternity leave scheme applicable to all contracts of individual service agreements".[113]

Similarly, labour arbitrators usually upheld the legal right of businesses to establish policies refusing leaves of absence to pregnant employees. In the 1957 case of *U.A.W. v. Essco Stamping Products Ltd.*,[114] the arbitrator, while upholding the company's policy of denying leave of absence to pregnant workers, ruled that maternity leave could not be demanded as "of right" as "it remains a matter to be negotiated between the parties".[115] Similarly, in the 1961 case of *Re International Brotherhood of Electrical*

[109] See "Nurse asks unions to seek equal pay", *The Globe and Mail* (25 June 1970) W3.
[110] Jane Tiel, "Women and Ontario Law: Adjust man's world for the modern woman", *The Globe and Mail* (28 December 1957) 11.
[111] *Aristocrat Apartment Hotel*, *supra* note 52.
[112] S.Q. 1975, c 6.
[113] *Aristocrat Apartment Hotel*, *supra* note 52 at para 21.
[114] (1957), 8 LAC 26 (Arbitrator: J.A. Hanrahan).
[115] *Ibid* at 30.

Workers, Local 530 & Sarnia Broadcasting Ltd.,[116] the majority arbitrators held that the company had the right to establish a policy of not providing leave for pregnancy. The board further concluded: "[I]t is a reasonable and necessary policy in order that the company should have on hand such work force when it is needed…it is not reasonable that the company should be obliged to hold a job open for every pregnant woman…Pregnancy is not a misfortune brought upon a woman without her consent."[117]

In the absence of maternity legislation, employers had considerable power to decide the employment status of pregnant women and new mothers. Numerous employers provided either no maternity protection or inadequate protection to both expectant and new mothers. Maternity leave policies grounded in the notion "that it was socially inappropriate and physically harmful for a woman to work once she became visibly pregnant, and that after childbirth she would assume primary responsibility for child-rearing" perpetuated stereotypes that traditionally confined women to caregiving roles.[118]

During the 1950s through the 1970s, few working women, however, had certain maternity rights due to some limited legislative protections that existed. In 1921, British Columbia became the first province to enact maternity leave legislation.[119] The *Maternity*

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[116] (1961), 11 LAC 355 (Arbitrators: H.J.M. Donley, B. Blackwell & F.V. Regan).
[117] *Ibid* at 357 (the arbitrators relied on a previous decision rendered in *Westinghouse*, *supra* note 73).
[118] Dowd, *supra* note 70 at 708-09.
[119] *An Act concerning the employment of women before and after childbirth*, SBC 1921, c 38 [*Maternity Protection Act*].
A possible explanation of why this legislation was enacted way back in 1921 could be the recommendations regarding introduction of maternity legislation made by the Health Insurance Commission appointed by the Province of British Columbia on 19 November, 1919. See British Columbia, *Report of the Commission on Maternity Insurance, 1921* (18 March 1921) online: <http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs_rc/461380/461380_comm_rc_health_insurance.pdf> at 1,7 [*Maternity Insurance Report*]. The provincial government mandated the Commission to investigate the maternity benefit laws of other countries in order to examine their success, and to gauge public interest regarding introduction of similar legislation in the province (*ibid* at 1). The Commission held public

Protection Act required both public and private sector employers to allow pregnant employees to leave work for the six-week period immediately preceding the date of expected delivery.[120] It also prohibited the employment of women for six weeks following childbirth.[121] Subsequently in 1942, the federal government introduced maternity leave for women working in the Civil Service Commission.[122] The 1943 *Report on Social Security for Canada*[123] suggested payment of cash benefits to working mothers "during abstention from work for six weeks before and six weeks after the birth of a child".[124] Thereafter, the federal government demonstrated "leadership" by providing maternity protection to women employees of the federal Public Service; first in 1958 in the form of leaves granted at the employer's discretion and later in 1962, as a matter of right.[125] Shortly after, in 1964, New Brunswick followed suit and enacted the *Minimum Employment Standards Act*[126] that allowed pregnant employees to take maternity leave

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hearings across the province to seek public opinion on the subject. See "Health Insurance Commission here", *The Cranbrook Herald* (18 December 1919) 2. During the hearings, the Commission found unanimous support for maternity benefits (*Maternity Insurance Report*, *supra* at 1: "Maternity benefits for this Province was approved by sixty-nine Women's Organizations, twenty-four Fraternal Societies, thirty-one Labor Organizations, five other organizations, five Ministers of the Gospel, eleven Medical Practitioners, three Insurance Agents and forty-one individuals giving evidence on their own behalf"). The Commission, in light of its investigation and the evidence received before it, recommended the need for a maternity leave legislation for working mothers so as to reduce infant and maternal mortality rates (*ibid* at 7). It also made a recommendation for payment of maternity benefits to birth mothers (*ibid* at 10-11).

[120] *Maternity Protection Act*, *supra* note 119, s 3(b).

[121] *Ibid*, s 3(a).

[122] Patricia Connelley, "Maternity leave available to women in civil service", *The Globe and Mail* (2 April 1942) 10.

[123] Leonard C. Marsh, *Report on Social Security for Canada: The requirements for post-war planning* (Ottawa: King's Printer, 1943).

[124] International Labour Office, *Social Security Planning in Canada: The Marsh Report and Proposed Health Insurance Legislation* (Montreal: ILO Office, 1943) at 19. The House of Commons on 8 March 1943 appointed a Special Committee on Social Security "*to examine and report on a national plan of social insurance which will constitute a charter of social security for the whole of Canada*" (*ibid* at 1 [emphasis in the original]). Dr. L.C. Marsh prepared a general report on social security for the Advisory Committee on Reconstruction proposing "*a series of considerations and principles that should be taken into account in designing a comprehensive social security system*" for Canada (*ibid* [emphasis in the original]).

[125] See RCSW, *supra* note 5 at 111 (the maternity leaves, nevertheless, continued to be unpaid).

[126] *Minimum Employment Standards Act*, SNB 1964, c 8.

for a six-week period before childbirth".[127] It also prohibited the employment of women employees for the six-week period following childbirth or a longer duration on production of a medical certificate.[128] The legislation also proscribed employers from dismissing employees for absences arising due to pregnancy and childbirth unless the employee had been absent for a minimum of 16 weeks.[129] In 1965, the Women's Bureau of Canadian Department of Labour also emphasized the significance of maternity protection to "ensure continuity in employment for women whose working life is interrupted by pregnancy and childbirth" and advocated a federal legislative provision for maternity leave.[130]

Even though some employers offered maternity leaves to women workers, many of them did not contemplate paid maternity leave.[131] Employers expressed concerns that maternity leaves "might become the thin edge of the wedge" leading to paid leaves funded by employer contributions, which would "reward" pregnancy.[132] Similarly, the federal government also denied working women access to paid maternity leaves. The original *Unemployment Insurance Act, 1940*[133] did not provide for maternity benefits. A new unemployment insurance legislation[134] introduced in 1955 to replace the 1940

[127] See Woodsworth, *supra* note 20 at 12.
[128] *Ibid*.
[129] See *ibid*; RCSW, *supra* note 5 at 86.
[130] See Women's Bureau Report, *supra* note 11 at ii, 38.
[131] See generally RCSW, *supra* note 5 at 154 (paid maternity leaves were "rare" in Canada). In addition to maternity leave legislation, it is essential that government-subsidized maternity benefits be available to female workers so as to reduce employer disincentive to recruiting and retaining women of childbearing age. See Ockert Dupper, "Maternity protection in South Africa: An international and comparative analysis (Part One)" (2001) 12 Stellenbosch Law Review 421 at 427 [Dupper, "Part One"]; ILO, *Maternity at work*, *supra* note 89 at 8: As the report states, "when paid maternity leave is not funded by social insurance or public funds and employers have to bear the full direct cost of maternity protection benefits, this can create disincentives to hiring, retaining and promoting women workers."
[132] Sangster, "Women Workers", *supra* note 12 at 137.
[133] *Unemployment Insurance Act, 1940*, SC 1940, First Schedule, Part II, c 44 [*UI Act, 1940*].
[134] *Unemployment Insurance Act*, SC 1955, c 50.

legislation continued to exclude pregnant women from receiving unemployment benefits.[135] Some legislators criticized the legislation citing the exclusion of pregnant women as the "greatest weakness" in the unemployment insurance system.[136] As Elmore Philpott noted, "[the exclusion of pregnant women from unemployment insurance benefits is] an unnecessary, vexatious and most unjust discrimination against women who should be the deepest and most cherished concern of all people of Canada, the working women who are adding to our population in the way the Almighty intended them to do."[137] He further stated that the inclusion of pregnant women in the benefits system would not cause any undue financial burden on the economy and instead remove "a great human grievance".[138]

To summarize, numerous employers during the 1950s and 1970s did not provide adequate maternity protection to women workers. The lack of sufficient maternity protection typically forced many pregnant women and new mothers to quit work. Therefore, the absence of maternity protections laws reinforced the notion that women's biological role as childbearers is fundamentally incompatible with the role of a worker, and that they must choose between being a mother and being an employee.

B. Dismissal of Pregnant Employees

The general lack of adequate maternity leave policies forced numerous women to resign on pregnancy. And those who stayed often had their employment terminated.[139]

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[135] See Grey Hamilton, "Jobless law said unfair in cases of pregnancy", *The Globe and Mail* (10 May 1955) 3.
[136] *House of Commons Debates*, 22nd Parl, 2nd Sess, No 4 (9 May 1955) at 3579 (Elmore Philpott).
[137] *Ibid*.
[138] *Ibid*.
[139] See RCSW, *supra* note 5 at 84-85, 89.

Numerous employers had explicit workplace policies against retaining pregnant women.[140] Some municipal governments had policies discharging pregnant workers.[141] Several education boards required pregnant teachers to cease teaching once they became visibly pregnant.[142] Likewise, many airlines also had policies grounding pregnant stewardesses.[143]

Labour arbitrators and courts generally upheld employer policies and decisions terminating employment of pregnant workers. In the 1960 case of *United Packinghouse Workers, Local 293 v. Quaker Oats Co.*,[144] the majority arbitrators upheld the company's policy of dismissing female employees during the sixth month of pregnancy. The

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[140] See Porter, *supra* note 55 at 66.

[141] "York may fight ruling on maternity leave", *The Globe and Mail* (7 December 1971) 15: A survey conducted disclosed that over the past ten years, 46 women employees in York municipal offices resigned because of pregnancy.

[142] See Kirkwood, "Teacher", *supra* note 75; "Maternity leave rule", *supra* note 78.

[143] See RCSW, *supra* note 5 at 89; "The limit: 3-1/2 months of pregnancy", *The Globe and Mail* (20 August 1975) 6; "Stewardesses to be grounded if pregnant", *The Globe and Mail* (4 December 1974) 13 (the Ministry of Transport proposed regulations requiring airlines to ground a flight attendant after 3-1/2 months of pregnancy).

In the airline industry, policies mandating employment of only unmarried females were widespread with stewardesses being traditionally fired as soon as they married. See Ruth Worth, "Board rejects plea of fired stewardess", *The Globe and Mail* (15 June 1965) 9 (a British Columbia arbitration board while rejecting a grievance filed by an airline flight attendant concluded that the company's policy of dismissing married stewardesses is legal). See also "Hostess fights airline regulation", *The Globe and Mail* (4 April 1963) 19 (both Trans-Canada Airlines and Canadian Pacific Airlines had policies of hiring only single girls). Airlines usually refused to hire married women because of possible pregnancy. See "Minister investigates stewardess age rules", *The Globe and Mail* (4 August 1965) 8. Another plausible reason for such a rule could be that the airline industry, with some glamour attached to it, typically hired "young and attractive" women; and that pregnant women might not be considered attractive. See RCSW, *supra* note 5 at 89: A brief submitted to the RCSW stated: "Discrimination against women has become much more sophisticated with youth and glamour having premium over experience and maturity. This is exploitation of sex in its worst form and is without regard to intellectual honesty or logical process. Probably no occupational group in modern Canadian society has been more subject to this type of prejudice than have the stewardesses employed by Canadian air lines as the Companies without exception adhere to the 'Bunny Club' philosophy. Up until 1965 marriage was cause for instant dismissal. In some air lines today, pregnancy is still reason for discharge." See generally Helen Beattie, "Careers for women: Marriage 'casualties' high in air stewardess group", *The Globe and Mail* (24 April 1946) 11 (young and personable girls hired as airline stewardesses); "CNR may hire stewardesses in miniskirts", *The Globe and Mail* (19 May 1971) 13 (the Canadian National Railway hiring stewardesses in miniskirts to serve passengers as part of a move to upgrade passenger service and get some glamour into it). See also "Stewardesses aren't bunny girls, inquiry on bloomer protest told", *The Globe and Mail* (9 December 1971) W8 (airlines required stewardesses to wear uniforms that represented the "bunny girl principle").

[144] *Quaker Oats*, *supra* note 19.

employer justified its policy citing the "long established practice" of refusing leaves of absence for reasons of pregnancy and the "normal procedure" of a pregnant employee resigning during the sixth month of her pregnancy.[145] Similarly, in a 1981 case, the Québec Provincial Court supported the employer's decision to terminate the employment contract of a pregnant worker.[146] The Court dismissed the claim of the pregnant employee ruling that the employer's decision did not constitute sex discrimination. Although the complainant argued that pregnancy discrimination is a form of sex discrimination as pregnancy is "an inherent attribute of the female sex", the Court concluded that sex discrimination implies treating men and women differently and not treating pregnant women differently from non-pregnant women.[147]

Such employer policies forced pregnant women out of the workforce, and continued to confine women to nurturing roles within the private sphere of the home. The continuing tolerance of these policies in the eyes of the judiciary in turn perpetuated the social and economic subordination of women.

C. Refusal to Hire Pregnant Women

Numerous employers not only fired pregnant workers, they also often denied employment opportunities to female job applicants if they were pregnant or were likely to become pregnant.[148] Women expected to be regularly asked about their family plans

[145] *Ibid* at 92, 89.
[146] *Nye*, *supra* note 52.
[147] *Ibid* at para 4894.
[148] See generally RCSW, *supra* note 5 at 91, 95: Women typically faced barriers to workforce participation. Some employers cited reluctance to employ married women because they perceived them as "short-term employees" working until they have children, while others disapproved of women combining work and family responsibilities. See also Rowan, *supra* note 18 (the head of complaint bureau of Québec's Council

during interviews.[149] Other employers asked prospective female employees intrusive questions about their menstrual schedule, contraceptive use and sexual habits for the purpose of screening out pregnant women. For example, an Ontario firm had a policy of demanding potential women applicants to state in writing, "whether…they take birth control pills, at what age they began menstruation, and how many sanitary pads they use a day, and…whether they have been treated for venereal disease" with answers to these questions being crucial to secure employment.[150]

Discriminatory hiring practices existed not only in private companies, but also in the public sector. The Nova Scotia Civil Service in the 1960s had a policy prohibiting the employment of married women unless a lack of qualified applicants or public interest necessitated otherwise.[151] Likewise, some police boards had policies refusing employment to women with young children.[152] Additionally, some public employers frequently asked female applicants inappropriate questions regarding marital status or childbearing plans during job interviews so as to deny them employment. During a job interview, a school board in Waterloo asked a woman applicant several invasive questions concerning family structure, future pregnancy plans and whether her present childcare arrangements would interfere with her ability to perform the job.[153] The education board subsequently expressed concerns about continuity in the job and cited

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on the Status of Women noted that employers in Québec typically refused to hire married women and fired pregnant employees).

[149] Sangster, "Doing two jobs", supra note 41 at 111.

[150] See "High price for a job", *The Globe and Mail* (3 November 1980) 6.

[151] See Woodsworth, *supra* note 20 at 13: The Nova Scotia Civil Service generally barred the employment of married women and usually dismissed women employees on marriage. A plausible explanation of such a rule could be that the provincial government was concerned about possible pregnancy and motherhood.

[152] See "Mother can't be policewoman", *supra* note 62.

[153] See "Woman charges trustees biased", *The Globe and Mail* (24 April 1972) 13.

unwillingness to employ a married woman likely to get pregnant.[154] This example illustrates how stereotyping of women as primary childcare providers negatively impacts "the review of a woman's capabilities and performance", and results in workplace discrimination.[155] As Rangita De Silva states: "These questions reflect blatant sex stereotypes that can play a powerful role in narrowing women's career opportunities."[156]

Courts typically upheld employer decisions to refuse employment to pregnant women. In the 1981 case of *France Breton v. Canadian Reynolds Metals Ltd.*[157], the Québec Provincial Court supported the employer's decision to refuse to hire a pregnant woman, concluding that such denial did not amount to sex discrimination. Thus, employer policies denying employment to pregnant women restricted their access to economic opportunities and reinforced their financial dependence on men.

D. Denial of Promotions to Pregnant Workers

Pregnant women also often encountered barriers to advancement in the workplace.[158] Women's employment interruptions due to maternity and familial responsibilities affected their progression to senior positions. A task force of the Ontario Secondary School Teachers' Federation in its 1976 report on the status of women found that interruptions in teaching careers of women due to childbirth affected their accumulation

[154] *Ibid*.
[155] See Rangita De Silva De Alwis, "Examining gender stereotypes in new work/family reconciliation policies: The creation of a new paradigm for egalitarian legislation" (2011) 18 Duke Journal of Gender Law & Policy 305 at 309.
[156] *Ibid*.
[157] *Breton*, *supra* note 52.
[158] See generally RCSW, *supra* note 5 at 93-95: Women usually faced obstacles to advancement to senior positions as many employers presumed them as "until" workers who work "until" marriage or children, and reluctant to undertake responsibilities.

of years of experience and jeopardized their chances for promotion.[159] Likewise, a study conducted by the Toronto Board of Education on the effect of a teacher's sex on promotion opportunities found that married women were less likely to be promoted than single women due to career interruptions because of pregnancy and family responsibilities.[160]

Furthermore, some employers penalized both expectant and new mothers for taking time off work to bear and raise children. A manufacturing company in Ontario relegated a woman employee to a less desirable position on her return from maternity leave.[161] Such employer practices grounded in the notion that women are primarily mothers who lack commitment to the workforce negatively affected their career prospects and reinforced the stereotypical assumption that women's roles as childbearer and rearer are diametrically opposed to the role of a worker.[162]

E. Denial of Employment Benefits to Pregnant Employees

Some employers also penalized pregnant employees by denying them job benefits including benefits such as sick leave, disability or medical coverage, and seniority. In the 1960s, the federal Civil Service denied accumulation of sick leaves to women employees

[159] Ontario, Ontario Secondary School Teachers' Federation Task Force on Women to Provincial Executive Council, *The effect of sexism on the career development of teachers*, (Woodstock, Ontario: Woodstock Print & Litho Ltd., 1976) at 30, 49.
[160] Carol Reich, *The Effect of a Teacher's Sex on Career Development* (Toronto: Toronto Board of Education for the City of Toronto, 1975) at 34, 36-40.
[161] See Margaret Mironowicz, "Women says men workers resented her promotions" *The Globe and Mail* (7 September 1979) 13. The woman employee joined the company as a warranty clerk and had worked her way up the promotional ladder to secure the position of a service office manager. While she was away on maternity leave, the employer divided her work responsibilities and on her return demoted her to a less responsible role, treating her "in essence as a clerk" (*ibid*).
[162] See Finley, *supra* note 24 at 1132.

on maternity leave.[163] Likewise, numerous school boards denied regular salary increments to women teachers on maternity leave.[164] Some school boards also refused to recognize the employee's seniority on return to work following maternity leave.[165] A study conducted by the Ontario Secondary School Teachers' Federation found that female teachers lagged behind male teachers in terms of seniority primarily because of interruptions in employment for reasons of marriage or pregnancy.[166]

Furthermore, many employers frequently denied sick leave benefits to pregnant workers while on leave for pregnancy-related reasons while other employees unable to work for other medical reasons received such benefits.[167] For instance, the British Columbia Civil Service refused pregnant employees access to paid sick leave for pregnancy-related absences.[168]

Courts and labour arbitrators mostly upheld employer policies denying sick leave benefits to pregnant employees. The arbitrators in the 1976 case of *Hotel Dieu of St. Joseph Hospital, London v. Ontario Nurses Association*[169] upheld the employer's policy of refusing to allow pregnant workers to draw on their sick credits for pregnancy-related illnesses.

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[163] See Women's Bureau Report, *supra* note 11 at 22.
[164] See Woodsworth, *supra* note 20 at 57-58; "Maternity pay boost opposed", *The Globe and Mail* (28 February 1964) 5 (the trustees of school boards opposed annual increments to women teachers on maternity leave as they contended that the concept of pay increments intended to reward teachers with increased experience did not fit well with women teachers on pregnancy leave).
[165] See Kirkwood, "Teacher", *supra* note 75; "Maternity leave rule", *supra* note 78.
[166] Ontario Task Force Report, *supra* note 159 at 30.
[167] See "Federal rules, union penalize pregnancy: pilot", *The Globe and Mail* (14 July 1979) 13: The airline, Transair Ltd., denied a pregnant pilot, grounded after a routine biannual medical check-up required by the federal government regulations determined her pregnancy, sick leave benefits which other employees received during leaves of absences due to illnesses unrelated to pregnancy.
[168] See Woodsworth, *supra* note 20 at 14.
[169] (1976), 13 LAC (2d) 177 (Arbitrators: J.D. O'Shea, W. Walsh & J.N. Bartlet).

To conclude, the general absence of maternity protection laws combined with the continuing judicial acceptance of discriminatory employer policies and practices typically compelled pregnant women and new mothers to leave the workforce that in turn forced them to assume the role of homemaker and primary caregiver.[170] This lack of support for women to combine their dual roles of employee and mother forced numerous women to choose between their family life and economic freedom.

Conclusion

The historical picture discloses the prevalence of discriminatory practices against pregnant workers. The period from the 1950s to 1970s in Canada saw both public and private employers routinely discriminating against expectant and new mothers. Employers had the legal right to fire or refuse to hire pregnant women, to establish policies refusing maternity leave or forcing pregnant employees to resign once their pregnancy became visible. Many employers also penalized pregnant employees by denying them promotion or access to fringe benefits. The lack of maternity protection legislation also forced numerous women to quit work or allowed for them to be fired. Thus, the employer's expression of freedom in the contractual sphere coupled with absence of effective legislative protections allowed widespread workplace discrimination against pregnant women and new mothers.

[170] Lori Jablczynski, "Striking a balance between the "parental" wall and workplace equality: The male caregiver perspective" (2010) 31 Women's Rights Law Reporter 309 at 330.

The arrival of second-wave feminism in the 1960s brought with it the demand for gender equality in employment.[171] Feminists petitioned the federal government to establish a commission to discuss concerns surrounding the status of women in Canada. In response to the feminist lobbying, the federal government established the Royal Commission on the Status of Women in 1967 to "inquire into and report upon the status of women in Canada, and to recommend what steps might be taken by the Federal Government to ensure for women equal opportunities with men in all aspects of Canadian society."[172] The Commission expressed concerns at discrimination faced by pregnant women and mothers in employment and recommended legislative reforms to promote equality of opportunity and treatment for female workers.[173] The campaign to promote women's equal employment opportunities thus began to produce substantial results. The next chapter examines the period of the 1970s through the 1990s when some workplace protections became available to pregnant workers and new mothers.

[171] See Annis May Timpson, *Driven apart: Women's Employment Equality and Child Care in Canadian Public Policy* (Vancouver: UBC Press, 2001) at 3, 13.
[172] RCSW, *supra* note 5 at vii.
[173] *Ibid* at 87, 89-95.

CHAPTER II

INTRODUCTION OF LEGAL PROTECTIONS AGAINST WORKPLACE DISCRIMINATION OF PREGNANT WOMEN AND MOTHERS

Introduction

Though the period during the 1950s through the 1970s saw a dramatic influx of women into the paid labour market,[174] numerous employers often fired or refused to hire pregnant women and new mothers, or denied them promotions or employment benefits.[175] The general absence of maternity protection laws often resulted in pregnant workers and new mothers resigning from their jobs.[176] Some women chose to stop working after childbirth,[177] many other women, however, challenged the traditional breadwinner-homemaker model.[178]

The 1960s saw the emergence of a social movement led by women "embrac[ing] human rights as a vision for social change".[179] The issues related to working-class women occupied "a central place on the agenda of the women's movement".[180] The mainstream second-wave feminists in Canada "understood stay-at-home motherhood as a major source of women's oppression" and thus "focused on economic independence through

[174] See *supra* note 9 and accompanying text.
[175] See Part-II of chapter 1, above, for more on this topic.
[176] *Ibid*.
[177] See Elizabeth Thompson, "Mrs. Thompson advises: Young mother seeks job to do at home", *The Globe and Mail* (19 June 1961) 12: A young mother expecting another child wrote: "I used to work before we had a family but now I feel my place is at home."
[178] See generally Ronald Anderson, "For one in five, woman's place no longer in the home", *The Globe and Mail* (23 April 1965) B5.
[179] Dominique Clément, "Legacies and implications of human rights law in Canada" (Spring 2013) Canadian Issues/Thèmes Canadiens 46 at 48.
[180] Meg Luxton, "On Feminism and the Labor Movement in Canada: A Response to Dan Clawson" (2004) 45:3 Labor History 370 at 372.

participation in the paid workforce as the key to improving the lives of all women".[181] Canadian feminists lobbied the federal government for establishment of a forum for women to articulate their concerns about the lived experiences of discrimination in both public and private spheres.[182] While viewing women's financial independence as essential to their "liberation", feminists argued the need for recognition of women's mothering work, and advocated "socializing" childcare.[183]

In response to the feminists' lobbying efforts, the federal government established the Royal Commission on the Status of Women to study issues impacting Canadian women and recommend ways to ensure women's equality of opportunity with men.[184] Although the Commission's historic work acted as a catalyst for the women's movement, it espoused a formal approach to interpreting equality. Feminists criticized this legal approach to equality rights as being inadequate in remedying the long-standing legacy of gender inequality and women's subordination, and for attaining substantive equality for women.[185] Acknowledging the insufficiency of government efforts to achieve workplace equality for women, the federal government established a Royal Commission on Equality in Employment to inquire into employment barriers faced by women.[186] The Commission rejected the sameness approach and emphasized the need to accommodate women's reproductive role to achieve equality for women in the workplace.[187]

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[181] Lynne Marks et al, "'A job that should be respected': contested visions of motherhood and English Canada's second wave women's movements, 1970-1990" (2016) Women's History Review 25:5 771 at 773-74.
[182] Timpson, *supra* note 171 at 28.
[183] Marks, *supra* note 181 at 772, 74.
[184] RCSW, *supra* note 5 at xi.
[185] Fudge, *supra* note 46 at 495-96.
[186] Carole Geller, "Equality in Employment for Women: The Role of Affirmative Action" (1990-91) 4 Canadian Journal of Women and the Law 373 at 393-4.
[187] RCEE, *supra* note 6 at 28-29.

Prior to the 1970s, pregnant women and new mothers could invoke few legal rights to advance their claims for equality. The second-wave feminist activist movement provided the context for the emergence of legal protections for women workers. The Royal Commissions also played a significant role in women's struggle for employment equality. The 1970s and the 1980s marked a turning point as pregnant women and new mothers won important legislative and judicial victories. Federal and provincial governments enacted laws granting women the right to a paid maternity leave of absence with employment protection. Maternity leave laws have enabled many women workers to maintain workplace attachment while temporary leaving work to give birth. The passage of federal and provincial human rights legislation and the equality rights provision of the *Canadian Charter of Rights and Freedoms*[188] guaranteed protection against sex discrimination. Judicial decisions holding that pregnancy discrimination amounts to sex discrimination afforded pregnant women legal protections against workplace discrimination. Human rights laws successfully invalidated employer policies that commonly refused pregnant workers' entry into jobs or kept them from continuing to work during or after pregnancy. Also, the emergence of the legal duty to accommodate in the late 1980s and early 1990s altered the Canadian workplace environment.[189] Employers' duty to accommodate pregnancy-related needs has enabled many pregnant workers to continue working during pregnancy, and to realize their full potential.

[188] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

[189] The duty to accommodate imposes a positive duty on employers to reasonably accommodate the individual needs of employees up to the point of undue hardship. The Ontario Board of Inquiry in *Mira Heincke v Kenneth Brownell & Emrick Plastics*, [1990] 14 C.H.R.R. D/68 [*Heincke*] ruled that the employer's duty to accommodate extends to pregnant workers.

Canadian workplaces underwent a significant change during the 1970s and the 1980s with working women having the right to maternity protections, and to be free from pregnancy-related discrimination. This chapter examines some of the social forces, and judicial and legislative developments that contributed to this change. Part I of this chapter analyzes the societal changes that effected evolutionary changes in the law concerning pregnant workers. It describes the establishment of the two Royal Commissions and their recommendations. In particular, it discusses the testimonies of discrimination given by women and feminist groups to the RCSW. A discussion of such testimonies gives us first hand information about women's realities of discrimination and historical exclusion from paid employment. Also, this part argues for rejection of the formal notion of equality in favour of substantive equality. Part II of this chapter describes the legal protections available to pregnant women and new mothers in the workplace. It argues that both the legislature and the judiciary played complementary roles in providing women partial legal protections against workplace pregnancy discrimination.

Part I – Feminist Movement and Legal Change

Feminist activism in Canada began in the 19th century when women challenged patriarchal institutions and attitudes and demanded legal and political rights such as women's right to vote and to hold political office.[190] The first feminist wave reached its peak in the second decade of the 20th century when Canada enfranchised women.[191] The second wave of the feminist movement in Canada took root in the 1960s to secure legal

[190] Lee Tunstall & Sarah E. Eaton, "Women's rights: An overview" (2016) Canadian Points of View 1 at 1 (Canadian Points of View Reference Centre).
[191] Carol L. Bacchi, "'First wave' feminism in Canada: The ideas of the English-Canadian Suffragists, 1877-1918" (1982) 5:6 Women's Studies International Forum 575 at 575.

and social equality for women. Second wave feminists considered "motherhood" as the main cause of women's oppression and sought freedom from the traditional role as the exclusive means of achieving equality and self-fulfillment.[192] Labour market inequalities "provided a rallying point" for women to appeal for government intervention to address the gender inequalities present in the employment sphere defined by freedom of contract.[193]

In the mid-1960s, women in Canada visibly organized themselves to actively push for "gender equality through legislative means".[194] In 1966, numerous women's organizations established the Committee on the Equality of Women under the leadership of Laura Sabia to advocate for creation of a Royal Commission[195] to study the status of

[192] See William Johnson, "Traditional role rejected: The wave of feminism opposes motherhood, marriage", *The Globe and Mail* (1 May 1969) W5.
[193] See Geller, *supra* note 186 at 384.
[194] See Greta Hofmann Nemiroff, *Women's Changing Landscapes: Life Stories from Three Generations* (Toronto: Second Story Press, 1999) at 169 (the American Civil Rights Movement that highlighted the issue of racial discrimination also had a "strong influence" on Canadian women's demands for equality).
[195] A Royal Commission has "many advantages". See Philip F. Vineberg, "Report and Procedures of The Royal Commission on Canadian Tax Reform" (1966) 20:1 Bulletin of the Section of Taxation 23 at 24. "It affords an opportunity for calm, quiet, reflective study" (*ibid*). It can undertake a thorough study of the subject under reference as it can "prolong its work…even for years". See Thomas J. Lockwood, "A History of Royal Commissions" (1967) 5:2 Osgoode Hall Law Journal 172 at 182. Additionally, the government can appoint "experts as members so as to secure a completely impartial treatment of the subject" (*ibid*). All the seven Commissioners of the Royal Commission on the Status of Women, of which five were women, had rich and varied experience in diverse fields. Headed by a well-known woman writer, journalist and broadcaster, Florence Bird (had written extensively on women's issues), the other members of the Commission were Doris Ogilvie, deputy judge of a juvenile court; Elsie Gregory MacGill, the first woman to earn electrical engineering and aeronautical engineering degrees from University of Toronto and University of Michigan respectively; Lola Mary Lange, a director of the Alberta Farm Women's Union; Jeanne Lapointe, professor at Laval University and a former member of the Royal Commission on Education in Québec; Jacques Henripin, a professor at the University of Montreal; and John Peters Humphrey (who replaced Donald Gordon), a law professor at McGill University and a former director of human rights at the United Nations. See Gillan Michael, " Problems of working wives' pay, taxation will be covered: Pearson names woman writer to head Royal Commission on equality", *The Globe and Mail* (4 February 1967) 16; "2 men named to commission on women", *The Globe and Mail* (17 February 1967) 11; "Commission members include a journalist, engineer, academics", *The Globe and Mail* (8 December 1970) 11.

women in Canada.[196] The Committee presented a brief to the federal government demanding creation of a Royal Commission on the Status of Women.[197] On seeing the government's indecisive response, Sabia issued an "ultimatum" with the threat to march two million women to Ottawa.[198] "The fear of two million women marching on Parliament Hill" provided the desired impetus and on February 3, 1967, Prime Minister Lester Pearson appointed the Royal Commission on the Status of Women chaired by Florence Bird, a Canadian journalist, broadcaster, Senator and author having written extensively on women's issues.[199]

Feminist lobbying proved successful as "a palpable demonstration of potential female power…force[d] decisionmakers to recognize that women have collective interests and are a formidable political force".[200] In the words of Linda Greene: "Those who seek to use the law to change society must demonstrate that their concerns are universal, not individual, and that they are not alone, but part of a large and potentially powerful movement".[201]

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[196] Nemiroff, *supra* note 194 at 170. See also "Recommends probe into women's rights", *The Globe and Mail* (13 September 1966) 10 (the Secretary of State Judy LaMarsh also played a central role in arguing for an official investigation into women's rights); "Cabinet received brief on status of women", *The Globe and Mail* (11 November 1966) 13.

[197] See "Women's status topic of brief to Pearson", *The Globe and Mail* (3 November 1966) W6. See generally "Equality for women wanted: Royal commission on women's status demanded", *The Globe and Mail* (29 June 1966) W2.

[198] See Barry Craig, "Women's march may back call for rights probe", *The Globe and Mail* (5 January 1967) 1: Laura Sabia gave an "ultimatum" to the federal government: "establish a royal commission or face the consequences". See generally Rudy Platiel, "'The Prime Minister and Cabinet are men as other men': Stop harping about a royal commission, Judy LaMarsh warns women's group", *The Globe and Mail* (9 January 1967) 13.

[199] Nemiroff, *supra* note 194 at 170. See generally *supra* note 195; "Statement expected on women's rights", *The Globe and Mail* (1 February 1967) 9.

[200] Linda S. Greene, "Feminism, Law, and Social Change: Some reflections on unrealized possibilities" (1993) 87:4 Northwestern University Law Review 1260 at 1264.

[201] *Ibid*.

The creation of the RCSW provided a public forum for women to express their "aspirations" and "frustrations" regarding their status in society and advance their hopes for "equality of the sexes as human beings and as citizens".[202] The Commission conducted a series of public hearings across the country for over 37 days, heard about 900 witnesses that testified before the Commission, received 468 briefs and around 1000 letters, and commissioned forty special research studies.[203] Women, "central to the development of feminist ideology and action", used submissions and the Commission's public hearings as a "vehicle" to effect social change and identified law as the primary means of achieving that change.[204] The formation of the Commission and its public hearings thus helped raise consciousness of women's issues and encouraged many feminist groups to "formulate legislative demands".[205]

The Commission heard growing concerns about flourishing discrimination and prejudice against women.[206] Briefs described the prevalence of ambivalent attitudes towards women that erected "invisible barriers" denying women equal participation in society and preventing them from developing their full potential.[207] Many women protested traditional stereotypes that defined their place in the home and their natural role as mothers, and were used to justify continued employment discrimination against

[202] See RCSW, *supra* note 5 at 3 (the Report quoted a brief submitted by the Canadian Air Line Flight Attendants Association to the RCSW).
[203] See *ibid* at ix-x.
[204] Greene, *supra* note 200 at 1262-64. See generally RCSW, *supra* note 5 at 3.
[205] See Porter, *supra* note 55 at 84.
[206] See RCSW, *supra* note 5 at xi.
[207] See Helen Tucker & Cecelia Wallace, "Women's rights", Letter to the Editor, *The Globe and Mail* (2 February 1967) 6. See generally "Male says housework is denied to men", *The Globe and Mail* (8 June 1968) 31 (women during public hearings complained to the RCSW that women's skills, abilities and qualifications are "wasted" when they are denied equal employment opportunities).

them.[208] Briefs also indicated the role of educational institutions and media in contributing to maintaining the existing gendered stereotypes and made suggestions for eradicating them.[209]

Briefs particularly highlighted the prevalence of sex discrimination in employment.[210] Many submissions to the RCSW argued for elimination of sex discrimination to ensure equality of opportunity in employment.[211] Some women called on the government to adhere to obligations made to the International Labour Organization by including "sex" in the legislation protecting against discrimination in

[208] See RCSW, *supra* note 5 at 3-4; Rosemary Speirs, "Commission ends western tour: Demands from women may result in re-examination of laws, chairman says", *The Globe and Mail* (6 May 1968) 13 (women demanded re-examination of their role in modern society); Leone Kirkwood, "Housewife's role 'must be abolished': Father must share responsibility for raising children, Royal Commission told", *The Globe and Mail* (4 June 1968) 13. See also Leone Kirkwood, "Attitude changed after marriage: Physics professor believes in equality in the kitchen", *The Globe and Mail* (10 June 1968) 13.

[209] See RCSW, *supra* note 5 at 14-16; "RC women's group wants students to hear a lot more about heroines", *The Globe and Mail* (22 March 1968) 9 (a women's group, St. John's International Alliance, Canadian Section in its brief to the RCSW stressed the role of education in inculcating stereotypical attitudes to younger generations and called on teachers to impart knowledge about women's working role in society instead of emphasizing on their biological role). See also "Use of 'sex-typed' schoolbooks discourages girls, report says", *The Globe and Mail* (8 December 1970) 11 (the Commission found that school textbooks reinforce traditional sex role stereotypes that inhibit young girls from pursuing challenging careers).

[210] See "Teachers' brief accuses Ottawa of bias in hiring women over 40", *The Globe and Mail* (18 November 1967) 13 (the Canadian Teachers' Federation in its brief submitted to the RCSW pointed out discrimination in hiring practices of Defence Department Schools refusing applications of women over 40 years of age); "Teachers' brief says women are held back", *The Globe and Mail* (21 January 1971) W2 (a study conducted by the Canadian Association of University Teachers for the RCSW indicated sex discrimination in salary, promotion and fringe benefits of women employees in Universities across Canada).

[211] See "Take marriage out of church, state: brief", *The Globe and Mail* (4 October 1968) 12 (a brief submitted by Canadian Federation of University Women called on the federal government to prohibit sex discrimination in the *Canadian Fair Employment Practices Act* of 1953 to extend the "basic principle of human rights" of equal employment opportunity to women); "Forceful law to end sex bias in employment urged by CLC", *The Globe and Mail* (2 October 1968) 9 (brief submitted by the Canadian Labour Congress advocated for a legislation to eradicate sex discrimination in employment and recommended establishment of a fair employment commission to oversee the implementation of the legislation with power to investigate industry practices and examine complaints). See also Tucker & Wallace, *supra* note 207 (the authors noted the absence of "sex" in the enumeration of grounds in the Ontario Code of Human Rights and highlighted the need for inclusion of this ground in the legislation).

employment. [212] Many labour unions also supported campaigns to eliminate discrimination against women workers.[213]

Numerous women highlighted the need for job protection during and immediately after pregnancy.[214] They urged the federal government to enact legislation guaranteeing maternity leave.[215] Women opposed employer policies that discriminated against hiring female workers due to their childbearing and rearing responsibilities. [216] Briefs emphasized the need for government-subsidized childcare centres to ensure equal employment opportunity for women by freeing them from disproportionate responsibility of raising children.[217] Briefs also stressed the requirement of "back-to-work training" for women who had been out of the labour force for raising families.[218]

The Commission's highly participatory public hearings, scores of briefs and letters submitted by both organizations and individuals, and commissioned research studies helped shape its recommendations.[219] On December 7, 1970, the Commission tabled in Parliament its remarkable report comprising of 167 recommendations. Of 167

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[212] See "Claims Canada lagging in promoting women", *The Globe and Mail* (4 June 1968) 13 (the Canadian Federation of Business and Professional Women's Clubs at a public hearing of the RCSW urged the government to include sex in its anti-discrimination legislation as stipulated by the ILO).
[213] See "CUPE chief admits discrimination", *The Globe and Mail* (1 October 1968) 13 (the Canadian Union of Public Employees told the RCSW that the labour movement is in the forefront of the struggle for female equality); "Some unions planning clauses on day-care", *The Globe and Mail* (5 June 1968) 12.
[214] See RCSW, *supra* note 5 at 84; 89-90 (the Canadian Air Line Flight Attendants Association in its brief noted discriminatory policy of airlines firing pregnant stewardesses).
[215] See Leone Kirkwood, "Discrimination study urged: Laid-off women say unions won't aid them", *The Globe and Mail* (6 June 1968) W2 (the Anglican Church of Canada emphasized the need for a maternity leave legislation).
[216] See "Dream world: Lacks view of poor, grandmother tells probe", *The Globe and Mail* (17 April 1968) 10: A young woman at one of the public hearings of the RCSW stated: "The crux of the problem is that employers fear to hire women because they are afraid they will leave in the middle of a project to raise babies."
[217] See "Women must be freed from children, brief says", *The Globe and Mail* (5 June 1968) 12. See also Leone Kirkwood, "Social disgrace to be single, commission told: Women 'expected to act like Cinderella waiting for Prince'", *The Globe and Mail* (7 June 1968) 13 (the Salvation Army in its brief to the RCSW advocated for a legislation mandating establishment of day care centres for children of working mothers).
[218] See "NDP to ask for equal pay for women", *The Globe and Mail* (7 July 1967) 9.
[219] See generally RCSW, *supra* note 5 at x.

recommendations, 122 were defined "exclusively in terms of federal responsibility".[220] Both the Commission's Terms of Reference and its recommendations recognized "a primary role for law and legal changes in achieving equality objectives for women and men in Canadian society".[221]

The Commission observed gender inequality in employment and argued that "the full use of human resources [was] in the national interest" and that men and women should have "equality of opportunity to share the responsibilities to society as well as its privileges and prerogatives".[222] It noted the stereotypical attitudes that limited women's access to employment opportunities and recommended a system of support to provide women the freedom to choose whether or not to work outside their homes.[223]

The Commission found that women's childbearing function had "served as the basis for restrictive generalizations and overt discrimination".[224] The report emphasized society's responsibility towards pregnant workers and recommended paid maternity leave.[225] The Commission also called on the federal government to prohibit dismissal of women employees during pregnancy or maternity leave.[226] It recognized that "women cannot be accorded true equality" unless childcare responsibility is acknowledged to be a joint parental and societal responsibility.[227]

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[220] Sue Findlay, "Feminist Struggles with the Canadian State: 1966-1988" (1988) 17:3 Resources for Feminist Research 5 at 5.
[221] Erika Abner, Mary Jane Mossman & Elizabeth Pickett, "No more than simple justice: Assessing the Royal Commission Report on Women, Poverty and the Family" (1990) 22:3 Ottawa Law Review 573 at 576.
[222] RCSW, *supra* note 5 at xii [emphasis deleted].
[223] *Ibid*.
[224] *Ibid* at 11.
[225] *Ibid* at 84-88. See Leone Kirkwood, "Commission asks easier abortions and paid leaves for childbearing", *The Globe and Mail* (8 December 1970) 1.
[226] RCSW, *supra* note 5 at 84-88.
[227] *Ibid* at xii.

The report also highlighted concerns about sex discrimination in employment and recommended inclusion of "sex" as a prohibited ground of discrimination in anti-discrimination laws.[228] Furthermore, the Commission noted with concern the lack of effective enforcement of human rights laws in their application to women and recommended the establishment of Human Rights Commissions at federal, provincial and territorial levels with authority to administer and enforce the anti-discrimination legislation, and adjudicate complaints regarding violations.[229]

The Commission proved successful in drawing attention to women's unequal status in Canada, and its findings represented a turning point for women's rights. Some of the Commission's recommendations translated into legislative changes designed to offer protections to pregnant women and new mothers in the workplace.[230] The federal government introduced legislation providing paid maternity leave to federal women employees.[231] Legislative amendments also included prohibition of dismissal or lay-off of women workers for reasons of pregnancy.[232] The armed forces also introduced policies granting unpaid maternity leave to women employees with ban on dismissal of pregnant workers.[233] Additionally, the federal government introduced legislation aimed at eliminating sex discrimination in employment.[234]

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[228] *Ibid* at 97-98.
[229] *Ibid* at 388-389.
[230] See generally "Government details actions to reduce bias: Journeywoman title dropped, Ottawa says", *The Globe and Mail* (3 April 1973) 13.
[231] See Murray Goldblatt, "Transportation, bank workers: Maternity leave planned in legislation next year", *The Globe and Mail* (9 December 1970) 1.
[232] See "Bill on maternity leave, equal pay introduced", *The Globe and Mail* (10 March 1971) 3.
[233] See Jo Carson, "Armed forces woo women, including artisans", *The Globe and Mail* (10 January 1974) W7; John Best, "One-third of trades are now open: Roles widening for women in Canadian armed forces", *The Globe and Mail* (15 August 1974) W6.
[234] See Bill C-16, *An Act to amend certain statutes to provide equality of status thereunder for male and female persons*, 1st Sess, 30th Parl, 1974, cl 10 (amending s 12(1) & (2) of the *Public Service Employment Act*): The amendment prohibited sex discrimination in selection decisions for appointment to federal public

Although the Commission played a major role in highlighting the issue of women's inequality in Canadian society, many opposed its creation. In a survey conducted by a Canadian daily newspaper, ahead of the Commission's public hearings, to inquire about men's opinions on the status of women, an overwhelming number of responses disagreed with the formation of the Commission.[235]

The late 1960s saw both growth in the women's rights movement and the beginning of a backlash against second-wave feminism.[236] Some women participants at the Commission's public hearings criticized women to be a "stumbling block to their own equality": "[Women] have been and still are inhibited by laziness, lack of education, fear of community criticism and an archaic concept of the female role."[237] Some advanced notions of sameness ignoring women's reproductive realities: "Too often, women want complete equality and special treatment as well...if women want equal opportunities with men they must expect to give equal time and effort to their jobs. There must be no more excuses on the basis of sex or family obligations."[238]

While publically recognizing that Canada's commitment to gender equality "is far from being realized" in light of the persistence and pervasiveness of discrimination against women, the Commission "used maleness as the standard to which women should

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service. See also Patricia Bell, "Lalonde reintroduces bill aimed at removing sex bias", *The Globe and Mail* (9 October 1974) 11; Jonathan Manthorpe, "Fight sex bias, PM urges; 13 demonstrators seized", *The Globe and Mail* (3 March 1971) A1.

[235] See Weiers, "What the men say", *supra* note 1 (only 188 of 714 replies received favoured the establishment of the Commission).

[236] See Elizabeth Thompson, "Elizabeth Thompson advises: Ignore smokescreen and fight for rights, woman says", *The Globe and Mail* (24 June 1968) 13: A woman wrote: "It is time a few more of us busy women, who are really concerned about conditions, speak out as Sick of Suffragettes has. No woman can make any finer contribution to society than a stable home from which secure children and a happy husband leave each morning and hasten home each evening." See also Elizabeth Thompson, "Elizabeth Thompson advises: Ashamed of briefs to Commission", *The Globe and Mail* (12 June 1968) 10; Bruce West, "Ghastly thoughts", *The Globe and Mail* (12 June 1968) 29.

[237] See "'Swaddled in mink', women demand equality", *The Globe and Mail* (12 June 1968) 10.

[238] See "Women must adjust views, hearing told", *The Globe and Mail* (23 April 1968) 11.

aspire" in agreement with its Terms of Reference that instructed "to ensure for women equal opportunities with men".[239] The Commission's understanding of equality espoused principles of formal equality, a theory "frequently criticized" in terms of achieving equality for women as it ignores "the impact of systemic barriers within societal structures".[240]

Formal equality primarily posits equal treatment for similarly situated people.[241] This sameness approach dictates that women be treated the same as men. This concept of male-centered equality is inadequate to achieve full equality as it fails to recognize the inherent biological differences between men and women.[242] As Angela Miles puts it: "Female-male differences have tended to be constructed as female deficiency/divergence from the male norm. The sense of women's deficiency or deviance [reinforced by the legislation that retains male as the norm] has generally failed to redress inequality or even to mitigate its negative impact."[243] This concept of equality operates to the prejudice of pregnant women as it fails to acknowledge women's special role in reproduction.[244]

Advocates of the formal legal equality approach deny women's claims to sex equality. Judges used the formal equality model to refuse women "equality before the law" guaranteed under the *Bill of Rights*.[245] Most feminists also criticized the equal treatment model as it ignored the systemic discrimination resulting from seemingly

[239] See Abner, Mossman & Pickett, *supra* note 221 at 578. See generally RCSW, *supra* note 5 at xi.
[240] See Abner, Mossman & Pickett, *supra* note 221 at 578-79.
[241] See Diana Majury, "The Charter, Equality Rights, and Women: Equivocation and Celebration" (2002) 40:3/4 Osgoode Hall Law Journal 297 at 305.
[242] See Angela R. Miles, "Feminism, Equality, and Liberation" (1985) 1 Canadian Journal of Women and the Law 42 at 66.
[243] *Ibid*.
[244] Sheilah L. Martin, "Sex Equality and Biological Difference: Some Preliminary Observations" (Paper delivered at the Discrimination in the Law and the Administration of Justice, Kananaskis, Alberta, October 1989) at 344, online: Canadian Institute for the Administration of Justice <https://ciaj-icaj.ca/wp-content/uploads/documents/import/1989/Martin.pdf?id=1607&1481407659> [Martin, "Sex Equality"].
[245] *Bliss*, *supra* note 45. See also text accompanying note 46.

neutral laws.[246] Facially neutral employment policies, practices and standards can have an adverse impact on women workers. Such apparently neutral employment policies discriminate because they do not take into account the social construction of gender roles.[247] For example, an employer rule denying childcare leave to any employee may negatively impact women workers because they tend to be primary providers of childcare. In the words of Brenda Cossman: "Failing to recognize the difference by adopting formal, facially neutral equality will penalize women for their difference, because the unstated norm in the ostensibly neutral standard is a male norm."[248]

In order to achieve social equality, legal reform must appreciate the disproportionate responsibility women bear in society due to childbearing and rearing.[249] Thus, laws built on formal notions of equality were limited in their ability to effect "positive" outcome for female workers.[250] As Marcia Neave writes: "Equal treatment disadvantages women by ignoring the structural barriers which limit job opportunities and underestimates the practical difficulties and cultural expectations which deter women from combining employment and domestic responsibility."[251]

Despite women gaining important statutory protections against sex discrimination in employment, women continued to face barriers to participation in the workplace.[252] As

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[246] See Fudge, *supra* note 46 at 495-6.
[247] See Geller, *supra* note 186 at 389-90.
[248] Brenda Cossman, "A Matter of Difference: Domestic Contracts and Gender Equality" (1990) 28:2 Osgoode Hall Law Journal 303 at 345.
[249] See Miles, *supra* note 242.
[250] See generally Geller, *supra* note 186 at 385.
[251] Professor Marcia Neave, "From Difference to Sameness – Law and Women's Work" (1992) 18 Melbourne University Law Review 768 at 807.
[252] Women faced both overt and subtle forms of discrimination. See Thomas H. B. Symons & James E. Page, *Some Questions of Balance: Human Resources, Higher Education and Canadian Studies (Volume III of "To know ourselves: The Report of the Commission on Canadian Studies")* (Ottawa: Association of Universities and Colleges of Canada, 1984) at 222 (the study noted "widespread and blatant" differential treatment of female faculty and staff in hiring, promotion, tenure and pay); Malcolm Gray, "Sex

the government efforts to achieve workplace equality for women proved to be insufficient, the federal government established a further Royal Commission to specifically inquire into barriers to employment encountered by women.[253] The government mandated the Royal Commission on Equality in Employment "to inquire into the most efficient, effective and equitable means of promoting employment opportunities, eliminating systemic discrimination and assisting all individuals to compete for employment opportunities on an equal basis".[254]

The Commission chaired by Justice Rosalie Silberman Abella received 274 submissions and scores of letters and documents, held 137 informal, country-wide meetings for over seven months, and consulted 160 advisers from academia, business community, labour, government and public.[255] The Commission issued a 270-page report and made 117 recommendations to eradicate discriminatory obstacles to employment equality and to create equality of opportunity to help members of the disadvantaged groups realise their full potential and make a valuable contribution to the workplace.[256]

The Commission found that traditional stereotypical assumptions about the appropriate role of women in society negatively impact their employment opportunities

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discrimination charged: Manpower office closed during sit-in", *The Globe and Mail* (17 September 1975) 45 (a women's group claimed that Manpower centres forced women into poorly paid jobs and discriminated against women applicants as it allowed employers to privately state their sex preferences when hiring workers).

[253] See RCEE, *supra* note 6 at i-ii: The Terms of Reference of the Royal Commission on Equality in Employment stated that: "Whereas the measures taken by Canadian employers to increase the employability and productivity of women, native people, disabled persons and visible minorities have as yet not resulted in nearly enough change in the employment practices which have the unintended effect of screening a disproportionate number of those persons out of opportunities for hiring and promotion…it is desirable that an inquiry be made into the opportunities for employment of women…". See generally Geller, *supra* note 186.

[254] See RCEE, *supra* note 6 at i-ii (the government identified four designated groups that faced systemic barriers to employment: women, Aboriginal people, persons with disabilities and members of visible minorities).

[255] *Ibid* at vi-vii (the Commissioner was then judge of the Ontario Family Court).

[256] *Ibid* at 4-5, 194.

and make them economically dependent on men.[257] It noted that women's role as "potential childbearers" sanctioned discriminatory treatment of women in the workplace: "Many women find that their current or prospective status as a mother is a powerful factor on a hidden agenda affecting hiring and promotion practices."[258]

The Commission emphasized women's concerns regarding failure of businesses to accommodate their childbearing capacities.[259] It noted that corporations expressed "a great deal of resentment" against women employees taking maternity leave.[260] It found barriers to women's workplace participation because of employers' perceived lack of career commitment among women employees due to their maternal and familial responsibilities.[261]

The Commission also underlined that women's disproportionate childcare responsibilities restrict their labour force participation and place them at a disadvantaged position in the workforce.[262] It noted that lack of affordable childcare is a major impediment to workplace equality for women: "Childcare is the ramp that provides equal access to the workforce for mothers."[263] Additionally, it highlighted the inadequacy of human rights laws in dealing "with the pervasiveness and subtlety of discrimination" because of their limitation in application to individual allegations of intentional acts of discrimination.[264]

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[257] *Ibid* at 25-7.
[258] *Ibid* at 29.
[259] *Ibid* at 28.
[260] *Ibid* at 29.
[261] *Ibid* at 29-30, 32.
[262] *Ibid* at 28, 178.
[263] *Ibid* at 177-78.
[264] *Ibid* at 8-9: The Commission stated: "It is sometimes exceptionally difficult to determine whether or not someone intends to discriminate. This does not mean that there is no need for processes that provide remedies to individuals when intentional discrimination can be proven. On the contrary, the need is

Furthermore, the Commission documented the prevalence of systemic discrimination in Canadian workplaces and recommended a systemic approach to eradicate systemic forms of discrimination and achieve employment equality.[265] It embraced law and legal reform as the principal means of eliminating employment barriers, and achieving societal change.[266]

Justice Abella stressed the need for state intervention to obliterate discriminatory employment barriers and to increase workplace opportunities for those "arbitrarily excluded".[267] She devised a new term, "employment equity", to refer to systemic remedial measures "designed to eliminate discriminatory barriers and to provide in a meaningful way equitable opportunities in employment".[268] She deliberately adopted the new phrase and suggested its use over "affirmative action" to help defuse the negative responses to the term.[269] She recommended legislatively mandating all federally regulated employers to implement employment equity.[270]

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manifest, but these processes do not sufficiently address the complexity of the problem…What we intend is sometimes far less relevant than the impact of our behaviour on others. The impact of behaviour is the essence of "systemic discrimination". It suggests that the inexorable, cumulative effect on individuals or groups of behaviour that has an arbitrarily negative impact on them is more significant than whether the behaviour flows insensitivity or intentional discrimination."

[265] *Ibid* at 9-10. Justice Abella defined systemic discrimination as: "A general employment condition, specific practice or approach to hiring or promotion that applies equally to everyone at a workplace but that negatively affects employment opportunity or advancement for specific groups of people…The impact, rather than the intention behind behaviour or employment practices, is what defines systemic discrimination" (*ibid* at 341, 193).

[266] *Ibid* at 254.

[267] *Ibid* at 19-21, 254.

[268] *Ibid* at 7.

[269] See Harish C. Jain, "Employment Equity and Visible Minorities: Have the Federal Policies worked?" (1992) 1 Canadian Labour Law Journal 389 at 394.

[270] RCEE, *supra* note 6 at 255. Following Justice Abella's recommendation, the federal government enacted the *Employment Equity Act*, SC 1986, c 31, s 2 to "achieve equality in the work place so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfillment of that goal, to correct the conditions of disadvantage in employment experienced by women…in Canada by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences". The legislation required all federally regulated employers with 100 or more employees, whether Crown

Justice Abella rejected the formal approach to equality and adopted a broad definition of the concept:

> Equality in employment is not a concept that produces the same results for everyone. It is a concept that seeks to identify and remove, barrier by barrier, discriminatory disadvantages. Equality in employment is access to the fullest opportunity to exercise individual potential. Sometimes equality means treating people the same, despite their differences, and sometimes it means treating them as equals by accommodating their differences… Ignoring differences may mean ignoring legitimate needs… *Ignoring differences and refusing to accommodate them is a denial of equal access and opportunity. It is discrimination*.[271]

She thus stressed that equality in employment for women meant accommodating their biological differences in childbearing.[272]

Additionally, Justice Abella noted the need for a change in societal attitudes towards women to achieve employment equality: "[E]quality in employment means first a revised approach to the role women play in the workforce. It means taking them seriously as workers and not assuming that their primary interests lie away from the workplace."[273] Moreover, Justice Abella called for childcare "to be seen as a parental rather than a maternal responsibility".[274] She stressed the need for "affordable childcare of adequate quality" to advance the goal of equality for women in the workplace.[275] Furthermore, she recommended legislative amendments to human rights laws to ensure

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corporations or private sector businesses, to implement employment equity programs and to submit annual reports on employment equity. See *House of Commons Debates*, 33rd Parl, 2nd Sess, No 13 (31 May 1988) at 15919 (Hon Monique Vézina).

[271] RCEE, *supra* note 6 at 3 [emphasis added]. The Supreme Court of Canada in *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143 [*Andrews*] adopted this concept of equality. The Court ruled that, "[t]he 'similarly situated should be similarly treated' approach will not necessarily result in equality nor will every distinction or differentiation in treatment necessarily result in inequality" (*ibid* at 144).

[272] RCEE, *supra* note 6 at 4, 28.

[273] *Ibid* at 4.

[274] *Ibid* at 28.

[275] *Ibid* at 177-8.

jurisdiction of human rights commissions over systemic discrimination with authority to mandate employment equity to remedy systemic discriminatory practices.[276]

The recognition of the concept of systemic discrimination led to the acceptance of the principle that equal treatment does not always lead to true equality and that frequently differential treatment will be necessitated to achieve "real equality".[277] Recognition of this concept is, as Brian Etherington notes, "a precondition to our ability to make major advances toward[s] the reduction of employment discrimination".[278] In order to thus achieve "true equality", differential treatment may be required to address systemic discrimination.[279]

The concept of systemic discrimination is, as argued by Catharine MacKinnon, integral to the principle of substantive equality.[280] The substantive model of equality "recognizes that in order to further equality, policies and practices need to respond to historically and socially based differences".[281] As Diana Majury writes: "Substantive equality looks to the effects of a practice or policy to determine its equality impact, recognizing that in order to be treated equally, dominant and subordinated groups may need to be treated differently."[282]

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[276] *Ibid* at 261.
[277] See Brian Etherington, "Central Alberta Dairy Pool: The Supreme Court of Canada's Latest Word on the Duty to Accommodate" (1992) 1 Canadian Labour Law Journal 311 at 312.
[278] *Ibid*.
[279] See Sandy Price, "Accommodating women in employment: The limitations of a traditional approach" (1992) 1 Canadian Labour Law Journal 140 at 145.
[280] See Catharine A. MacKinnon, "Substantive equality revisited: A reply to Sandra Fredman" (2016) 14:3 International Journal of Constitutional Law 739 at 742.
[281] Majury, *supra* note 241.
[282] *Ibid*.

The equality framework focusing on substantive equality requires accommodation of differences in the workplace.[283] Samuel Issacharoff and Elyse Rosenblum suggest that lack of "meaningful accommodation" for childbearing needs of working women prompts a "predictable and relatively early career interruption in employment".[284] They contend that failure to support pregnant workers may result in their "early departure" from the labour force and compromise their ability to get ahead in the workplace: "[W]ithout accommodation for pregnancy, women experience an elevated level of early departure from the work force and an associated failure to develop what economists term job specific capital – that is, the enhanced skills and productivity that come from experience on the job."[285] According to Lucinda Finley, current discriminatory employment practices that fail to address the pregnancy-related needs of women workers and the legal and judicial acceptance of such practices reinforce the notion that pregnancy and motherhood are incompatible with employment, thus perpetuating barriers to women's equality in the workplace.[286] Thus, as the formal legal equality approach is inadequate to address women's reproductive needs, workplaces must accommodate pregnancy and childbirth to achieve substantive equality for women.

The Abella Commission went beyond the formal equality model to argue for accommodation of women's unique biological capacities. The acceptance of the idea that discrimination may be unintentional led to the judicial and legislative recognition of

[283] See Katherine Swinton, "Accommodating equality in the unionized workplace" (1995) 33:4 Osgoode Hall Law Journal 703 at 709, 711.
[284] See Samuel Issacharoff & Elyse Rosenblum, "Women and the workplace: Accommodating the demands of pregnancy" (1994) 94 Columbia Law Review 2154 at 2156.
[285] *Ibid*.
[286] See Finley, *supra* note 24 at 1119-20.

adverse effect discrimination and the concomitant duty to accommodate.[287] This legal workplace duty to accommodate requires employers to accommodate women's pregnancy-related needs so that women can have equal access to employment opportunities.

To summarize, both Royal Commissions played a key role in providing pregnant women and new mothers with significant workplace protections. The Canadian feminist movement thus proved instrumental in bringing about legal change.

Part II – Emergence of Legal Protections for Pregnant Workers and New Mothers

As discussed above, during the decades of 1970s and 1980s, women made some progressive legislative and judicial gains like the introduction of maternity leave and human rights laws, and expansion of the definition of sex discrimination to include pregnancy discrimination. Both judges and legislators played "complementary" roles in providing pregnant women with partial legal protections against employment discrimination.[288]

Feminists used law to impact societal thinking about gender roles, to secure workplace equality for women, and for creating social change.[289] Both the legislature and the judiciary responded to evolving societal realities. The legislature, exercising "major"

[287] The Supreme Court of Canada in *Ontario Human Rights Commission and Theresa O'Malley (Vincent) v Simpson-Sears Limited*, [1985] 2 SCR 536 at 551 [*Simpson*] defined adverse effect discrimination: "It arises where an employer for genuine business reasons adopts a rule or standard which is on its face neutral, and which will apply equally to all employees, but which has a discriminatory effect upon a prohibited ground on one employee or group of employees in that it imposes, because of some special characteristic of the employee or group, obligations, penalties, or restrictive conditions not imposed on other members of the work force."

[288] See generally Emmett M. Hall, "Law reform and the judiciary's role" (1972) 10:2 Osgoode Hall Law Journal 399 at 404. In the words of Lord Radcliffe: "The legislature and the judicial process respectively are two complementary sources of law-making, and in a well ordered state each has to understand its respective functions and limitations" (*ibid*).

[289] See generally Greene, *supra* note 200 at 1263.

responsibility for lawmaking and legal reform, enacted and reformed laws offering some employment protections to both expectant and new mothers.[290] The judiciary, on the other hand, participating "as good faith delegate or co-worker of the legislature" engaged in judicial lawmaking and judicial law reform.[291] Judges purposively interpreted protective statutes to afford greater protections to pregnant workers and new mothers.

It is possible to speculate reasons why many judges engaged in creative decision-making.[292] One possible explanation is that the social and legal factors influenced judicial decision-making.[293] Judges, exposed to the "new" social reality of women being permanent members of the workforce and accompanying legislative developments, attempted to render decisions reflecting these societal changes.[294] Secondly, it could be that lawyers advanced new legal arguments, reflecting values embedded in their own visions of a just and equal society for women, that made judges more aware of concerns facing working women.[295]

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[290] See generally Hall, *supra* note 288 at 408, 410.

[291] See generally John M. Kernochan, "Statutory interpretation: An outline of method" (1976) 3:2 Dalhousie Law Journal 333 at 358. The judges, while respecting parliamentary supremacy, engage in law reform through common law, statutory interpretation, and constitutional interpretation. See Hall, *supra* note 289 at 406; The Right Honourable Brian Dickson, "A life in the law: The process of judging" (2000) 63 Saskatchewan Law Review 373 at 384.

[292] By creative decision-making, I mean creative development of the common law, and creative, purposive interpretation of both statutory and constitutional provisions.

[293] As Aharon Barak describes, "Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law". See Aharon Barak, "A judge on judging: The role of a Supreme Court in a democracy" (2002) 116:1 Harvard Law Review 19 at 28-29. Thus, judges take into account social changes to ensure that the statutes and the constitution remain "living" instruments in a constantly changing environment (*ibid* at 71, 75).

[294] As Sangster states that feminists while lobbying for a royal commission "pointed to the 'new' reality that women were lifelong, not temporary, members of the workforce". See Joan Sangster, "Invoking experience as evidence" (2011) 92:1 The Canadian Historical Review 135 at 139.

[295] Lawyers play a vital role in helping judges keep abreast of the evolving societal values. They advance arguments reflecting societal realities rooted in society's morals and standards. Furthering the vision of law as a means of achieving meaningful social change, some lawyers engage in "social change lawyering" working "to alter structural and societal impediments to equity" while providing "redress and representation to the voiceless". See Karen L. Loewy, "Lawyering for social change" (2000) 27:6 Fordham Urban Law Journal 1869 at 1869. Lawyers articulate new and innovative arguments drawing on "their own

A third possible reason could be that increased numbers of both women lawyers and women judges "through their differing perspectives on life" made a "difference" by "infusing the law with an understanding of what it means to be fully human".[296] In the 1970s, women in Canada began to enter the law profession in "unprecedented" numbers.[297] This "wave of feminist lawyers" while practising law used their "feminism and legal skills" to bring about positive changes not only in society but also legal culture and thinking.[298] Possibly, these women lawyers crafted arguments and made claims rooted in women's reproductive experiences, and their own lived realities and experiences as workers and mothers that women judges appreciated due to "certain shared experiences and a shared reality".[299] As Justice Kathryn M. Werdegar argued, "women judges are bound to be influenced by their life experience…[and] in fact are likely to be the most sensitive members of their court concerning issues especially affecting women".[300] Moreover, as elsewhere argued, "our lives, our experience, and our social understanding are the primary sources from which we develop and refine the

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visions of an ideal society" to effect social change while protecting and advancing client interests (*ibid* at 1890). See generally Kevin H. Michels, "Our hidden value" (2014) 53:1 University of Louisville Law Review 1 at 15-16.

[296] See Madam Justice Bertha Wilson, "Will women judges really make a difference" (1990) 28:3 Osgoode Hall Law Journal 507 at 522. See also Madam Justice Claire L'Heureux-Dubé, "Making a difference: The pursuit of a compassionate justice" (1997) 31 University of British Columbia Law Review 1 at 3 [Dubé, "Difference"]. Madam Justice Dubé with reference to the works of Dean Lynn Smith and Professor Isabel Grant stated that the authors "hope that 'the appointment of more female judges would increase the likelihood that certain perspectives, shared by many women, would be available on the bench'" (*ibid*).

[297] Constance Backhouse, "'A Revolution in Numbers': Ontario feminist lawyers in the formative years 1970s to the 1990s" in Constance Backhouse & W. Wesley Pue, eds, *The Promise and Perils of Law: Lawyers in Canadian History* (Toronto: Irwin Law, 2009) 265 at 273-74.

[298] *Ibid* at 273, 286.

[299] See generally Wilson, *supra* note 296 at 518. See also Dubé, "Difference", *supra* note 297: As Justice Dubé, once again with reference to Dean Smith and Professor Grant, while identifying ways in which women judges may be able to deliver "more gender-sensitive justice" notes in part that, "women judges may be more willing and able to hear and understand the stories of women litigants…[and] may also bring special expertise to the adjudication process, gained both professionally and through life experiences".

[300] See Justice Kathryn Mickle Werdegar, "Why a woman on the bench?" (2001) 16 Wisconsin Women's Law Journal 31 at 35 (women issues such as "equal employment opportunity, sexual assault, domestic violence, and the relationship between child and parent").

law".[301] Therefore, women lawyers and judges played a significant role in "seek[ing] to ensure the access of all women to gender-sensitive justice".[302]

To conclude, both the legislature and the judiciary played important roles in providing, protecting and enhancing the employment rights of pregnant women and new mothers.

A. Maternity Protection Laws

During the 1960s, pregnancy and maternity were essentially seen "as an individual and familial responsibility rather than a social one".[303] The RCSW, while particularly acknowledging women's reproductive function adopted the principle that "society has a responsibility for women because of pregnancy and childbirth, and special treatment related to maternity will always be necessary" to recommend job-protected, paid maternity leave.[304] The introduction of maternity benefits marked an important symbolic victory for feminists as it recognized women as "both mothers and workers".[305]

The Commission's historic work highlighted the social importance of maternity leave, and set the stage for legislative steps to reduce the disproportionate impact the lack of adequate maternity leave policies have on female workers, and to achieve equality of employment opportunity for women.[306] The notable legislative changes included

[301] See Michels, *supra* note 295 at 8. See generally Dubé, "Difference", *supra* note 297 at 5 (discussing how gender affects judicial decision-making).
[302] *Ibid* at 7.
[303] See Porter, *supra* note 55 at 80.
[304] See RCSW, *supra* note 5 at xii, 87-8 [emphasis deleted].
[305] See Porter, *supra* note 55 at 120.
[306] See generally *House of Commons Debates*, 28th Parl, 3rd Sess, No 1 (3 November 1970) at 841-842 (discussing Bill C-6, *An Act respecting the employment of women in federal jurisdiction before and after childbirth*).

introduction of maternity leave with employment protection and job reinstatement, and inclusion of maternity benefits in the unemployment insurance (UI) program.

In Canada, eligibility for maternity leave and maternity benefits are two different procedures.[307] Leave from employment for childbirth is mostly governed by provincial employment standards legislation, except where employees are regulated by federal laws.[308] By the end of the 1970s, the federal government and most provinces legislated maternity leave with the duration of leave ranging from 16 weeks to 37 weeks.[309] The eligibility conditions for maternity leave based on length of service varied among jurisdictions, with women not required to work for any specific length of time in British Columbia and New Brunswick, and qualification period of 12 months' continuous employment required in most provinces, and by the federal government.[310] The eligibility condition of continuous employment worked "to exclude most casual or temporary workers".[311]

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[307] See Maureen Baker, *Canadian Family Policies: Cross-National Comparisons* (Toronto: University of Toronto Press, 1995) at 161.
[308] *Ibid*.
[309] See Canada, Intergovernmental Committee on Women in Employment, *Maternity Leave in Canada*, (Ottawa: Women's Bureau, Canadian Department of Labour, 1980) at 11 (except Prince Edward Island) [Intergovernmental Committee Report]. Most jurisdictions provided 17 weeks of maternity leave (see *ibid* at 14-15: British Columbia provided 16 weeks of maternity leave, 18 weeks' leave provided in Québec, Saskatchewan and Alberta and 37 weeks' leave offered by the Federal Public Service).
[310] *Ibid* at 12-13: Newfoundland, Nova Scotia, Manitoba, Saskatchewan and Alberta legislation required 12 months of continuous employment for employees to be eligible for maternity leave whereas Québec required 20 weeks in the preceding 12 months, and one year plus 11 weeks required in Ontario. There were, however, some differences in the requirement of continuous employment as some provinces required continuous employment up to the date of application for leave while some required up to the expected date of birth. The federal government stipulated continuous employment of 12 months for women employees of most inter-provincial establishments as an eligibility condition for maternity leave, and 6 months for women employees of public service.
[311] See Baker, *supra* note 307.

Furthermore, the maternity leave legislation of most jurisdictions protected women from dismissal for reasons connected with pregnancy or maternity leave.[312] Most jurisdictions also introduced statutory provisions guaranteeing women reinstatement to the same or a comparable position on return from maternity leave.[313] Additionally, some provinces introduced legislative provisions precluding employers from requiring pregnant workers to commence maternity leave earlier than desired, unless pregnancy interfered with the ability to perform the job.[314]

As discussed in Part II-A of chapter 1 above, the lack of adequate maternity protection policies typically forced numerous pregnant women and new mothers to leave work. A no-leave or inadequate maternity leave policy with no job protection almost made it impossible for most women workers to continue working while pregnant and giving birth. And because women left the workforce to give birth, this behaviour fostered employers' stereotypical notions about women's commitment to work.[315]

Maternity leave laws have established a woman's legal right to pregnancy leave, and have helped women reconcile their dual responsibilities as workers and childbearers. Maternity leave provides new mothers with time away from work and at home to rest and recover from pregnancy and childbirth.[316] It helps protect the physical and mental health

[312] Intergovernmental Committee Report, *supra* note 309 at 16-19: Only the legislation in Nova Scotia made no mention of such protection, however, the legislation was administered in a way that afforded this protection to pregnant employees.
[313] *Ibid* at 20-21 (the legislation in British Columbia and New Brunswick did not provide for reinstatement).
[314] *Ibid* at 18-19 (the legislation in Nova Scotia, Ontario, Saskatchewan and Alberta had such provisions).
[315] As will be discussed in chapter 3, the assumption that women would leave the workforce once they choose to become mothers continues to hurt women's employment prospects.
[316] ILO, *Maternity at work*, *supra* note 89 at 8, 90. Additionally, motherhood is usually associated with joy and celebration and "constitutes a critical life course transition for most women and their families". See Dagher, McGovern & Dowd, *supra* note 89 at 370. Working women may experience changes in their family structure and household duties, and need time away from work to physically recuperate from childbirth and adapt to the new environment of "providing around-the-clock infant care" (*ibid*).

of both the mother and the child.[317] It also helps achieve gender equality and prevent workplace discrimination against women.[318]

Currently in Canada, the duration of maternity leave is fairly consistent — ranging from 15 to 18 weeks — among all jurisdictions. Women workers also have a legal right to be reinstated to former or comparable position on return to work following maternity leave. All jurisdictions also guarantee women protection from dismissal or reprisal because of pregnancy and maternity leave. However, only few jurisdictions do not require length of service conditions for women to qualify for maternity protection — the provinces of British Columbia, Québec and New Brunswick — that grant maternity leave to all pregnant employees. The federal government and the provincial and territorial jurisdictions of Alberta, Nova Scotia, Saskatchewan, Manitoba, Newfoundland and Labrador, Ontario, Prince Edward Island, Nunavut, Northwest Territories and Yukon still make entitlement to pregnancy leave conditional upon length of service ranging from thirteen weeks to one year. Imposition of such length of service requirements on maternity leave works to exclude a segment of women workers who may be in need of employment protection during pregnancy and childbirth. These exclusions from maternity protection offered by the employment standards legislation place women at a

[317] Researchers report that taking time from work after childbirth helps mothers emotionally recover from pregnancy and that shorter maternity leaves are associated with increased risk of postpartum depression among new mothers, and longer leaves with improved mental health. See Dagher, McGovern & Dowd, *supra* note 89 at 405-06. Access to paid maternity leaves both during pregnancy and after childbirth facilitates "improved bonding" between the mother and the child, a reduction in infant and maternal mortality rates and an increase in child's cognitive growth and general well-being. See Elizabeth L. Aguilera, "The best interests of families and employers: Why the family and medical insurance leave act is the best hope for easing work-family tension for American parents and children" (2015) 84:1 UMKC Law Review 155 at 161-62; ILO, *Maternity at work*, *supra* note 89 at 2, 8: Lack of sufficient maternity protection has "adverse effects" on the health of both the mother and the child.

[318] See ILO, *Maternity at work*, *supra* note 89 at 1.

disadvantaged position in the labour market and serve to perpetuate women's economic and social vulnerability.[319]

As noted by the Women's Legal Education and Action Fund, a women's legal organisation in Canada, eligibility thresholds that disentitle some women workers to maternity leave may disadvantage women with long term commitment to labour market but who had a brief employment interruption for any number of reasons and that such thresholds may also incentivise employers to place women in "more vulnerable, short-term" positions so as to circumvent the requirement to provide maternity leave.[320] Given that maternity protection is necessary to ensure women's access to meaningful equality of opportunity in the workplace, these jurisdictions should eliminate length of service requirements and replicate the maternity leave provisions of provincial statutes with no eligibility thresholds so as to extend the maternity leave to all pregnant workers.

In addition to maternity leave, "cash benefits during the leave are central to maternity protection."[321] In the absence of paid leaves, mothers may often return to work sooner "before bonding has been established and full physical healing has occurred".[322] The stress associated with this decision to return to work early from maternity leave may even lead to mothers leaving the workforce completely.[323] Prior to the incorporation of maternity benefits in the UI program, paid maternity leaves were rare in Canada.[324] In 1971, the federal government entrenched maternity leave benefits within the

[319] Joanna Birenbaum, Jo-Ann Kolmes & Marcia Tait, "Submission of LEAF and LEAF-Edmonton on the length of service requirement for maternity and parental leave under the *Canada Labour Code*" (19 May 2009), online: Women's Legal Education and Action Fund <http://www.leaf.ca/legal/reform-and-analysis/>.
[320] *Ibid* at 22.
[321] Dupper, "Part One", *supra* note 131 at 423.
[322] Aguilera, *supra* note 317 at 160.
[323] *Ibid*.
[324] See RCSW, *supra* note 5 at 154.

Unemployment Insurance Act.[325] The inclusion of maternity benefits in the UI system provided for 15 weeks of "partially compensated leave from employment for biological mothers".[326]

Although an important legislative victory for women workers, the UI legislation limited the access to maternity benefits to "major attachment" claimants fulfilling the additional requirement of the "magic ten" rule.[327] The rule specified: "[Maternity] benefits are payable to a major attachment claimant who proves her pregnancy, if she has had ten or more weeks of insurable employment in the twenty weeks that immediately precede the thirtieth week before her expected date of confinement".[328] Since the normal duration of pregnancy is forty weeks, the rule "ensured that claimants were employed at or before the time of conception and had not entered the work force while pregnant simply to collect the benefits".[329] The restriction reflected "a concern about potential program abuse" by pregnant women.[330] As Georges Campeau writes: "This was simply more evidence of prejudice against women, who were now suspected of taking jobs for the sole purpose of collecting these benefits and must therefore have their access restricted".[331]

The legislation also disentitled expectant and new mothers who did not qualify for maternity benefits from claiming regular benefits in the weeks surrounding childbirth

[325] *UI Act, 1971*, *supra* note 47.
[326] See Kathryn Meehan, "Falling through the cracks: The law governing pregnancy and parental leave" (2004) 35:2 Ottawa Law Review 211 at 216.
[327] See *UI Act, 1971*, *supra* note 47, s 16(1)(d): The *Act* defined "major attachment claimant" as "a claimant who has been employed in insurable employment for twenty or more weeks in his qualifying period".
[328] *Ibid*, s 30(1).
[329] See Pal & Morton, *supra* note 47 at 151.
[330] See Monica Townson & Kevin Hayes, "Women and the Employment Insurance Program: The Gender Impact of Current Rules on Eligibility and Earnings Replacement" (March 2007), online: <http://ywcacanada.ca/data/research_docs/00000051.pdf> at 3.
[331] See Georges Campeau, *From UI to EI: Waging war on the welfare state* (Vancouver: UBC Press, 2005) at 87.

even though they would qualify for other benefits but for their pregnancy.[332] The statutory limitation embodied an "irrebuttable presumption" that "carried forward the pre-1971 presumption that pregnancy was a condition inevitably accompanied by incapacity or unavailability".[333]

Another restrictive provision that limited the time period in which pregnant women could claim maternity benefits required maternity benefits to be claimed in the fifteen-week period beginning eight weeks before the expected week of childbirth and ending six weeks after the week of childbirth.[334] This limiting condition requiring that "the bulk of the leave be taken before rather than after the birth…reflected the persistence of medical views about when women should stop work and societal views about when it was appropriate for pregnant women to withdraw from sight into the private sphere".[335]

Since the introduction of maternity benefits in 1971, women and feminist groups criticized the UI program for its treatment of pregnant workers, and made efforts to alter the rules of the program: "[T]he very partial and limited nature of [maternity] benefits meant that tensions remained both in women's ability to maintain workforce continuity and in their ability to adequately address the needs of social reproduction."[336] The significant legal battle in *Bliss*[337] also intensified the pressure from feminist lobbyists for

[332] See *UI Act, 1971*, *supra* note 47, s 46.
[333] See Leslie A. Pal, "Maternity Benefits and Unemployment Insurance: A question of policy design" (1985) 11:3 Canadian Public Policy 551 at 555. See also *Bliss*, *supra* note 45 at 190; Marc Emmett Gold, "Equality before the law in the Supreme Court of Canada: A case study" (1980) 18:3 Osgoode Hall Law Journal 336 at 416.
[334] See *UI Act, 1971*, *supra* note 47, s 30(2).
[335] See Porter, *supra* note 55 at 126.
[336] *Ibid* at 126, 120. See also "Maternity benefits called not enough", *The Globe and Mail* (11 September 1975) F6.
[337] For further discussion of the ruling in *Bliss*, see text accompanying notes 48 and 49.

changes in the maternity legislation.[338] This increased pressure led to the federal government contemplating changes to the maternity benefits program.[339] The federal government thus established a task force to review the UI program including examining eligibility requirements for maternity benefits.[340]

The 1981 Report of the Task Force on Unemployment Insurance largely supported criticisms of maternity benefits provisions made over the last decade and recommended elimination of the "magic ten" rule and provisions that disqualified pregnant women from claiming regular benefits and limited the payment of maternity benefits to the initial fifteen-week period to have "much more equitable maternity provisions".[341] Consequently in 1983, the federal government introduced legislative changes to promote greater equality of treatment for pregnant women and new mothers in the UI maternity benefits system.[342] As honorable senator McElman noted at the time, "these proposed changes are something of a milestone in social insurance legislation for women…They make the rules more equitable and more flexible so that working women

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[338] See "Wants to change maternity benefits", *The Globe and Mail* (22 June 1977) 12; Pal & Morton, *supra* note 47 at 151-2; Porter, *supra* note 55 at 136-7.

[339] See "Cabinet to re-examine UIC maternity benefits", *The Globe and Mail* (1 November 1978) 14; "New maternity benefits proposed", *The Globe and Mail* (6 December 1978) 15; "Ottawa reviewing maternity scheme", *The Globe and Mail* (3 February 1981) 14.

[340] See *House of Commons Debates*, 32nd Parl, 1st Sess, No 2 (18 June 1980) at 2234 (Hon Lloyd Axworthy).

[341] See Task Force on Unemployment Insurance, *Unemployment Insurance in the 1980s* (Ottawa: Minister of Supply and Services Canada, 1981) at 70-71: "The changes will recognize the increasing labour market contribution of women, and will constitute a major step forward, both in simplifying the maternity provisions themselves, and in strengthening the income protection capacity of the UI program as a whole." See also Pal & Morton, *supra* note 47 at 152; Pal, *supra* note 333 at 557.

[342] See Bill C-156, *An Act to amend the Unemployment Insurance Act, 1971 (No. 3)*, 1st Sess, 32nd Parl, 1983 (the legislative amendments included elimination of the "magic ten" requirement and Section 46, and changes in the maternity benefits claim period).
Subsequently in 1990, the federal government amended the UI program to introduce 10 weeks of parental leave benefits available to both biological and adoptive parents to care for a newborn or a newly adopted child. See Bill C-21, *An Act to amend the Unemployment Insurance Act and the Employment and Immigration Department and Commission Act*, 2nd Sess, 34th Parl, 1989, cl 9 (second reading 6 June 1989 and assented to 23 October 1990).

are treated more fairly under the act and are not unduly restricted from getting UI benefits of any kind."[343]

Presently, the federal *Employment Insurance Act* governs maternity benefits.[344] To be eligible to access maternity benefits, women claimants must accumulate 600 hours of insurable employment in the 52 weeks immediately preceding the commencement of the benefit. This directly excludes both women in informal employment as well as those employed in part-time or seasonal work who fail to accumulate the required hours over the period of one year.[345] In addition, it excludes full-time female students and other women regarded as having no workforce attachment (irrespective of whether they have been formerly active in the labour market), "new entrants" to the labour force, and self-employed women.[346]

Though the federal government in 2011 expanded the availability of maternity benefits to self-employed mothers by allowing them to opt into the program, the take-up rates have remained very low.[347] Several factors may contribute to the low take-up rates among self-employed women workers. The program requires self-employed workers to contribute for 12 months before taking leave.[348] This excludes mothers who might not have planned ahead for the pregnancy, and hadn't contributed premiums long enough to be eligible for the maternity benefits.[349] Additionally, any income earned while on

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[343] See *Debates of the Senate*, 32nd Parl, 1st Sess, No 5 (2 June 1983) at 5699 (Hon Charles McElman).
[344] *Employment Insurance Act*, SC 1996, c 23 [*EI Act*].
[345] Lene Madsen, "Citizen, worker, mother: Canadian women's claims to parental leave and childcare" (2002) 19 Canadian Journal of Family Law 11 at 45.
[346] *Ibid* at 46.
[347] See Jennifer Robson, "Parental benefits in Canada: Which way forward?" (March 2017), online: Institute for Research on Public Policy <http://irpp.org/wp-content/uploads/2017/03/study-no63.pdf> at 4.
[348] *EI Act*, *supra* note 344, s 152.07 (1)(a).
[349] See Janyce McGregor, "EI for self-employed costs $40M to administer, pays only $21M in benefits", *CBC News* (17 August 2015) online: CBC News <http://www.cbc.ca/news>.

maternity leave "is clawed back from the benefits paid" unlike employer top-ups that are not considered as earnings and are not deducted from the EI benefits.[350] Moreover, once the self-employed worker claims EI benefits, individuals' participation in the program lasts indefinitely during their self-employed career. For parents who intend to remain self-employed for most of their careers, it may be economical in the long run to forego the maternity benefits.[351]

The Québec's Parental Insurance Program can act as a model for the rest of the nation. In Québec, new mothers have to meet a low earnings threshold set at just $2,000 in insurable earnings.[352] Working at Québec's minimum wage, a new mother would be eligible for maternity benefits "after approximately 186 hours of work, more than two-thirds less than in the rest of Canada".[353] The low-earnings eligibility test makes more women eligible for maternity benefits.[354] In addition, the Québec plan covers the self-employed mothers (mandatory coverage), and offers choice between the "basic" (lower rate of weekly benefit for a longer time period) and "special" (higher weekly benefit for a shorter period of time) plan.[355]

To sum, lowering the eligibility threshold for maternity benefits under the federal employment insurance program may "allow [more] women to have a meaningful choice as to when to return to work during the first year of their infant's life".[356] As Kathryn Meehan notes: "Allowing women to define when they will seek re-entry into the

[350] Robson, *supra* note 347.
[351] McGregor, *supra* note 349.
[352] *Act respecting Parental Insurance*, RSQ c A-29.011, s 3(3).
[353] Robson, *supra* note 347 at 6.
[354] See generally *ibid*.
[355] *Ibid* at 5-6.
[356] See Meehan, *supra* note 326 at 219.

workforce, rather than forcing them to return for economic reasons, is one means of assisting women in achieving substantive equality in the workplace."[357]

To conclude, the introduction of paid, employment protected maternity leave has helped women reconcile their family and work lives. These legislative achievements not only established women's entitlement to maternity leave but also effectively challenged prevailing stereotypes that relegated women to the private realm of the home when pregnant: "Women asserted that they *did* have a major attachment to the labour force, that they were not simply there for a brief period before taking up their 'real' role as mothers and wives, and that they belonged in the public as well as the private sphere."[358]

B. Human Rights Protection from Workplace Pregnancy Discrimination

Historically, the idea of the freedom of contract governed the employment relationship.[359] Adherence to the liberal values of freedom of contract "resulted in [the judiciary's] failure to adapt the common law to recognize and protect the interests of workers".[360] The common-law principle of employment at will gave employers unrestricted power to fire or refuse to hire pregnant women. The courts' failure to protect workers against discrimination ultimately left it to the legislatures to enact laws dealing with the problem of discrimination.[361]

a. Protection from pregnancy discrimination guaranteed by human rights laws

[357] *Ibid*.
[358] See Porter, *supra* note 55 at 148 [emphasis in the original].
[359] See Tarnopolsky, *supra* note 30; Adams, *supra* note 28.
[360] See Brian Etherington, "An assessment of judicial review of labour laws under the *Charter*: Of realists, romantics and pragmatists" (1992) 24 Ottawa Law Review 685 at 689.
[361] See Denise G. Réaume, "Of pigeonholes and principles: A reconsideration of discrimination law" (2002) 40 Osgoode Hall Law Journal 113 at 123-4.

The first legislative steps towards prohibiting discrimination in Canada started in the 1930s and the 1940s.[362] Although anti-discrimination statutes began to be passed during the 1930s, "it was not until near the end of World War II that modern human rights legislation started to spread".[363] In 1944, Ontario enacted *The Racial Discrimination Act*[364] "prohibiting the publication or display of signs, symbols or other representations expressing racial or religious discrimination".[365] The Ontario legislation "was brief, and limited to one specific purpose".[366] It was not until 1947 that Saskatchewan enacted the *Saskatchewan Bill of Rights Act*,[367] "the first detailed and comprehensive statute".[368] The *Act* provided: "Every person and every class of persons shall enjoy the right to obtain and retain employment without discrimination…because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons."[369] Despite the legislation's broad scope, it failed to prohibit discrimination on the basis of sex.[370] Although the Saskatchewan legislation made provision for penal sanctions like imposition of fines and imprisonment, it did not provide for any "special agency" responsible for administration

[362] See Constance Backhouse, "Racial Segregation in Canadian Legal History: Viola Desmond's Challenge, Nova Scotia, 1946" (1994) 17 Dalhousie Law Journal 299 at 330. A 1932 amendment to Ontario's *Insurance Act, 1932*, SO 1932, c 24 forbade insurers to unfairly discriminate against insured on the basis of "the race or religion" (*ibid*). British Columbia also enacted numerous statutes between 1931 and 1945 prohibiting discrimination on the basis of "race, political affiliation or religious views" in the provision of unemployment relief and social welfare (*ibid* at 330-1). A 1934 amendment to Manitoba's *Libel Act*, SM 1934, c 23 authorized courts to grant an injunction to prevent continuation and circulation of libel published "against a race or creed" (*ibid* at 331). The province of Manitoba also enacted *The Law of Property Act*, SM 1950, c 33 outlawing "racial and religious restrictions on the sale and tenancy of land" (*ibid*).
[363] See Tarnopolsky, *supra* note 30.
[364] SO 1944, c 51.
[365] See Backhouse, *supra* note 362 at 331.
[366] See Tarnopolsky, *supra* note 30.
[367] SS 1947, c 35 [*Saskatchewan Bill of Rights*].
[368] See Tarnopolsky, *supra* note 30.
[369] *Saskatchewan Bill of Rights*, *supra* note 367, s 8(1).
[370] See Backhouse, *supra* note 362 at 332.

and enforcement of the legislation.[371] As a result, due to lack of enforcement procedures, the legislation failed to curb employment discrimination.[372]

"Seeking greater impact," the Ontario government in 1951 enacted the *Fair Employment Practices Act*[373] based on a legislative scheme borrowed from the State of New York, "prohibiting discrimination in employment, and establishing a commission to monitor and enforce the legislation".[374] Other provinces followed suit and enacted similar laws.[375] Also in 1951, Ontario led the way by passing *The Female Employees Fair Remuneration Act*[376] prohibiting sex discrimination in pay and protecting a woman's right to equal pay for same work.[377] Most other jurisdictions in Canada subsequently duplicated the Ontario's female equal pay legislation.[378]

Ontario became the "first province in Canada" to consolidate its various human rights provisions into a single comprehensive statute[379] "setting an example for other provinces".[380] The legislation created a Human Rights Commission charged with the duty to administer and enforce the statute.[381] Other provinces in Canada soon enacted similar human rights legislation and established human rights commissions.[382] In 1977, the

[371] See Tarnopolsky, *supra* note 30.
[372] See Adams, *supra* note 28.
[373] SO 1951, c 24.
[374] See Adams, *supra* note 28 at S65.
[375] See Tarnopolsky, *supra* note 30 at 1702.
[376] SO 1951, c 26.
[377] See Réaume, *supra* note 362 at 126; Dominique Clément, *Equality Deferred: Sex Discrimination and British Columbia's Human Rights State, 1953-84* (Vancouver: UBC Press for the Osgoode Society for Canadian Legal History, 2014) at 72 [Clément, *Equality*].
[378] See *ibid* at 72-3.
[379] *Ontario Human Rights Code*, SO 1961-62, c 93 [*Ontario Code*].
[380] See Tiffany Tsun, "Overhauling the Ontario Human Rights System: Recent developments in case law and legislative reform" (2009) 67 University of Toronto Faculty of Law Review 115 at 120.
[381] *Ontario Code*, *supra* note 379, s 8.
[382] See I.A. Hunter, "Human Rights Legislation in Canada: Its origin, development and interpretation" (1976) 15 University of Western Ontario Law Review 21 at 27.

federal government introduced the *Canadian Human Rights Act*[383] and created the Canadian Human Rights Commission to administer and implement the federal legislation.[384]

Although the initial human rights statutes proscribed employment discrimination on the basis of race, religion, creed, colour, ethnic or national origin, they did not outlaw sex discrimination.[385] The first anti-discrimination statute in Canada to forbid sex discrimination in employment was the federal 1960 *Bill of Rights*.[386] But, in practice, it failed to guarantee "sex equality to women".[387] The *Ontario Human Rights Code* also did not include sex as a prohibited ground of discrimination.[388] As women continued to face workplace sex discrimination, and the feminist movement increasingly pushed for inclusion of women's rights under the umbrella of human rights protection, sex was added to the list of discrimination grounds, initially in 1969 in *British Columbia Human Rights Act*,[389] and subsequently in human rights legislation of other jurisdictions.[390]

The federal human rights legislation mandated the Canadian Human Rights Commission to issue annual reports on the Commission's activities.[391] The Commission in its first annual report committed itself to using the tools of "recourse, awareness, and

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[383] SC 1976-77, c 33 [*CHRA*].
[384] See Walter Tarnopolsky, "Legislative jurisdiction with respect to anti-discrimination (human rights) legislation in Canada" (1980) 12:1 Ottawa Law Review 1 at 2.
[385] See Adams, *supra* note 28.
[386] See Dominique Clément, *Human Rights in Canada: A History* (Waterloo, Ontario: Wilfrid Laurier University Press, 2016) at 65.
[387] See Clément, *Equality*, *supra* note 377 at 74.
[388] *Ontario Code*, *supra* note 379, s 4(1): The Code provided: "No employer…shall refuse to employ or continue to employ any person or discriminate against any person with regard to employment…because of his race, creed, colour, nationality, ancestry or place of origin."
[389] SBC 1969, c 10.
[390] See Adams, *supra* note 28. The author notes that the American legislative approach of adding "sex" to Title VII of *The Civil Rights Act of 1964*, 42 U.S.C. §§ 2000e-2000e-17 (2000) influenced Canadian legal developments.
[391] *CHRA*, *supra* note 383, s 47(1).

advocacy" to protect human rights and to "translat[e] the principle of equality of opportunity into everyday experience".[392] The Commission's annual reports repeatedly emphasized the differential treatment experienced by women in the workplace.

In its annual report of 1978, the Commission highlighted the "category of cases involv[ing] policies and practices which differentiate adversely against women who combine the roles of working and childbearing".[393] The report stated: "A variety of issues surrounding maternity – leave, benefits, questions asked of prospective employees, working conditions, and so on – were brought to our attention as hindering the equality of opportunity of women."[394] In the Commission's 1979 annual report, it noted that it received complaints concerning "denial of regular or maternity benefits under unemployment insurance...subjection of female applicants for unemployment insurance to searching personal questions about child care, breast-feeding, etc.; demotion upon pregnancy; forced cessation of work early in pregnancy".[395] In the same year, the Commission in light of the number of cases involving "adverse differentiation because of pregnancy" recommended addition of definition of existing ground "sex" to include "discrimination because of pregnancy, childbirth, or related medical conditions".[396] The Commission also suggested an amendment "to provide for additional leave or special benefits related to the birth of a child…or care of a child".[397]

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[392] See Canadian Human Rights Commission, *Annual Report 1978*, (Ottawa: Minister of Supply and Services Canada, 1979) at Preface.
[393] See *ibid* at 9.
[394] *Ibid*.
[395] See Canadian Human Rights Commission, *Annual Report 1979*, (Ottawa: Minister of Supply and Services Canada, 1980) at 30.
[396] *Ibid* at 7 (amendment of *Canadian Human Rights Act*).
[397] *Ibid* at 8.

The Commission's annual report of 1980 reiterated the Commissions' concern over women being penalized in their careers for being pregnant.[398] The report emphasized maternity benefits as an issue involving "long-standing concerns".[399] It also noted the discriminatory nature of the unemployment insurance eligibility provisions that forced some working women "to pay a price for childbearing that is not required of people whose working life is interrupted for other reasons".[400] The Commission recommended that women be allowed to use sickness or disability benefits when unable to work due to pregnancy-related reasons.[401] It also suggested that leave to care for a child be available to either parent.[402] The 1980 annual report proved to be "significant not only because it pointed to discriminatory practices but also because it questioned whether maternity was solely an individual or familial responsibility and suggested that the 'economic and social costs related to child bearing and child rearing' should not be borne solely by parents, but also by the state".[403]

The Commission's annual reports of 1981 and 1982 recommended amendment to the *UI Act* to remove the discriminatory treatment of pregnant claimants.[404] In the 1982 report, the Commission stated that it dealt with numerous complaints from women who

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[398] See Canadian Human Rights Commission, *Annual Report 1980*, (Ottawa: Minister of Supply and Services Canada, 1981) at 8, 20-21 (the Commission again recommended that definition of "sex" be added to clarify that sex discrimination included discrimination based on pregnancy).
[399] *Ibid* at 43.
[400] *Ibid* at 43-44: The Commission highlighted the concerns of pregnant women under the UI program that required them to work longer to be eligible to claim maternity benefits and their inability to claim regular benefits around childbirth if they did not qualify for pregnancy benefits.
[401] *Ibid* at 44.
[402] *Ibid*.
[403] See Porter, *supra* note 55 at 140.
[404] See Canadian Human Rights Commission, *Annual Report 1981*, (Ottawa: Minister of Supply and Services Canada, 1982) at 14; Canadian Human Rights Commission, *Annual Report 1982*, (Ottawa: Minister of Supply and Services Canada, 1983) at 10.

were denied employment because of their pregnant status.[405] The Commission consistently pushed for legislative clarification of sex discrimination to include discrimination because of pregnancy and a provision "permitting special or preferential arrangements for leave to permit parents to care for a child".[406] The Commission "was thus in the forefront in calling for a revised conception of responsibility for child bearing and rearing and linking these explicitly to women's equality."[407]

Due to the Commission's persistent recommendations, the Parliament in 1983 amended the *Canadian Human Rights Act* to clarify that sex discrimination included discrimination on the basis of pregnancy or childbirth.[408] The legislative amendment specifically noted that special assistance measures in favour of women workers in connection with pregnancy or childbirth, or measures providing special leave or benefits to employees to assist them in taking care of their children are not discriminatory.[409] The amendment as senator Frith stated "will ensure that women, like men, will be treated simply on the basis of their ability or inability to work…[and] will not be fired or refused employment merely because they are pregnant or have borne a child".[410]

Most provincial jurisdictions subsequently modified their human rights legislation to define sex discrimination as including pregnancy discrimination.[411] Thus, the

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[405] *Ibid* at 8.
[406] See Canadian Human Rights Commission, *Annual Report 1983*, (Ottawa: Minister of Supply and Services Canada, 1984) at 9-10: The Commission emphasized that adoption of recommendation of special leave arrangements to care for a child meant that "it is not discriminatory for employers to provide special leave or benefits to employees of either sex in connection with child care and to female employees in connection with pregnancy or childbirth".
[407] See Porter, *supra* note 55 at 141.
[408] See Bill C-141, *An Act to amend the Canadian Human Rights Act and to amend certain other Acts in consequence thereof*, 1st Sess, 32nd Parl, 1982 (assented to 30 March 1983).
[409] *Ibid*, cl 7 (adding s 14(f)).
[410] See *Debates of the Senate*, 32nd Parl, 1st Sess, No 5 (29 March 1983) at 5525 (Hon Royce Frith).
[411] See Arjun P. Aggarwal, *Sex Discrimination: Employment Law and Practices* (Toronto: Butterworths, 1994) at 85.

legislators through legislative reinterpretation of pregnancy-based discrimination as a form of sex-based discrimination extended human rights protections to pregnant workers.

The existing federal, provincial and territorial human rights laws protect pregnant women and new mothers from discrimination in employment.[412] Legislative protection against pregnancy discrimination extends to all aspects of the employment relationship beginning from the recruitment process and continuing through the working relationship until termination. The anti-discrimination statutes forbid employers to refuse to hire, fire, demote, or deny promotion, training, or employment benefits to both expectant and new mothers.

b. Constitutional protection against pregnancy discrimination

Even as women won important statutory protections against workplace sex discrimination, judicial rulings in sex equality cases perpetuated discrimination against women workers.[413] The decision in *Bliss* allowed employers to "discriminate against pregnant women with impunity".[414] As Sheilah Martin notes: "Separating a uniquely sex-

[412] See generally Ontario Human Rights Commission, *Policy of preventing discrimination because of pregnancy and breastfeeding* (29 October 2014), online: Ontario Human Rights Commission <http://www.ohrc.on.ca/sites/default/files/Policy%20on%20preventing%20discrimination%20because%20of%20pregnancy%20and%20breastfeeding_accessible_2014.pdf> at 5-8: Discrimination on the basis of pregnancy is a form of sex discrimination and the term "pregnancy" takes into consideration "all the special needs and circumstances of a pregnant woman". Pregnancy discrimination thus includes discrimination against a woman because she is, trying to or intending to get pregnant; is taking or intending to go on maternity leave; has experienced abortion, miscarriage or stillbirth or complications related to them; is experiencing complications or illnesses related to pregnancy or childbirth; is recovering from childbirth or is breastfeeding. It also includes adverse treatment of a woman for reasons related to pregnancy or complications or disability arising out of pregnancy.

[413] See *Bliss*, *supra* note 45. In *Bliss*, the Supreme Court of Canada ruled that discrimination on the basis of pregnancy did not constitute sex discrimination. For further discussion of the ruling in *Bliss*, see text accompanying notes 48 and 49.

[414] See Kathleen Mahoney, "*Vriend v. Alberta*: A Victory for Discrimination", Case Comment, (1996) 4 Canadian Journal of Women and the Law 389 at 399.

based characteristic such as pregnancy from sex misses the entire point of sex equality guarantees."[415]

Feminists extensively criticized the decision in *Bliss*.[416] It became a "rallying cause" for feminist groups.[417] In the aftermath of this unsuccessful legal battle, "feminist organisations began to argue that since the *Bill of Rights* had proven ineffective to ensure equality rights for women, a constitutionally entrenched charter of rights with stronger and more explicit guarantees was needed".[418] *Bliss*, as Lorna Turnbull remarks, represented "a defining moment of feminist engagement with the law both for the tremendous involvement of the feminist community…and for the catalyst that the case provided for feminists engaged in shaping the scope of the equality guarantee contained within the *Charter*".[419]

Consequently, the federal government "embarked on a major campaign of constitutional reform in 1980, with a new charter of rights and freedoms as its centerpiece".[420] Feminist organisations "proved to be crucial allies in Trudeau's constitutional quest".[421] At first, legislative drafters, while drafting Section 15 of the *Charter*, "essentially duplicated" the wording of Section 1(b) of the federal *Bill of Rights*.[422] Feminist groups unanimous in their support to achieve substantive equality and fearful of legal repercussions of judicial decisions like *Bliss* successfully called for a

[415] See Sheilah L. Martin, "Canada's Abortion Law and the Canadian Charter of Rights and Freedoms" (1986) 1 Canadian Journal of Women and the Law 339 at 380.
[416] See Pal & Morton, *supra* note 47 at 153.
[417] See Fudge, *supra* note 46 at 506.
[418] *Ibid*. See Pal & Morton, *supra* note 47 at 153.
[419] See Lorna Turnbull, "The Promise of *Brooks v. Canada Safeway Ltd*: Those who bear children should not be disadvantaged" (2005) 17 Canadian Journal of Women and the Law 151 at 153.
[420] See Pal & Morton, *supra* note 47 at 153.
[421] See Fudge, *supra* note 46 at 506.
[422] See Pal & Morton, *supra* note 47 at 154.

rewording of Section 15 that would foreclose the possibility of such pronouncements.[423] As Leslie Pal and Frederick Morton noted: "No lobby fared better than the feminists."[424]

The resulting Section 15 of the *Charter* provided "the most sweeping constitutional guarantee of equality to be found in any liberal democracy in the world".[425] The sex equality guarantees are contained in two provisions under the *Charter*: Sections 15 and 28. Section 15 is the general equality rights provision that guarantees sex-based equality and permits affirmative actions measures intended to improve the conditions of disadvantaged groups or individuals.[426] The other equality rights provision, section 28 specifically affirms sex equality.[427] Feminist activists successfully lobbied for Section 28 to be added to the *Charter,* as they viewed Section 15 with "distrust" incapable of delivering "a remedy against legislated sex discrimination".[428] The *Charter* thus guarantees constitutional equality rights for women.

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[423] See Canadian Advisory Council on the Status of Women, "Women, Human Rights & The Constitution: Submission of the Canadian Advisory Council on the Status of Women to the Special Joint Committee on the Constitution" (18 November 1980), online: <http://historyofrights.ca/wp-content/uploads/committee/cacsw.pdf> at 4-5, 12-13: The Canadian Advisory Council on the Status of Women expressed doubts on the adequacy of Section 15 to guarantee sex equality for women and stressed their support for wording that "will provide such clear directions to judges that they cannot possibly misinterpret the intended content and meaning". See generally Barry L. Strayer, "The Evolution of the Charter" in Lois Harder & Steve Patten, eds, *Patriation and its consequences: Constitution making in Canada* (Vancouver: UBC Press, 2015) 72 at 87-88; Majury, *supra* note 242. See also Robert Sheppard, "Charter would enshrine bias, NAC says", *The Globe and Mail* (21 November 1980) 9; Dorothy Lipovenko, "Group sees inequities in charter", *The Globe and Mail* (24 November 1980) 15; Margaret Mironowicz, "Women mount campaign against charter", *The Globe and Mail* (21 November 1981) 14.

[424] See Pal & Morton, *supra* note 47 at 156. See generally "Women's charter-of-rights campaign may be close to success", *The Globe and Mail* (17 March 1981) 14.

[425] See Fudge, *supra* note 46 at 506. See generally "More rights for women in changes to charter", *The Globe and Mail* (12 January 1981) 1: The amended Section 15 guaranteed women equality "before and under the law"; the former "protect[ing] them against laws that treat men and women differently, such as the Indian Act" and the latter "protect[ing] women against discrimination in benefits, like unemployment payments".

[426] *Charter*, supra note 188, s 15: Section 15 guarantees four kinds of equality rights: equality before and under the law, equal protection and equal benefit of the law without discrimination.

[427] *Ibid*, s 28.

[428] See Beverley Baines, "Section 28 of the *Canadian Charter of Rights and Freedoms*: A purposive interpretation" (2005) 17 Canadian Journal of Women and the Law 45 at 51.

The advent of equality rights jurisprudence under the *Charter* is marked by the judicial rejection of the formal equality model in pursuit of the substantive concept of equality. The Supreme Court of Canada, in its pioneering decision in *Andrews v. Law Society of British Columbia*,[429] unequivocally rejected the "similarly situated test" arguing that, "identical treatment may frequently produce serious inequality".[430] The Court emphasized the need for differential treatment to achieve "true equality", the essence of which is the "accommodation of differences".[431] Justice McIntyre looked to human rights jurisprudence to adopt a broad definition of discrimination encompassing both intentional and unintentional discrimination.[432]

The decision in *Andrews* is significant as the highest Court signaled its commitment to employing the principle of substantive equality over formal equality. Rejection of the formalistic approach to equality is "particularly significant for women" because the sameness approach forces women to accept equality standards designed to meet the needs of males whereas the equality approach adopted in *Andrews* "gives women the opportunity to challenge male-defined structures and institutions that disadvantage them, and to set their own norms based on their own needs and characteristics".[433] This substantive equality analysis proved to be "vital" to the Supreme

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[429] *Andrews*, *supra* note 271 (the Court ruled that the Law Society of British Columbia's requirement of Canadian citizenship as a prerequisite to be a member of the bar infringed Section 15 of the *Charter*).
[430] *Ibid* at 171.
[431] *Ibid* at 168-9.
[432] *Ibid* at 174-5: The Court, focusing on impact of the law rather than the intent to discriminate, interpreted discrimination as "a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed."
[433] See Kathleen E. Mahoney, "The Constitutional Law of Equality in Canada" (1992) 44 Maine Law Review 229 at 246-7 [Mahoney, "Equality"].

Court's "reinterpretation" of pregnancy discrimination as constituting sex discrimination.[434]

c. Judicial protection from pregnancy discrimination

With the introduction of the *Charter*, the Supreme Court of Canada "rigorously and vigorously assumed a leadership role for the courts in preventing and remedying discrimination".[435] By renouncing the "'sameness' model that had animated the Supreme Court's equality assessments under the Bill of Rights, the Court chose instead to interpret equality as an anti-discrimination, human rights tool."[436] Adopting a substantive definition of equality, the Court acknowledged the concept of systemic discrimination and considerably "expand[ed] the protective ambit of the equality guarantees under the Charter".[437]

"Even though the *Charter* does not itself apply to most workplaces", it has guided "reinterpretation" of the federal, provincial and territorial human rights legislation and has consequently had "an important, if indirect, effect on equality rights in the employment context".[438] Since the passage of the *Charter*, courts have endorsed the "quasi-constitutional" status of human rights legislation granting them supremacy over

[434] See Andrea York, "The inequality of emerging *Charter* jurisprudence: Supreme Court interpretations of Section 15(1)" (1996) 54:2 University of Toronto Faculty of Law Review 327 at 338.
[435] See Rosalie Abella, "Foreword by Rosalie Abella" (2012) 1 Canadian Journal of Human Rights 1 at 4 (The author refers to cases like *Brooks*, *Simpson*, *Alberta Dairy Pool*, etc.).
[436] *Ibid*.
[437] See Mahoney, "Equality", *supra* note 433 at 247.
[438] See Madam Justice Claire L'Heureux-Dubé, "It takes a vision: The constitutionalization of equality in Canada" (2002) 14:2 Yale Journal of Law and Feminism 363 at 372 [Dubé, "Vision"] (the *Charter* only applies to governmental action and not to private entities). The author references the decision in *Brooks v. Canada Safeway Ltd.*, [1989] 1 SCR 1219 [*Brooks*] to argue that the Supreme Court after 1985 "reconsidered its pre-*Charter* decisions under the *Bill of Rights* anti-discrimination jurisprudence in light of its post-*Charter* understanding of substantive equality". See Dubé, "Vision", *supra* note 438 at 373-73.

conflicting statutes.[439] In light of the "special nature" of human rights statutes, courts have emphasized a broad, purposive and liberal approach to their interpretation advancing the enactment's broad purposes.[440]

Human rights laws protect a broad range of rights and freedoms as they apply to both public action and private practices of individuals and corporations.[441] Thus, in the employment law context, "the equality guarantees provided by anti-discrimination legislation have proven the most significant means of ensuring that substantive equality applies even in the absence of direct government action".[442]

In *Andrews*, the Supreme Court embraced a substantive approach to interpreting equality. Drawing on this approach, the Court in *Brooks v. Canada Safeway Ltd.*,[443] overruled its earlier jurisprudence in *Bliss*, and held that the prohibition on sex discrimination in the Manitoba human rights legislation encompasses pregnancy discrimination. In *Brooks*, pregnant women plaintiffs received disfavoured treatment under the employer's accident and sickness plan because of their pregnant status. The Court found that the disfavoured treatment that "flowed entirely from the [plaintiff's] state of pregnancy, a condition unique to woman" constituted pregnancy discrimination,

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[439] See *Insurance Corporation of British Columbia v Heerspink et al.*, [1982] 2 SCR 145 at 158; *Simpson*, *supra* note 287 at 547; Chantal Tie, "Immigrant Selection and the Canadian Human Rights Act" (1994) 10 Journal of Law and Social Policy 81 at 99.
[440] See *Simpson*, *supra* note 287 at 547. See also *CN v. Canada (Canadian Human Rights Commission)*, [1987] 1 SCR 1114 at 1136 [*CN v Canada*]; *Winnipeg School Division No. 1 v Craton*, [1985] 2 SCR 150 at 156.
[441] See Hilary M.G. Paterson, "The justifiability of biblically based discrimination: Can private Christian schools legally refuse to employ gay teachers?" (2001) 59:1 University of Toronto Faculty of Law Review 59 at 62.
[442] See Dubé, "Vision", *supra* note 438.
[443] *Brooks*, *supra* note 438.

"a form of sex discrimination because of the basic biological fact that only women have the capacity to become pregnant".[444]

Identifying pregnancy as "a valid health-related reason for absence from the workplace" and invoking the societal benefits of procreation, Chief Justice Brian Dickson concluded:[445]

> Combining paid work with motherhood and accommodating the childbearing needs of working women are ever-increasing imperatives. That those who bear children and benefit society as a whole thereby should not be economically or socially disadvantaged seems to bespeak the obvious. It is only women who bear children; no man can become pregnant. As I argued earlier, *it is unfair to impose all the costs of pregnancy upon one half of the population*. It is difficult to conceive that distinctions or discriminations based upon pregnancy could ever be regarded as other than discrimination based upon sex, or that restrictive statutory conditions applicable only to pregnant women did not discriminate against them as women.[446]

Brooks thus represented a significant victory for women's sex equality rights in the workplace as it recognized women's reproductive realities and the unfair social disadvantages imposed on women due to their biological capacities. The Court purposively interpreted the provincial human rights legislation to conclude that "sanction[ing] imposing a disproportionate amount of the costs of pregnancy upon women" violates the purpose of anti-discrimination legislation: "Removal of such unfair impositions upon women…is a key purpose of anti-discrimination legislation."[447]

Although not a *Charter* decision, *Brooks* decided under the provincial human rights legislation takes "a step in the right direction by acknowledging the importance of not being financially penalized if [women] need to take time off work for

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[444] *Ibid* at 1242.
[445] *Ibid* at 1237.
[446] *Ibid* at 1243-44 [emphasis added].
[447] *Ibid* at 1238.

childbearing".[448] Taken together, the decisions in *Andrews* and *Brooks* "can be used as a basis for an approach to sex equality grounded in the reality of biological duality, under which women are not penalized for the ways in which they are not like men".[449]

Given the legal reinterpretation of sex discrimination as including discrimination on the basis of pregnancy, and combined with the wide reach of the human rights laws, these statutes ended the era where employers overtly and routinely fired or denied jobs to pregnant women. Although the human rights statutes successfully invalidated these hostile employer policies, these have fallen short of dismantling harmful stereotypes surrounding motherhood, and about women's proper role in society that continue to hinder women's career progression. A recent social science study of work experiences of women practicing law in Alberta found that women who decide to have a family often feel that they are viewed as less committed to the work and they "are given less important and less challenging work assignments, such that their opportunities for career advancement decline".[450] Likewise, a study involving a nation-wide survey of employers and employees to understand the impact of maternity leave on a woman's career development found that "a disproportionately large number of new mothers (36%) felt that taking maternity leave had negatively impacted their opportunity for promotions, seniority, and career progression".[451]

Additionally, the still significant number of pregnancy-related complaints received by the human rights commissions indicates the persistence of bias against

[448] See Colleen Sheppard, "Recognition of the disadvantaging of women: The Promise of *Andrews* v. *Law Society of British Columbia*", Case Comment, (1989) 35 McGill Law Journal 206 at 231-2.
[449] See Martin, "Sex Equality", *supra* note 244 at 350.
[450] Wallace, *supra* note 27 at 290, 300.
[451] Avra Davidoff et al, *Making it Work! – How to effectively manage maternity leave career transitions – An Employer's Guide* (Toronto: Canadian Education and Research Institute for Counselling, 2016) at 3.

expectant mothers.[452] Despite the fact that by the early 1990s, pregnancy was added to the list of prohibited grounds of discrimination in almost all Canadian human rights laws, some of the claims surprisingly reveal straightforward discriminatory treatment of pregnant women in the workplace. For example, being fired after disclosing pregnancy to the employer, not being allowed to return to work after maternity leave, or being subject to adverse treatment after announcing pregnancy.[453] Furthermore, narrative and anecdotal accounts of pregnant women and new mothers being driven out of the workplace are reported in newspapers.[454] These narratives as well as summary of pregnancy discrimination complaints documented by the human rights commissions suggest that stereotypes concerning pregnancy and caregiving continue to inform employer decision-making.

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[452] See Saskatchewan Human Rights Commission, *Annual Report 2015-2016*, online: <http://saskatchewanhumanrights.ca/pub/documents/publications/SHRC_2015_2016_AnnualReport_web.pdf> at 20; British Columbia Human Rights Tribunal, *Annual Report 2015-2016*, online: <http://www.bchrt.bc.ca/shareddocs/annual_reports/2015-2016.pdf>; The Manitoba Human Rights Commission, *Annual Report 2015*, online: <http://www.manitobahumanrights.ca/publications/annual_reports/annual_report_2015.pdf>; Newfoundland and Labrador Human Rights Commission, *Annual Report 2015-16*, online: <http://www.justice.gov.nl.ca/just/publications/2015-2016/HRC_Annual_Report_2015_16.pdf>; New Brunswick Human Rights Commission, *Annual Report 2015-2016*, online: <http://www2.gnb.ca/content/dam/gnb/Departments/hrc-cdp/PDF/Annualreport-Rapportannuel/AnnualReportHRC2015-16.pdf>; Yukon Human Rights Commission, *2015-2016 Annual Report*, online: <https://yhrc.yk.ca/sites/default/files/AnnualReport_YHRC_2016_2015_FinalWeb2.pdf>. See also "Pregnancy discrimination complaints on rise", *CBC News* (7 March 2012) online: CBC News <http://www.cbc.ca/news>.

[453] See generally annual reports for the fiscal year of 2015-16 of human rights commissions of Saskatchewan, Manitoba and New Brunswick (*supra* note 452).

[454] See Maryse Zeidler, "Pregnant waitress allegedly forced to quit an all too common issue, says lawyer", *CBC News* (18 February 2017) online: CBC News <http://www.cbc.ca/news>; Holly Moore, "Cleaning company accused of pregnancy discrimination", *CBC News* (23 July 2015) online: CBC News <http://www.cbc.ca/news>; Holly Moore, "Lawyer locked in pregnancy discrimination battle with UManitoba", *CBC News* (3 May 2015) online: CBC News <http://www.cbc.ca/news>.

Because workplace discrimination today tends not to be overt and can be subtle and nuanced,[455] litigants alleging pregnancy discrimination often face challenges similar to the ones encountered by plaintiffs in proving other forms of discrimination.[456] But employers, regardless of the difficulty confronting complainants in establishing discrimination in an evidence-based process, risk being exposed to successful claims brought against them.[457] Even though law is a mechanism designed to combat pregnancy discrimination, the battle against this discrimination cannot be won by legislation alone. Changing attitudes, perceptions and behaviour is essential to foster a culture where human rights are protected and respected. Education is a key instrument that can bring about a change in societal outlook and attitudes: "Education is a process which brings about changes in the behaviour of society. It is a process which enables every individual to effectively participate in the activities of society and to make positive contribution to the progress of society."[458] Towards this end, the federal and provincial human rights commissions should provide education to individuals and organisations on how to build diverse and inclusive workplaces.

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[455] See generally *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39. See also Holly Moore, "Pregnancy not a factor in firing, ruling disappoints Human Rights Commission", *CBC News* (22 May 2015) online: CBC News <http://www.cbc.ca/news>.

[456] See generally The Right Honourable Lord Browne-Wilkinson, "Race and sex discrimination in English Law" (1993) 19:4 Commonwealth Law Bulletin 1647 at 1651.

[457] See generally Daniel Lublin, "Employers need to heed recent human rights decisions", *The Globe and Mail* (26 July 2013) online: The Globe and Mail <http://www.theglobeandmail.com/> (noting the wide powers of a human rights judge in making an award to remedy discrimination); Jessica Bungay, "Pregnancy quips perpetuate gender discrimination", *Canadian Employment Law Today* (1 February 2017) online: Canadian Employment Law Today <http://www.employmentlawtoday.com/>. See also Holly Moore, "Winnipeg cleaning company discriminated against pregnant ex-employee, adjudicator finds", *CBC News* (5 May 2016) online: CBC News <http://www.cbc.ca/news>.

[458] Farooq Ahmed Ganiee, "Education as an instrument of social change" (2014) 2:1 International Journal of English Language, Literature and Humanities 18 at 18.

To conclude, the introduction of human rights statutes and the equality guarantees of the *Charter* together with the legislative and judicial clarification of pregnancy discrimination as a form of sex discrimination have provided women with partial legal protections against pregnancy-related discrimination in the workplace.

d. Duty to reasonably accommodate pregnancy

By the 1980s, Canadian society witnessed a shift towards systemic analysis of workplace inequalities. The emergence of awareness of systemic discrimination accompanied a recognition of how facially neutral rules, standards, policies and practices can have a discriminatory impact on protected groups or individuals. The Supreme Court of Canada in the 1985 case of *Ontario Human Rights Commission and Theresa O'Malley (Vincent) v Simpson-Sears Limited*[459] defined this concept as "adverse effect discrimination".[460]

Identifying that a seemingly neutral rule can have an adverse effect, the Court went on to embrace the concept of the duty to accommodate: "The Code accords [individuals] the right to be free from discrimination in employment. While no right can be regarded as absolute, a natural corollary to the recognition of a right must be the social acceptance of a general duty to respect and to act within reason to protect it."[461] Thus, in situations where an employment rule or practice has an adverse discriminatory impact on members of a protected group, the employer has a duty to take "reasonable steps to accommodate" the adversely affected member, "short of undue hardship".[462]

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[459] *Simpson*, *supra* note 287.
[460] *Ibid*.
[461] *Ibid* at 554.
[462] *Ibid* at 554-5.

The Supreme Court in subsequent decisions[463] elaborated on the concept of systemic discrimination and the concomitant duty to accommodate. Of these, the decision in *Meiorin* is particularly significant because it requires employers to design workplace standards that "accommodate the potential contributions of all employees in so far as this can be done without undue hardship to the employer".[464] As Justice McLachlin noted:

> Employers designing workplace standards owe an obligation to be aware of both the differences between individuals, and differences that characterize groups of individuals. They must build conceptions of equality into workplace standards. By enacting human rights statutes and providing that they are applicable to the workplace, the legislatures have determined that the standards governing the performance of work should be designed to reflect all members of society, in so far as this is reasonably possible.[465]

Thus, recognition of the concept of adverse effect discrimination endorsed the "substantive vision of equality" and emphasized the significance of the employer's legal duty to accommodate as "an integral dimension of equality".[466]

Historically, pregnant women were presumed to be incapable and unavailable for work for six weeks before and after childbirth.[467] Strangely enough, this presumption was elevated to the level of "fact", thereby foreclosing the application of empirical tests to determine an individuals' availability for work.[468] This "rule of thumb" that continued

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[463] See *CN v Canada*, *supra* note 440; *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)*, [1990] 2 SCR 489; *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 SCR 970; *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union*, [1999] 3 SCR 3 [*Meiorin*].
[464] *Meiorin*, *ibid* at 33.
[465] *Ibid* at 38.
[466] See Colleen Sheppard, "Of Forest Fires and Systemic Discrimination: A Review of *British Columbia (Public Service Employee Relations Commission) v B.C.G.S.E.U.*", Case Comment, (2001) 46 McGill Law Journal 533 at 558, 533.
[467] Canada, Committee of Inquiry into the Unemployment Insurance Act, *Report of the Committee of Inquiry into the Unemployment Insurance Act*, (Ottawa: Queen's Printer and Controller of Stationery, 1962) at 135 (Chair: Ernest C. Gill) [Gill Report].
[468] See *ibid*; Pal, *supra* note 333 at 553.

until the 1970s produced decisions like *Bliss*.[469] However, in *Brooks*, the Supreme Court acknowledged pregnancy to be a condition that benefits the whole society and emphasized the need to accommodate pregnant women workers so as not to impose disproportionate costs of childbearing on women.[470] Additionally, Justice Abella in her report of the Royal Commission on Equality in Employment stressed the need to accommodate women's reproductive role to ensure for women equality of opportunity in employment.[471]

The workplace duty to accommodate is defined as a "[fundamental] legal obligation of employers to facilitate the inclusion of persons in a protected group".[472] It is a central component of the equality guarantee and freedom from discrimination.[473] As Michael Lynk notes: "Accommodation is a significant human rights obligation".[474]

The employer's legal duty to accommodate extends to accommodating pregnant women.[475] It imposes a positive obligation on employers to provide reasonable accommodations to pregnant employees to enable them to perform the essential functions

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[469] *Ibid*.
[470] For more discussion, see text accompanying note 446.
[471] For more discussion, see text accompanying note 272.
[472] See Daniel Huang, Shannon L. Wagner & Henry G. Harder, *Disability Management and Workplace Integration: International Research Findings*, ed by Thomas Geisen & Henry Harder (New York: Routledge, 2016) at 78.
[473] See M. David Lepofsky, "Understanding the concept of employment equity: Myths and Misconceptions" (1994) 2 Canadian Labour Law Journal 1 at 14.
[474] See Michael Lynk, "The duty to accommodate in the Canadian workplace: Leading principles and recent cases" (21 June 2008), online: <http://ofl.ca/wp-content/uploads/2008.06.21-Report-DutytoAccommodate.pdf> at 4.
[475] See *Heincke*, *supra* note 189 at para 49: The Ontario Board of Inquiry found that employers have a "duty to reasonably accommodate the special needs and circumstances…of pregnant worker[s]". See generally Janis Sarra, "Protecting workers' reproductive health: Lessons from Québec and other statutory regimes" (1995) 53:2 University of Toronto Faculty of Law Review 272 at 297: "The significance of [*Heincke's*] decision is the explicit recognition that employers have a duty to reasonably accommodate pregnant workers under the [Ontario *Human Rights Code*]."

of the job, unless accommodation imposes undue hardship.[476] While many women are physically capable to engage in paid employment throughout pregnancy, it can "sometimes impose real, if temporary, limitations on a woman's working capacity".[477] The workplace duty to accommodate "maximize[s] the opportunity for pregnant women to continue working despite the temporary physical effects of pregnancy".[478]

Reasonable accommodation of a pregnant employee may take the form of a temporary relocation to a different work location,[479] a flexible work schedule accommodating pregnancy-related medical appointments,[480] a flexible working arrangement allowing to work from home,[481] and can include assigning modified or light work duties,[482] permitting pregnant employees to sit periodically at the workstation,[483] relaxing requirements to dress in a particular way,[484] allowing to take longer and more frequent bathroom breaks,[485] or modifying work schedule to accommodate pregnancy-related symptoms.[486]

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[476] See *Kathy Hansen v Big Dog Express Ltd. and Jonathan Grant*, 2002 AHRC 18. In this case, the employer, on learning of the complainant's pregnancy, unilaterally reduced her work hours and subsequently terminated her employment. The Alberta Human Rights Panel ruled that the employer discriminated against the complainant because of her pregnancy and did not take steps to accommodate her to the point of undue hardship.

[477] Joanna L. Grossman, "Pregnancy, work, and the promise of equal citizenship" (2010) 98 The Georgetown Law Journal 567 at 579 [Grossman, "Pregnancy"].

[478] *Ibid* at 625.

[479] See *Kulvinderpal Sidhu v Broadway Gallery*, 2002 BCHRT 9 [*Sidhu*].

[480] See *Andrea Szabo v Cindy Dayman, operating as Take Time Home Clean & Life Style Services*, 2016 MBHR 2.

[481] See *Camilla Brown v PML Professional Mechanical Ltd. and Donald Wightman*, 2010 BCHRT 93.

[482] See *Julie Lord v Haldimand-Norfolk Police Services Board and Lee Stewart*, [1995] 23 C.H.R.R. D/500 (Ont Bd of Inq).

[483] See *Natasha Williams v Hudson's Bay Company/Zellers Inc., Brian Harrison and Derek Sampath*, 2009 HRTO 2168; *June Purres v London Athletic Club (South) Inc.*, 2012 HRTO 1758 [*Purres*].

[484] See *Sashy Arunachalam v Best Buy Canada Ltd., Carl Cacheiro and Romielyn Navasero*, 2010 HRTO 1880; *Nathalie Nadeau v Grievor and Deputy Head (Correctional Service of Canada)* (2014), 121 C.L.A.S. 88 (Canada Public Service Labour Relations Board).

[485] See *Michelle Holmes v Dr. James Findlay Inc.*, 2014 BCHRT 178; *Darlene Munro v I.M.P. Aerospace Components*, 2014 CanLII 41257 (NS Bd of Inq).

[486] See *Kimberly LaCouvee v Alchemy Studios Ltd. and Christopher Castle*, 2013 BCHRT 126.

Accommodation of a pregnant employee, however, does not mean "unilaterally impos[ing] changes to her employment in the form of reduced shifts and hours" when she is capable of working throughout the duration of her pregnancy.[487] Additionally, reasonable accommodation does not include substantially reducing the pregnant employee's work hours[488] or altering the employment status.[489] "Instead, accommodation should affect the employee's rights as little as possible."[490]

The Ontario Board of Inquiry in the 1996 case of *Juanita Crook v Ontario Cancer Treatment and Research Foundation and Ottawa Regional Cancer Centre*[491] underlined the importance of accommodating pregnant women workers to conclude that the failure or refusal to accommodate "imposes and reinforces economic and workplace disadvantage against women and sends the implicit message that they should bear the costs of pregnancy and childbirth".[492] It further ruled that women are "valued employees" entitled to accommodation of their pregnancy related-needs.[493]

Additionally, the consequences of not providing workplace accommodations to pregnant workers can be severe. For many of those employed in physically strenuous or hazardous jobs, lack of workplace accommodation could mean an early exit from the workplace. For women workers who qualify for paid or unpaid leave, employers' failure to provide reasonable accommodation will cause them to exhaust their leave, leaving less

[487] See *Amanda Bickell v The Country Grill*, 2011 HRTO 1333 at para 40.
[488] See *Purres*, *supra* note 483.
[489] See *Sidhu*, *supra* note 479. See also *Natalya Golovaneva v Atkinson Schroeter Design Group Inc.*, 2015 HRTO 1471.
[490] See Anneli LeGault, *Fairness in the Workplace*, 3rd ed (Toronto: CCH Canadian Limited, 2002) at 38.
[491] [1996] 30 C.H.R.R. D/104.
[492] *Ibid* at para 60.
[493] *Ibid*.

to use while physically recovering from giving birth or caring for the newborn.[494] And for others who fail to qualify for leave, lack of accommodation is "tantamount to termination".[495]

Therefore, accommodation of pregnancy-related needs allows women to equally participate in the workforce and to attain workplace equality. As Lara Gardner notes, if women need to give up motherhood to achieve workplace equality, it "is not true equality and it is not beneficial for anyone".[496]

Conclusion

Prior to the introduction of legal protections against workplace pregnancy discrimination, women remained significantly disadvantaged in the workplace. The arrival of the second-wave feminism brought with it the demands for a Royal Commission to examine women's role in Canadian society. The Commission highlighted the discriminatory employment practices that relegated women to second-class status in the labour market. Although the Commission's recommendations brought important legislative changes, individual women and feminist groups criticized the formal equality model endorsed by the Commission as being inadequate to achieve substantive equality for women.

Acknowledging the need to promote women's participation in the workforce, the federal government established the Royal Commission on Equality in Employment to promote equal employment opportunities by eliminating practices that result in systemic discrimination. The Commission adopted a substantive vision of equality to argue for

[494] Grossman, "Pregnancy", *supra* note 477 at 619.
[495] *Ibid*.
[496] See Lara M. Gardner, "A step toward true equality in the workplace: Requiring employer accommodation for breastfeeding women" (2002) 17 Wisconsin Women's Law Journal 259 at 289.

accommodation of women's reproductive functions so as to attain workplace gender equality.

The 1970s and the 1980s saw the emergence of legislative and judicial protections for women in the workplace like the introduction of maternity leave and human rights laws, and the legal recognition of pregnancy discrimination as a form of sex discrimination. Both the legislature and the judiciary played vital roles in providing pregnant women and new mothers partial legal rights to integrating childbearing and employment. Unquestionably, maternity leave laws have enabled women to retain workforce attachment while temporarily leaving for purposes of childbirth. Additionally, human rights statutes ended the long history of exclusionary and hostile policies towards pregnant workers. Despite these successes, the existing legal regime has fallen short of eliminating negative stereotypes that form the basis of subtle discrimination against pregnant women and new mothers. The next chapter examines how the parental leave policy in Canada by failing to disrupt the gendered patterns of parental leave taking has perpetuated traditional sex-role stereotypes that continue to impede women's workplace equality.

CHAPTER III

INSUFFICIENCY OF PROTECTIVE LEGAL FRAMEWORK AS A RESPONSE TO SUBTLE WORKPLACE DISCRIMINATION AGAINST PREGNANT WOMEN AND NEW MOTHERS

Introduction

The decades of the 1970s and the 1980s witnessed a dramatic change in the legal landscape for pregnant women and new mothers. The federal and provincial governments established a woman's legal right to combine motherhood and work by introducing job-protected, paid maternity leave. The enactment of human rights laws helped redefine traditional workplace practices that treated male and female workers differently on the basis of sex as discriminatory and illegal. The legislative and judicial clarification of pregnancy discrimination as constituting sex discrimination afforded the rights and protections available under anti-discrimination laws to pregnant workers.

The legal expansion of the concept of discrimination in Canadian law as comprising both intentional and adverse effect discrimination emphasized the importance of differential treatment as a means of achieving true workplace equality. The emergence of the employer's duty to accommodate within the context of human rights laws helped pregnant workers obtain reasonable workplace accommodations needed to stay on the job during pregnancy. Thus, both the legislative and judicial action signaled a move towards a substantive equality framework that helped eliminate some barriers to women's equal workforce participation.

Pregnant women and new mothers have significant legal workplace rights guaranteed to them under employment standards legislation and employment insurance legislation providing access to paid, job-protected maternity and parental leaves,[497] and human rights statutes offering protection against employment discrimination. Despite current legal protections, women still encounter subtle forms of pregnancy discrimination in the workplace.[498] Historically ingrained gender-role stereotypes and assumptions continue to restrict women from fully participating in the workforce and prevent them from achieving true equality in the public sphere.[499] Women in the workplace are still being penalized for their role as childbearers and caregivers. Taking maternity leave still hurts women's careers.[500] Indeed, many working women who choose to be mothers often

[497] Throughout this chapter, the terms parental leave and childcare leave are used interchangeably.

[498] See Deborah E. Prowse, *Workplace Review – Calgary Police Service* (November 2013), online: Calgary Police Service <http://www.calgary.ca/cps/Pages/Our-commitment-to-gender-equality.aspx> at 21-22: An internal workplace review of the Calgary Police Service has revealed claims of pregnancy discrimination made by women police officers. Some women officers reported they felt "their acceptance on the job ended at the point they became pregnant". Few women police officers were accommodated in a "safe environment" upon becoming pregnant, however, majority of women officers were placed in positions with "negative stigma" attached to them, or assigned duties below their abilities or "not particularly safe". Accommodations to pregnant officers were offered typically "without consideration of their interests, aspirations and performance and with no alternatives". Many women police officers felt they were punished for becoming pregnant when they sought accommodations with their "good performance" being "disregarded or devalued" or their "career goals [being] put on hold if not terminated". Most women police officers described the "negative impact" discriminatory practices had on their morale and the consequent "emotional stress" they faced at an already stressful time. The report described the lower morale and stress as "a source of long term damage" to the employee's relationship with human resources department and with the organization. Both male and female police officers reported that their maternity and paternity leaves and accommodation "negatively impacted their eligibility for promotion". Female police officers reported experiencing difficulties returning to work from maternity leave due to lack of "organized support". Some women noted that their request to return to work on a part-time basis was challenged with stereotypical statements that questioned their commitment to job. Women commonly reported that the absence of support on return to work made them feel as if "they had no choice but to resign". The report highlighted the absence of "a concerted effort to retain women and to support their career development during childbearing/child-raising years".

[499] See also Task Force on Barriers to Women in the Public Service, Beneath the Veneer: The Report of the Task Force on Barriers to Women in the Public Service (Report and Recommendations) (Ottawa: Minister of Supply and Services Canada, 1990) vol 1 at 60 (the report found that the most significant barriers faced by women in the federal public service are stereotypical attitudes towards women, corporate culture where such stereotypes flourish unabated, and difficulty balancing work and family responsibilities).

[500] See Davidoff, *supra* note 451; Leah Eichler, "Like it or not, maternity leave hurts your career", *The Globe and Mail* (14 October 2011) online: The Globe and Mail <http://www.theglobeandmail.com/>;

find themselves sidelined onto the "mommy-track" with diminished opportunities for career advancement.[501] The gender wage gap continues to exist,[502] and the glass ceiling persists — women still remain underrepresented in the top echelons of leadership and management.[503]

Though maternity leave and parental leave policies, instances of "measures within a substantive equality framework", are "intended to neutralize disadvantages and guarantee women's participation in the labor market", these work-family policies "indirectly reinforce biological differences, reify social expectations and drive women to lower paying work categories while encouraging their economic dependence on men".[504] These policies indirectly reinforce traditional sex-role stereotypes that relegate women to the private domain and confine them primarily to the roles of mother and homemaker.[505]

Work-family policies affect male and female workers differently because of inevitable biological differences since it is only women who get pregnant, and socially

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Tamsin McMahon, "Is maternity leave a bad idea?", *Maclean's* (20 January 2014) online: Macleans.ca <http://www.macleans.ca/>; Deborah Aarts, "The subtle ways taking maternity leave still hurts women's careers", *Canadian Business (Blogs & Comment)* (14 December 2015) online: Canadian Business <http://www.canadianbusiness.com/>. See also Nicole Brockbank, "Toronto woman hid pregnancy for fear of losing out on promotion", *CBC News* (7 June 2016) online: CBC News <http://www.cbc.ca/news>.

[501] For more discussion, see text accompanying notes 27 and 450. The legal profession is just one example where motherhood imposes significant "career costs" on women lawyers although this trend holds true for women in many other professions.

[502] See Solomon Israel, "StatsCan on gender pay gap: Women earn 87¢ to men's $1", *CBC News* (8 March 2017) online: CBC News <http://www.cbc.ca/news>.

[503] See Marina Glogovac, "The challenge for women to smash the glass ceiling", *The Globe and Mail* (7 March 2016) online: The Globe and Mail <http://www.theglobeandmail.com/>; Pete Evans, "'It's either overt or covert hostility': Why only 2 women made list of 100 highest-paid CEO's", *CBC News* (4 January 2017) online: CBC News <http://www.cbc.ca/news>; Jennifer Brown, "Study shows law firm senior leadership still largely white and male", *Canadian Lawyer* (17 January 2017) online: Canadian Lawyer <http://www.canadianlawyermag.com/>; "Women's glass ceiling remains", *CBC News* (31 August 2011) online: CBC News <http://www.cbc.ca/news>; Yvonne Zacharias, "Women execs believe glass ceiling still an impediment in Canada: study", *Vancouver Sun* (12 December 2012) online: Vancouver Sun <http://vancouversun.com/>; Tara Carman, "Glass ceiling still in place for public sector employees", *Vancouver Sun* (17 October 2016) online: Vancouver Sun <http://vancouversun.com/>; Saturnin Ndandala, "Breaking through the glass ceiling in Canadian Higher Ed", *Inside Higher Ed* (13 September 2016) online: Inside Higher Ed <https://www.insidehighered.com/>.

[504] See Alwis, *supra* note 155 at 305-06.

[505] *Ibid*.

constructed gender roles that assign women the principal responsibility for child-nurturing. This chapter argues that the current work-family policies have, by discounting women's lived realities, served to perpetuate the negative gendered stereotypes that particularly disadvantage women.

Parental leave in Canada, being gender-neutral, is available to both parents, whether same-sex or opposite-sex. Despite its accessibility to either parent, "mothers in Canada tend to use parental leave benefits more often and for longer durations than fathers".[506] This leave-taking behaviour of men and women is partly fuelled by deeply entrenched social norms about appropriate gender roles: "women as primary caregivers and men as primary breadwinners".[507]

Due to women in Canada being primary takers of childcare leave, the parental leave policy reinforces the belief that mothers are the "ideal" primary caregivers of children.[508] Furthermore, these leave-taking patterns among men and women validate employers' assumptions about women's lack of commitment to the paid work, and construct men as the "ideal worker".[509] The parental leave policy, being gender-neutral, fails to challenge the prevailing work-family structure that places women at a disadvantaged position to men both in the public and the private worlds. Although intended to help parents reconcile work-family responsibilities, the parental leave policy

[506] See Hawkins, *supra* note 25 at 57.
[507] See Andrea Doucet, "Dad and baby in the first year: Gendered responsibilities and embodiment" (2009) 624 The Annals of the American Academy of Political and Social Science 78 at 88.
[508] See generally Lindsay R. B. Dickerson, "'Your wife should handle it': The implicit messages of the Family and Medical Leave Act" (2005) 25 Boston College Third World Law Journal 429 at 431.
[509] See *ibid* at 443-44, 439.

instead works to "perpetuate the underlying stereotypes that are the basis of workplace discrimination".[510]

Part I of this chapter examines how the parental leave policy has failed to disrupt the gendered leave-taking patterns. It then analyses how these leave-taking patterns reinforce gendered parenting norms, thereby perpetuating harmful sex-role stereotypes that limit women's participation in the work world and men's participation in the domestic world. Part II of this chapter suggests Québec's paternity leave policy as a model for the rest of Canada that values the role of fathers in caregiving, and that may potentially alter the gendered caregiving patterns. Providing gender-specific leaves would allow both parents to equally engage in parenting and paid employment, thus, achieving true gender equality.

Part I – Inadequacy of Parental Leave Policy to Challenge Gendered Patterns of Parental Leave-taking

A. Canadian Legislative Context of Work-Family Policies

In Canada, work-family policies[511] designed to help parents combine work and family responsibilities are composed of several components. The federal, provincial and

[510] See generally Alison A. Reuter, "Subtle but Pervasive: Discrimination against mothers and pregnant women in the workplace" (2005) 33:5 Fordham Urban Law Journal 100 at 135.

[511] Work-family policies, like maternity and parental leaves, flexible work scheduling and work locations, and breastfeeding breaks, benefit both employers and employees. These policies enable employers to retain staff, reduce employee turnover and recruitment costs, and increase employee morale and productivity while facilitating employees to reconcile their work and family duties. See Nancy Papalexandris & Robin Kramar, "Flexible working patterns: Towards reconciliation of family and work" (1997) 19:6 Employee Relations 581 at 593.

territorial employment standards laws[512] establish the legal right of employees to job-protected, unpaid maternity and parental leave. The duration of maternity and parental leave is reasonably standard across jurisdictions with maternity leave ranging from 15 weeks to 18 weeks and parental leave, available to either parent, from 34 weeks to 37 weeks. The total length of combined maternity and parental leave is, however, capped at 52 weeks.

Employment standards legislation in all jurisdictions protects the employee's right to return to the former position or comparable position with same wages and benefits upon completion of maternity or parental leave.[513] Additionally, all jurisdictions guarantee protection from dismissal or other forms of reprisal because of pregnancy, maternity or parental leave.[514] Some jurisdictions also grant pregnant and nursing workers a right to temporary reassignment or modification of work duties and functions if an employee's pregnancy interferes with her ability to perform the job, or if the job functions pose health risks to herself or to her unborn or nursing child.[515] Furthermore, human rights laws protect the labour market position of expectant and new parents by providing them protection against workplace discrimination.

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[512] Employment standards legislation sets the minimum standards that employers are required to meet for the purpose of establishing employment conditions. Labour standards legislation at the federal level is the *Canada Labour Code*, RSC 1985, c L-2. Other employment relationships are governed by provincial and territorial labour standards legislation like the Alberta *ESC*, *supra* note 85, Ontario *Employment Standards Act*, SO 2000, c 41, British Columbia *Employment Standards Act*, RSBC 1996, c 113, *The Saskatchewan Employment Act*, SS 2013, c S-15.1, etc.

[513] See Jane Pulkingham & Tanya Van Der Gaag, "Maternity/Parental Leave Provisions in Canada: We've come a long way, but there's further to go" (2004) 23:3/4 Canadian Woman Studies/Les Cahiers de la Femme 116 at 117, 121.

[514] See Meehan, *supra* note 326 at 218.

[515] The federal legislation stipulates provisions for reassignment and modification of job duties of pregnant and nursing employees whereas the Saskatchewan legislation makes provision for reassignment of pregnant workers. In Québec, the occupational health and safety legislation provides pregnant workers right to protective re-assignment if the job duties are physically hazardous to their health or the health of their unborn child (see generally Sarra, *supra* note 475).

While on maternity and parental leave, the federal *Employment Insurance Act*[516] makes provision for income replacement benefits.[517] Biological mothers, who need to be absent from work because of pregnancy and childbirth, can claim maternity benefits for a maximum of 15 weeks.[518] Biological parents, who need time away from work to care for a newborn child, can claim parental benefits of up to 35 weeks.[519] When combined, a total of 50 weeks of benefits are available to qualifying working parents in the case of childbirth. Both maternity and parental benefits are payable to "major attachment" claimants at 55% of the claimant's previous earnings.[520]

These federal and provincial work-family laws help parents balance work and family domains. Statutory entitlement of employees to paid maternity and parental leave "reflect[s] an increasing acknowledgement of the importance of childbearing and parenting as legitimate interests to be protected and accommodated in the relations between employer and employee".[521]

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[516] *EI Act*, *supra* note 344. The employment insurance program is entirely financed by employer and employee contributions.

[517] The Supreme Court of Canada in *Reference Re Employment Insurance Act (Can.), ss. 22 and 23*, [2005] 2 SCR 669 upheld the constitutionality of maternity and parental benefits provided under Sections 22 and 23 of the *EI Act*. The Court stated: "The context in which the [maternity benefits] provision was enacted, and its language and effect, bring to light the pith and substance, or essential characteristic, of the benefits: they replace the employment income of insured women whose earnings are interrupted when they are pregnant…[and] parental benefits like maternity benefits, are in pith and substance a mechanism for providing replacement income when an interruption of employment occurs as a result of the birth or arrival of a child" (*ibid* at 687, 701).

[518] *EI Act*, *supra* note 344, s 12(3)(a).

[519] *Ibid*, s 12(3)(b). In 2001, the federal government generously expanded the parental leave benefits program introduced in 1990 from 10 weeks to 35 weeks. See Patricia M. Evans, "Comparative perspectives on changes to Canada's paid parental leave: Implications for class and gender" (2007) 16 International Journal of Social Welfare 119 at 121.

[520] *EI Act*, *supra* note 344, ss 22(1), 23(1), 17. The *Act* defines major attachment claimant as "a claimant who qualifies to receive benefits and has 600 or more hours of insurable employment in their qualifying period" (*ibid*, s 6(1)).

[521] *Barrie (City) v Canadian Union of Public Employees Local 2380* (1994), 40 LAC (4th) 168 at para 34 (Ontario Labour Arbitration).

Since familial responsibilities have traditionally been "women's work",[522] prior to the introduction of maternity and parental leave programs in Canada, "having a child signaled the end of workforce participation for many of the women who could financially afford to withdraw".[523] The enactment of maternity and parental leave legislation has helped mothers to continue to participate in the labour market while engaging in caregiving roles.

The parental leave legislation has provided both parents the much-needed leave to care for a newborn along with the "flexibility" to share the leave at their discretion. As honorable senator Mahovlich noted in the year 2000: "[The legislation enables] more flexibility for parents to decide whether one or both of them will spend time at home with their new child".[524] Yet, despite both parents having the legal right to use parental leave, mothers continue to primarily use it.[525] The parental leave policy has thus failed to challenge the gendered notions of care that have historically excluded women from workforce and men from caregiving, in turn, perpetuating gender inequalities both in the workplace and at home.

B. Inadequacy of Parental Leave Legislation to Remedy Gendered Participation in Parental Leave Programs

[522] See Nancy E. Dowd, "Work and family: Restructuring the workplace" (1990) 32 Arizona Law Review 431 at 451 [Dowd, "Work"]. The author argues that gender, class and race are "powerful determinants…of family, work, and the family-work relationship…[that] frame the way we actually experience family and work" (*ibid*).
[523] See Hawkins, *supra* note 25 at 58.
[524] See *Debates of the Senate*, 36th Parl, 2nd Sess, No 138 (13 June 2000) at 1580 (Hon Francis William Mahovlich).
[525] See text accompanying notes 527 and 528.

Although the parental leave is available to both parents, in reality, women in Canada "tend to use parental leave benefits more often and for longer durations than fathers".[526] In the year 2014, the Employment Insurance Coverage Survey reported that 89 percent of recent mothers with insurable employment received maternity or parental benefits, compared with only 27.1 percent of recent fathers who used or intended to use parental leave.[527] Similarly, according to the 2010 Survey of Young Canadians, 90 percent of Canadian mothers took time off work to care for a child following birth with the length of their leave averaging approximately 44 weeks compared to 2.4 weeks for fathers.[528] As long as women remain the primary parental leave-taker, these gendered leave-taking patterns will reproduce "the traditional division of roles and the economic inequalities between men and women".[529]

Several reasons may help explain the gender differences in parental leave take-up rates, such as the wage gap between men and women, persistence of gendered parenting norms, and "the emphasized importance of breastfeeding in the first year".[530] Unfortunately, women in Canada continue to earn less than men.[531] In that regard, Patricia Evans argues that "the generally lower wages that women receive means that mothers, as a group, will continue to claim parental leave far more often and for much

[526] See Hawkins, *supra* note 25 at 57.
[527] "Employment Insurance Coverage Survey, 2014", *The Daily* (23 November 2015) online: Statistics Canada <http://www.statcan.gc.ca/daily-quotidien/151123/dq151123b-eng.pdf> at 3 ["EI Survey"].
[528] Leanne C. Findlay & Dafna E. Kohen, "Leave practices of parents after the birth or adoption of young children" (30 July 2012), online: Canadian Social Trends (Statistics Canada) <http://www.statcan.gc.ca/pub/11-008-x/2012002/article/11697-eng.pdf> assessed 29 October 2016 at 3, 11 (a survey of young Canadians that examined the leave patterns of parents after birth or adoption of young children).
[529] See Diane-Gabrielle Tremblay, "More Time for Daddy – Québec leads the way with its new parental leave policy" (2009) 18:3 Our Schools Our Selves (The Canadian Centre for Policy Alternatives) 223 at 224.
[530] See Hawkins, *supra* note 25 at 57.
[531] See Israel, *supra* note 502.

longer period than do fathers".[532] Similarly, Martin Malin identifies financial considerations as a barrier to paternal involvement in parental leave.[533] Indeed, the gender earnings gap between parents translates into "an economically rational decision for the mother to stay home with the newborn while the father continues to work".[534] In fact, a Canadian study found that a father's decision to take parental leave is influenced by income levels of both parents and that some families consider whose income reduction will be higher before deciding which parent claims parental benefits so as to minimize loss of family income.[535] Since parental benefits in Canada are paid at a replacement rate of 55 percent of claimant's earnings and as the wage difference between men and women remains, it is more likely that women would continue to claim the bulk of parental leave.

In addition to financial concerns, "workplace hostility" is the other "more formidable barrier" that precludes fathers from taking parental leave.[536] The workplace opposition men encounter when seeking accommodation of their childcare responsibilities could be linked to culturally embedded gender roles of men as secondary caregivers and women as secondary breadwinners.[537] The persistence of social norms regarding traditional gender roles "may dictate how mothers and fathers approach parental leave".[538] As a study conducted in Canada found that fathers' decision to take childcare leave "was influenced by the displayed or expected responses of bosses and

[532] See Patricia Evans, *supra* note 519 at 126.
[533] Martin H. Malin, "Fathers and Parental Leave Revisited" (1998) 19 Northern Illinois University Law Review 25 at 37.
[534] See generally *ibid* at 37-38.
[535] See Katherine Marshall, "Fathers' use of paid parental leave" (June 2008), online: Statistics Canada <http://www.statcan.gc.ca/pub/75-001-x/2008106/pdf/10639-eng.pdf> at 10-11 (the author uses the 2006 Employment Insurance Coverage Survey results to study father's use of paid parental leave in Québec and other Canadian provinces).
[536] Malin, *supra* note 533 at 39.
[537] See Dickerson, *supra* note 508 at 439-40.
[538] See Hawkins, *supra* note 25 at 58.

work colleagues, as well as extended family and community peers…[and] that with rare exceptions, employers did not expect or encourage fathers to take some or any leave".[539]

Also, as "[i]nvolvement of fathers in family and carework runs counter to the principles of traditional masculinity, consequently, fathers requesting leave from work to fulfill family roles [are] generally discouraged".[540] Whereas mothers typically do not encounter such problems, and are generally "able to draw on traditional gender norms as a bargaining tool in negotiating both with fathers and with their employers to achieve their desire to stay home to care for children".[541]

Similarly, Ankita Patnaik pinpoints the existence of "stigma cost" to define impediments to fathers' parental leave-taking: financial considerations, hostile workplace attitudes, fear of damage to careers, and social and psychological factors such as "personal distaste" for childcare and socially constructed traditional gender roles that "push men to see themselves as the primary breadwinner who must prioritize paid work".[542] Due to absence of father involvement in childrearing responsibilities, it primarily remains the mother's duty.

Furthermore, these deeply entrenched traditional gender norms "continue to exert a strong influence" in shaping parents' decisions about parental leave taking.[543] As reported in a Canadian case study: "[T]he decision-making patterns of heterosexual

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[539] Lindsey McKay & Andrea Doucet, "'Without taking away her leave': A Canadian case study of couples' decisions on fathers' use of paid parental leave" (2010) 8:3 Fathering: A Journal of Theory, Research, and Practice about Men as Fathers 300 at 311.
[540] See Hawkins, *supra* note 25 at 58.
[541] See McKay & Doucet, *supra* note 539 at 311, 314.
[542] Ankita Patnaik, "Reserving time for daddy: The short and long-run consequences of fathers' quotas" (Paper delivered at the Department of Economics, Cornell University, 29 September 2014), online: <http://www.economics.illinois.edu/seminars/documents/Ankita.pdf> at 8, 11 (a recent study examining the Québec's paternity leave and its effect on father's participation in paid parental leave programs).
[543] McKay & Doucet, *supra* note 539 at 314.

couples took place within the context of the social norms, ideologies and networks around them which still held predominantly traditional notions of who ought to be caring for infants and who ought to be on the career track".[544] For these numerous reasons, women continue to remain the primary takers of childcare leave. The parental leave policy in Canada does nothing to challenge the gendered patterns of parental leave taking, thereby effectively reinforcing gendered caretaking patterns that have traditionally confined women to caregiving roles, and placed them at a disadvantaged position in the paid workforce.

Because the "early phase of parenting…can entrench women and men into long-standing gender differences in their parenting and employment opportunities", parental leave policies play a major role in determining the status of men and women at work and at home.[545] As the parental leave policy in Canada fails to disrupt the gendered patterns of caregiving, it works to ensure that the burden of childrearing continues to fall on women. Further, the policy may serve to undermine the position of women in the labour market.

Since parental leave in Canada "translates into a kind of extended maternity leave" for women,[546] women's prolonged absence from work has the potential to negatively impact their careers.[547] Additionally, women's continued presence at home

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[544] *Ibid* at 311.
[545] See Doucet, *supra* note 507 at 93.
[546] See Tremblay, *supra* note 529 at 224.
[547] Several international studies show that extended maternity leave may hurt women's chances of progressing in their careers. See Anita Nyberg, "Parental leave, public childcare and the dual earner/dual carer-model in Sweden" (Discussion Paper delivered at the Peer Review meeting, Stockholm, 19-20 April 2004), online: <http://pdf.mutual-learning-employment.net/pdf/sweden04/disspapSWE04.pdf> at 17-18 (a study conducted in Sweden found that although generous parental leave provisions increased women's labour force participation and workforce attachment, they resulted in an extremely gender-segregated labour market with fewer women progressing to higher positions); Francine D. Blau & Lawrence M. Kahn,

following childbirth is likely to make them more adept at childcare, or even if not, is likely to create a perception of them being more competent caregivers.[548] As a result, women are likely to engage in "maternal gatekeeping" that may discourage paternal participation in childcare duties.[549] Furthermore, financial concerns and less supportive workplace culture may constrain father involvement in childrearing, thereby, causing many women to assume disproportionate caregiving duties.[550]

The lack of paternal involvement in caregiving "remain[s] a major barrier to women's roles in the workplace".[551] As women continue to shoulder the disproportionate burden of childrearing responsibilities, they are consequently more likely to experience children related career interruptions.[552] In contrast, men continue to focus on their careers unfettered by parental duties.[553]

As the time following childbirth is "a critical period in shaping both men's and women's perceptions of parental competence and determining the long-term division of childrearing responsibilities" and as most women "almost automatically" take leave

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"Female labor supply: Why is the United States falling behind?" (2013) 103:3 American Economic Review: Papers & Proceedings 251 at 255 (a recent study conducted in the United States found that generous parental leave policies might encourage women's participation in part-time employment and lower level positions and that such policies may also lead employers to statistically discriminate against women by denying them consideration for higher-level positions); Uta Schönberg & Johannes Ludsteck, "Maternity leave legislation, female labor supply, and the family wage gap" (March 2007) online: <http://ftp.iza.org/dp2699.pdf> at 30-32 (a study conducted in Germany found that extension in maternity leave coverage delayed women's return to work and that long maternity leaves carried a wage penalty).

[548] Malin, *supra* note 533 at 37.

[549] Sarah J. Schoppe-Sullivan et al, "Maternal gatekeeping, coparenting quality, and fathering behavior in families with infants" (2008) 22:3 Journal of Family Psychology 389; Jerry L. Cook et al, "Revisiting men's role in father involvement: The importance of personal expectations" (2005) 3:2 Fathering: A Journal of Theory, Research, and Practice about Men as Fathers 165.

[550] See text accompanying notes 534 and 540.

[551] Malin, *supra* note 533 at 32.

[552] *Ibid*.

[553] Keith Cunningham-Parmeter, "(Un)equal protection: Why gender equality depends on discrimination" (2015) 109 Northwestern University Law Review 1 at 4.

following birth, they still assume the lion's share of "long-term" childrearing duties.[554] Additionally, women's ongoing family responsibilities may make it more challenging for them to perform as "ideal workers".[555] Workplace norms that define an "ideal worker" as "a worker who is resolutely committed, flexible, singularly focused on their job and unencumbered by child bearing or child rearing" construct women's roles of mother and worker being diametrically opposite.[556]

Women's continued caregiving obligations create a perception of them as "secondary workers" with "minor commitment" to paid work.[557] Employers reasonably presume that their workers would observe traditional gender roles and that women would leave the paid workforce, at least temporarily, to have children.[558] As a result, all workingwomen, whether or not they have the intention of becoming pregnant, suffer from "maternal profiling" whereby employers perceive women as "riskier hires" likely to reduce their workplace commitment on bearing children and eventually exiting the labour market.[559]

Given the fact that women in Canada predominantly take parental leave, many employers are likely to assume that mothers are less committed to paid employment. The presence of such stereotypes perpetuates discrimination against pregnant workers and mothers. Social science research suggests that discrimination against both expectant and

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[554] See Joanna L. Grossman, "Job security without equality: The Family and Medical Leave Act of 1993" (2004) 15 Washington University Journal of Law & Policy 17 at 30-31 [Grossman, "Job"].
[555] Hawkins, *supra* note 25 at 56.
[556] Reginald A. Byron & Vincent J. Roscigno, "Relational power, legitimation and pregnancy discrimination" (2014) 28:3 Gender & Society 435 at 439.
[557] Patricia Evans & Norene Pupo, "Parental leave: Assessing women's interests" (1993) 6 Canadian Journal of Women and the Law 402 at 408. See also Task Force on Barriers to Women in the Public Service Report, *supra* note 499 at 62. The Task Force Commissioners found persistence of a "belief that men do serious work to support their families, while women undertake trivial tasks for pin money" (*ibid*).
[558] See Dickerson, *supra* note 508 at 443-44.
[559] Cunningham-Parmeter, *supra* note 553 at 5 (describing this form of bias as "statistical discrimination").

new mothers appears to be driven by stereotypical assumptions about them being "less competent and committed to their job, which is presumed to result in increased absenteeism and quitting".[560]

As the parental leave legislation in Canada has served to support gendered caregiving roles, it "perpetuates the belief and stereotype that women are less committed to the workplace, because her focus is on the home".[561] Since "discrimination can take the form of stereotyping", the leave policy perpetuates workplace discrimination against women.[562] Laws "shape and reinforce work-family structure."[563] As the gender-neutral parental leave policy fails to challenge the deeply ingrained gendered parenting norms, it reinforces the work and family structure built on traditional gender roles and stereotypes that specifically disadvantage women.

Part II – Paternity Leave: Towards a Gender Egalitarian Society

Given the reality of gendered allocation of parenting roles, dedicated leave for fathers (or co-parents) may help facilitate co-parenting and possibly "a more egalitarian distribution of work and family responsibilities".[564] In 2006, Québec became the first (and the only) province in Canada to go beyond the federal parental leave scheme to introduce a more generous leave program with father-targeted leave. In Québec, employees are entitled to five-week, non-transferable, job-protected, paid paternity leave in addition to parental

[560] Byron & Roscigno, *supra* note 556.
[561] See Dickerson, *supra* note 508 at 443.
[562] See Alwis, *supra* note 155 at 313.
[563] Dowd, "Work", *supra* note 522 at 469.
[564] See Nancy E. Dowd, "Women's, men's and children's equalities: Some reflections and uncertainties" (1997) 6 South California Review of Law and Women's Studies 587 at 596.

leave.[565] Compared with the federal parental leave policy, the Québec policy provides fathers an exclusive paternity leave with benefits paid at higher wage replacement rates.[566] While "[n]o perfect or single solution exists to eliminate the gendered patterns of [parental] leave-taking" and nurturing that reinforce women's subordination in the public sphere, the Québec's parental leave policy can serve as a model for the nation.[567]

A non-transferable, paid paternity leave can challenge stereotypes of women as primary caregivers because it will incentivize fathers to participate in childcare while making it easier for women to engage in paid work.[568] Given the fact that employers are likely to engage in maternal profiling because female workers are the predominant takers of parental leave,[569] if both parents equally participate in parental leave programs, employers are likely to "perceive male and female employees as equally (un)attractive", thereby, diminishing "employers' stereotypical views about women's commitment to work and their value as employees".[570] In other words, if both fathers and mothers present the "same risk" of taking leave to care for a child, it would likely paint "nearly *every* employee of childbearing age…[at] a risk of early career interruptions to

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[565] *Act respecting Labour Standards*, RSQ c N-1.1, ss 81.2, 122: Québec's Act respecting labour standards contains provisions concerning paternity leave that entitles fathers to five weeks of job-protected, unpaid paternity leave.
Paternity leave in Québec is payable at a replacement rate of 70 percent of previous earnings. Québec manages the maternity and parental leave benefits under the Québec Parental Insurance Plan (QPIP) regulated by *Act respecting Parental Insurance*, *supra* note 353. Paternity benefits are calculated under s 18(1).
[566] See Findlay & Kohen, *supra* note 528 at 7. While parental leave is available to both parents, only fathers can claim paternity leave in the same fashion as mothers claim maternity leave.
[567] See generally Dickerson, *supra* note 508 at 447.
[568] See generally *ibid*. See also Elina Pylkkänen & Nina Smith, *Career interruptions due to parental leave: A comparative study of Denmark and Sweden* (Paris, OECD Publications Service, 2003) at 30. The study analyzing the impact of parental leave policies of Denmark and Sweden on women's career interruptions due to childbirth found that father's participation in parental leave programs played a significant role in women's return to employment; the longer the father's leave, the shorter the career break for the mother.
[569] See text accompanying note 559.
[570] See Grossman, "Job", *supra* note 554 at 18, 28.

employers," thus, challenging underlying stereotypes that inform discrimination against women workers.[571]

Father-targeted leave will help "equalize the burdens" of caregiving responsibilities within the household, and alter gendered parenting norms.[572] As Keith Cunningham-Parmeter, an academic who has written widely on work-family policy and employment discrimination, notes: when fathers stay home with their children even for relatively brief periods of time, it triggers "tectonic shifts" both at work and at home – mothers "spend more time in paid work, earn higher wages, and advance in their careers" while leave-taking fathers "perform a greater share of housework and spend less time at the office long after their parental leave ends".[573] Likewise, as Patnaik, an economist, in her recent study on Québec's paternity leave program found that small alterations in initial allocation of parenting duties had a "large and persistent impact on gender dynamics within households", and that exposure to the program "moved households towards a dual-earner, dual-caregiver model wherein fathers and mothers contribute more equally to home and market production".[574]

Dedicated leave for fathers will provide men "a bargaining tool with their employers to assert their right to take leave".[575] A "daddy-only" label can play a significant role in influencing fathers' participation in parental leave programs because it "establishes a father's individual right to leave, removes the need to negotiate with his

[571] Cunningham-Parmeter, *supra* note 553 at 49 [emphasis in the original].
[572] See generally Grossman, "Job", *supra* note 554 at 18.
[573] Cunningham-Parmeter, *supra* note 554 at 6. See Patnaik, *supra* note 542 at 3-5.
[574] Patnaik, *supra* note 542 at 4-5.
[575] McKay & Doucet, *supra* note 539 at 313.

wife, and improves his bargaining position with employers and co-workers who may be more sympathetic to him using leave specifically designated for him".[576]

Additionally, a non-transferable ("use-or-lose") leave entitlement for fathers can encourage men to utilize leave because leave time not used by them will mean time and insurance benefits lost to their families.[577] Likewise, the "use-it-or-lose-it" model offered in Québec has had a profound impact on the proportion of fathers claiming paternity benefits, with most Québécois fathers embracing paternity leave.[578] Also, national research indicated that Québec fathers took longer periods of parental leave than fathers in the rest of Canada.[579]

Furthermore, "daddy quotas" will send a clear indication to men that "paternal leave-taking is valued and encouraged".[580] Such quotas, as Patnaik argues, may help "reduce social stigma against [fathers] taking leave and possibly even introduce stigma against those who do not utilize this generous opportunity to spend time with their children".[581] In the words of Cunningham-Parmeter: "Fatherhood bonuses would not only

[576] Patnaik, *supra* note 542 at 4, 8.
[577] Janet C. Gornick & Marcia K. Meyers, "Creating gender egalitarian societies: An agenda for reform" (2008) 36:3 Politics & Society 313 at 331.
[578] See McKay & Doucet, *supra* note 539 at 317 (discussing that non-transferable paternity leave for fathers makes a "significant difference", with more fathers using leave). See also Findlay & Kohen, *supra* note 528 at 8; Marshall, *supra* note 535 at 8; EI Survey, *supra* note 527 (the 2014 Employment Insurance Coverage Survey found that the introduction of the Québec plan in 2006 has had a "major impact" on the proportion of fathers who claimed or intended to claim parental benefits as the number of fathers in Québec who used or intended to use parental leave almost tripled since the introduction of the QPIP, from 27.8 percent in 2005 to 78.3 percent in 2014 whereas the proportion of fathers, elsewhere in Canada, who took or intended to take parental leave reduced from 12.2 percent in 2013 to 9.4 percent in 2014).
[579] See Findlay & Kohen, *supra* note 528 at 6 (Québec fathers on average took paid leave for 5.5 weeks to care for a child following birth or adoption whereas fathers elsewhere in Canada took 1.7 weeks).
[580] Gornick & Meyers, *supra* note 577.
[581] Patnaik, *supra* note 542 at 8.

combat gender norms that limit women's opportunities, they would expand the realm of 'acceptable' behavior for men as well."[582]

As alleviating one of the main barriers (lack of workplace support) that keep men from fully utilizing the parental leave program will enable fathers to participate in the leave program, another possible approach to supplementing their participation could include increasing the income-replacement rates. As men in Canada still earn more than women, it often makes more monetary sense for mothers to claim majority of parental leave. Although high wage replacement levels in and of itself would not ensure equal participation of both parents in parental leave programs,[583] research indicates that high replacement levels result in generally greater paternal participation.[584] Notably, countries that offer fathers non-transferable leave entitlement with high-income replacement rates report highest paternal participation.[585] As is rightly stated: "To promote fathers' take-up of parental leave, financial support has to be combined with a reserved period of leave as basic building blocks for starting to shift the existing gender division of labour."[586] Therefore, a legislated father-targeted, paid leave will help promote an uptake of parental leave among men.

Besides, paternity leave will provide fathers "an earlier opportunity to be actively involved in their child's rearing".[587] Paternal involvement in childcare benefits children

[582] Cunningham-Parmeter, *supra* note 553 at 56.
[583] See generally Evans, *supra* note 519 at 126.
[584] See Hawkins, *supra* note 25 at 63.
[585] Marshall, *supra* note 535 at 6 (parental leave take-up rates among fathers are highest in Nordic counties with Sweden topping the list at 90 percent participation rate, closely followed by Norway with 89 percent and by Iceland with 84 percent).
[586] Dominique Anxo et al, *Parental leave in European companies: Establishment Survey on Working Time 2004-2005* (Luxembourg: Office for Official Publications of the European Communities, 2007) at 42.
[587] Spencer H. Larche, "Pink-shirting: Should the NCAA consider a maternity and paternity waiver?" (2008) 18:2 Marquette Sports Law Review 393 at 404.

and women, the men themselves, and society in general. Research suggests that positive father parenting leads to better cognitive and emotional development among young children.[588] Father involvement with children will facilitate women to engage in paid labour by easing their burdens of childrearing duties.[589] Men's involvement in childcare and domestic responsibilities results in healthier marital relationships.[590] Research indicates that men's involvement in parenting children, accompanied with longer parental leaves, can have positive effects on fathers' physical and mental health.[591] Also, fathers' involvement with their children will make them more competent at caregiving, and allow them to assume the role of "primary caregiver" thereby diminishing sex-role stereotypes that form the basis for discrimination against mothers in the workplace.[592] Indeed, encouraging men's participation in carework would help facilitate equal parenting and further gender equality both at work and at home.

Finally, equally important is that paternity leave must account for different family structures, such as same-sex couple families and single-parent families. Over the recent years, Canada has seen a striking increase in the proportion of families headed by single parents and same-sex partners.[593] Recognizing non-traditional family structures and considering the significance of the issue, many jurisdictions with father-targeted leave

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[588] Natasha J. Cabrera, Jacqueline D. Shannon & Catherine Tamis-LeMonda, "Fathers' influence on their children's cognitive and emotional development: From Toddlers to Pre-K" (2007) 11:4 Applied Developmental Science 208 at 212.
[589] See Cunningham-Parmeter, *supra* note 553 at 56.
[590] Adam M. Galovan et al, "Father involvement, father-child relationship quality, and satisfaction with family work: Actor and partner influences on marital quality" (2014) 35:13 Journal of Family Issues 1846.
[591] Janet Shibley Hyde et al, "Parental leave: Policy and research" (1996) 52:3 Journal of Social Issues 91 at 103.
[592] See Dickerson, *supra* note 508 at 447-48.
[593] Statistics Canada, "Portrait of families and living arrangements in Canada: Families, households and marital status, 2011 Census of Population" (September 2012), online: <http://www12.statcan.gc.ca/census-recensement/2011/as-sa/98-312-x/98-312-x2011001-eng.pdf> at 3.

provisions have extended leave benefits to a broad range of parental arrangements.[594] In Québec, lesbian co-mothers can claim the five-week leave benefit in the same fashion as fathers in heterosexual families.[595] Indeed, the parental leave policy should acknowledge "the diverse landscape of child-rearing environments" and "maximize the number of sexes and sexual orientations associated with family leave, thereby diluting the gendered nature of leave itself".[596]

To summarize, as the existing parental leave legislation in Canada is inadequate to disrupt gendered patterns of parental leave-taking that perpetuate stereotypical views about women's competence and commitment to work, the current parental leave policy should introduce a period specifically reserved for fathers.[597] The Québec's paternity leave program can certainly act as a model for the rest of the nation. Reserving time for fathers would enable men to engage in childrearing and help their partners reconcile work-family conflict by sharing their burden of childcare and development. Encouraging father participation in carework would not only facilitate coequal parenting but also "degender[ize] the traditional allocation of wage and family work and male/female gender roles".[598] Father-targeted leave, thus, has the potential "to change cultural norms around motherhood and fatherhood, family dynamics, employers' and colleagues' expectations, and the subtle forces that keep many women from fully using their skills

[594] See Cunningham-Parmeter, *supra* note 553 at 54.
[595] Rachel Cox, "The recent Québec appeal court decision on the constitutionality of maternity and parental benefits as employment insurance benefits: Some feminist reflections" (Ottawa: National Association of Women and the Law, 2004), online: <https://www.nawl.ca/ns/Pub_Brief_MPBenefits04_en.doc> at 10.
[596] Cunningham-Parmeter, *supra* note 553 at 55.
[597] Introducing paid paternity leave would involve amendment to both employment standards legislation and the federal *EI Act*.
[598] Nancy E. Dowd, "Race, gender, and work/family policy" (2004) 15 Washington University Journal of Law & Policy 219 at 244, 249 [Dowd, "Race"].

and talents."[599] However, it is essential that the leave program extends benefits to diverse family arrangements. The federal government is contemplating changes to parental leave policy and has signaled its initiation of efforts to include dedicated leave for fathers.[600] This is a welcome step in the right direction.

Conclusion

Deeply embedded gender role stereotypes have traditionally allocated wage work to men and family work to women. This gendered allocation of societal roles denied women the opportunity to participate in the public sphere and relegated women to secondary status in Canadian society. Traditional cultural assumptions that dictated women's roles as mother and primary caregiver restricted women's access to employment opportunities, and fostered their economic dependence on men.

Despite the prevalence of stereotypical assumptions about women's roles, women began to flood the workforce in the 1950s and the 1960s to better financially support their families. The presence of pregnant women and mothers in the labour force also increased. Yet "[a]ssumptions and stereotypes about the physical and emotional effects of pregnancy and motherhood, about the appropriate role of women in society stemming from the physical fact of childbearing, and about the perceived response of women to childbearing" guided employer decisions about expectant and new mothers.[601] Sex

[599] Lori Kenschaft, Roger Clark & Desirée Ciambrone, *Gender Inequality in our Changing World: A Comparative Approach* (New York, USA: Routledge, 2016) at 93.
[600] "Labour minister eyes dedicated time for fathers in new parental leave rules", *The Globe and Mail* (17 April 2016) online: The Globe and Mail <http://www.theglobeandmail.com/>.
[601] Finley, *supra* note 24 at 1119.

stereotyping of women as primarily mothers justified employment discrimination against pregnant workers and new mothers.

Before the emergence of workplace protections, both public and private sector employers could discriminate against pregnant workers and new mothers with impunity. During the 1950s through the 1960s, many employers routinely fired or refused to hire pregnant women. Additionally, the general absence of maternity protection laws typically ensured pregnant women's withdrawal from the labour market. The employer's expression of contractual freedom tied to lack of employment protections permitted widespread discrimination against mothers in the workplace. The continuing legal tolerance of discriminatory employer policies perpetuated women's economic and social subordination.

With the arrival of second-wave feminism in the 1960s came the demand for establishment of Royal Commission on the Status of Women. The Commission inquired into the status of women in Canadian society and made legislative recommendations to promote women's equality in the workplace. Following the Commission's report, the federal government took legislative steps to provide women legal protection against discrimination in the workplace.

The decades of the 1970s and the 1980s represented a major milestone in the history of women's rights in Canada. Women won significant legislative and judicial victories, like the introduction of maternity protection and human rights laws, and the legal recognition of pregnancy discrimination as a form of sex discrimination. Both the legislature and the judiciary, responding to changing social realities, provided pregnant women and new mothers partial protections against employment discrimination.

Despite laws aimed at promoting equality for pregnant women and mothers, discrimination persists in the workplace. The gender wage gap, maternity leave discrimination, and the glass ceiling are all symptomatic of prevalence of subtle discrimination against women in the workplace. Traditional sex-role stereotypes continue to prevent women from combining employment with motherhood. Women in Canada still continue to shoulder the disproportionate burden of childcare responsibilities.[602]

"Laws can enhance stereotypes, counteract them, or at least avoid promoting them."[603] The parental leave policy in Canada, though historically has helped women reconcile work-family conflict, it has failed to challenge the gendered parenting norms that perpetuate stereotypes of women as primary childcare providers and men as primary breadwinners. Because women in Canada still remain the primary parental leave-taker, "employers continue to see women as more costly and less desirable".[604] Such gendered patterns of parental leave-taking foster employers' stereotypical assumptions about women's commitment to work that form the basis for workplace discrimination.

As long as women take most of the parental leave and men forego it, the gender-neutral parental leave policy has the potential of hurting women's career prospects. From a "gender equality perspective", if mostly women take the bulk of parental leave, it "perpetuates gender-related, stereotypical assumptions about men and women's domestic responsibilities and aptitudes for employment".[605] These gendered assumptions about care roles may affect women's future employment prospects as they "can fuel

[602] "Fewer Canadian mothers work outside home than those in many rich countries", *CBC News* (4 August 2016) online: CBC News <http://www.cbc.ca/news>. The federal government's newly released detailed internal analysis stated that fewer Canadian mothers particularly those with young children participate in the labour market than women in Québec and other OECD countries.
[603] Cunningham-Parmeter, *supra* note 553 at 36.
[604] Reuter, *supra* note 510 at 113.
[605] Anxo, *supra* note 586 at 9.

employment discrimination against the recruitment and promotion of women" while at the same time "make it more difficult for fathers to take parental leave because this conflicts with workplace cultures and expectations about the appropriate behavior for men".[606]

A father-targeted leave would help break down sex-role stereotypes and make it easier for women to participate in paid work and for men to participate in the home.[607] As Alison Reuter argues: "Until the embedded assumptions and biases that form the basis for the current work-family structure are eradicated, women and men will not be able to enjoy equal opportunities both at work and at home."[608] The Québec's paternity leave can serve as a model for the country. Paternity leave would encourage men's participation in parental leave programs and increase their involvement with children. Reserving time for fathers would enable men to engage in equal parenting, and assume the role of primary caregiver, thereby, degenderizing traditional work and family roles resulting in a more egalitarian distribution of employment and family responsibilities.[609]

[606] *Ibid*.
[607] Reuter, *supra* note 510 at 149.
[608] *Ibid* at 105.
[609] Dowd, "Race", *supra* note 598 at 249.

BIBLIOGRAPHY

Legislation

An Act concerning the employment of women before and after childbirth, SBC 1921, c 38.

Act respecting Labour Standards, RSQ c N-1.1.

Act respecting Parental Insurance, RSQ c A-29.011.

Bill C-141, *An Act to amend the Canadian Human Rights Act and to amend certain other Acts in consequence thereof*, 1st Sess, 32nd Parl, 1982.

Bill C-156, *An Act to amend the Unemployment Insurance Act, 1971 (No. 3)*, 1st Sess, 32nd Parl, 1983.

Bill C-16, *An Act to amend certain statutes to provide equality of status thereunder for male and female persons*, 1st Sess, 30th Parl, 1974, cl 10.

Bill C-21, *An Act to amend the Unemployment Insurance Act and the Employment and Immigration Department and Commission Act*, 2nd Sess, 34th Parl, 1989, cl 9.

British Columbia Human Rights Act, SBC 1969, c 10.

Canada Labour Code, RSC 1985, c L-2.

Canadian Bill of Rights, SC 1960, c 44.

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

Canadian Human Rights Act, SC 1976-77, c 33.

Civil Service Act, SNS 1962, c 3.

Employment Equity Act, SC 1986, c 31.

Employment Insurance Act, SC 1996, c 23.

Employment Standards Act, RSY 2002, c 72.

Employment Standards Act, SNWT 2007, c 13.

Employment Standards Act, RSBC 1996, c 113.

Employment Standards Act, SO 2000, c 41.

Employment Standards Code, RSA 2000, c E-9.

Employment Standards Regulations, RRNWT 2008.

Fair Employment Practices Act, SO 1951, c 24.

Labour Standards Act (Nunavut), RSNWT 1988, c L-1, as duplicated for Nunavut by s 29 of the *Nunavut Act*, SC 1993, c 28.

Labour Standards Act, RSNL 1990, c L-2.

Labour Standards Code, RSNS 1989, c 246.

Minimum Employment Standards Act, SNB 1964, c 8.

Ontario Human Rights Code, SO 1961-62, c 93.

Pregnancy and Parental Leave Regulations, RRNWT 1990, c 8 (Supp) as duplicated for Nunavut by s 29 of the *Nunavut Act*, SC 1993, c 28.

Québec Charter of Human Rights, S.Q. 1975, c 6.

Saskatchewan Bill of Rights Act, SS 1947, c 35.

The Female Employees Fair Remuneration Act, SO 1951, c 26.

The Saskatchewan Employment Act, SS 2013, c S-15.1.

Unemployment Insurance Act, 1940, SC 1940, First Schedule, Part II, c 44.

Unemployment Insurance Act, 1971, SC 1971, c 48.

Unemployment Insurance Act, SC 1955, c 50.

Government Documents

British Columbia. *Report of the Commission on Maternity Insurance, 1921* (18 March 1921) online: <http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs_rc/461380/461380_comm_rc_health_insurance.pdf>.

British Columbia Human Rights Tribunal. *Annual Report 2015-2016*, online: <http://www.bchrt.bc.ca/shareddocs/annual_reports/2015-2016.pdf>.

Canada. Beneath the Veneer: The Report of the Task Force on Barriers to Women in the Public Service (Report and Recommendations) (Ottawa: Minister of Supply and Services Canada, 1990) vol 1.

—. Committee of Inquiry into the Unemployment Insurance Act, *Report of the Committee of Inquiry into the Unemployment Insurance Act*, (Ottawa: Queen's Printer and Controller of Stationery, 1962).

—. *Debates of the Senate*, 32nd Parl, 1st Sess, No 5 (2 June 1983) at 5699.

—. *Debates of the Senate*, 32nd Parl, 1st Sess, No 5 (29 March 1983) at 5525.

—. *Debates of the Senate*, 36th Parl, 2nd Sess, No 138 (13 June 2000) at 1580.

—. *House of Commons Debates*, 22nd Parl, 2nd Sess, No 4 (9 May 1955) at 3579.

—. *House of Commons Debates*, 28th Parl, 3rd Sess, No 1 (3 November 1970).

—. *House of Commons Debates*, 32nd Parl, 1st Sess, No 2 (18 June 1980) at 2234.

—. *House of Commons Debates*, 33rd Parl, 2nd Sess, No 13 (31 May 1988) at 15919.

—. Intergovernmental Committee on Women in Employment, *Maternity Leave in Canada*, (Ottawa: Women's Bureau, Canadian Department of Labour, 1980).

—. Royal Commission on Equality in Employment, *Equality in Employment: A Royal Commission Report*, (Ottawa: Supply and Services Canada, 1984).

—. Royal Commission on the Status of Women in Canada, *Report of the Royal Commission on the status of women in Canada*, (Ottawa: Information Canada, 1970).

—. Task Force on Unemployment Insurance, *Unemployment Insurance in the 1980s* (Ottawa: Minister of Supply and Services Canada, 1981).

—. The Women's Bureau, *Report of a Consultation on the Employment of Women with Family Responsibilities*, (Ottawa: Canadian Department of Labour, 1965).

Canadian Human Rights Commission. *Annual Report 1978*, (Ottawa: Minister of Supply and Services Canada, 1979).

—. *Annual Report 1979*, (Ottawa: Minister of Supply and Services Canada, 1980).

—. *Annual Report 1980*, (Ottawa: Minister of Supply and Services Canada, 1981).

—. *Annual Report 1981*, (Ottawa: Minister of Supply and Services Canada, 1982).

—. *Annual Report 1982*, (Ottawa: Minister of Supply and Services Canada, 1983).

—. *Annual Report 1983*, (Ottawa: Minister of Supply and Services Canada, 1984).

Manitoba Human Rights Commission. *Annual Report 2015*, online: <http://www.manitobahumanrights.ca/publications/annual_reports/annual_report_2015.pdf>.

Marsh, Leonard C. *Report on Social Security for Canada: The requirements for post-war planning* (Ottawa: King's Printer, 1943).

Newfoundland and Labrador Human Rights Commission. *Annual Report 2015-16*, online: <http://www.justice.gov.nl.ca/just/publications/2015-2016/HRC_Annual_Report_2015_16.pdf>.

New Brunswick Human Rights Commission. *Annual Report 2015-2016*, online: <http://www2.gnb.ca/content/dam/gnb/Departments/hrc-cdp/PDF/Annualreport-Rapportannuel/AnnualReportHRC2015-16.pdf>.

Ontario Human Rights Commission. *Policy of preventing discrimination because of pregnancy and breastfeeding* (29 October 2014), online: Ontario Human Rights Commission<http://www.ohrc.on.ca/sites/default/files/Policy%20on%20preventing%20discrimination%20because%20of%20pregnancy%20and%20breastfeeding_accessible_2014.pdf>.

Ontario. Ontario Secondary School Teachers' Federation Task Force on Women to Provincial Executive Council, *The effect of sexism on the career development of teachers*, (Woodstock, Ontario: Woodstock Print & Litho Ltd., 1976).

Saskatchewan Human Rights Commission. *Annual Report 2015-2016*, online: <http://saskatchewanhumanrights.ca/pub/documents/publications/SHRC_2015_2016_AnnualReport_web.pdf>.

Woodsworth, Sheila. *Maternity Protection for Women Workers in Canada* (Women's Bureau, Canada Department of Labour) (Ottawa: Queen's Printer and Controller of Stationery, 1967).

Yukon Human Rights Commission. *2015-2016 Annual Report*, online: <https://yhrc.yk.ca/sites/default/files/AnnualReport_YHRC_2016_2015_FinalWeb2.pdf>.

Jurisprudence

Amanda Bickell v The Country Grill, 2011 HRTO 1333.

Andrea Szabo v Cindy Dayman, operating as Take Time Home Clean & Life Style Services, 2016 MBHR 2.

Andrews v Law Society of British Columbia, 27 DLR (4th) 600.

Andrews v. Law Society of British Columbia, [1989] 1 SCR 143.

Barrie (City) v Canadian Union of Public Employees Local 2380 (1994), 40 LAC (4th) 168.

Bliss v. Canada (Attorney General), [1979] 1 SCR 183.

British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union, [1999] 3 SCR 3.

Brooks v. Canada Safeway Ltd., [1989] 1 SCR 1219.

Camilla Brown v PML Professional Mechanical Ltd. and Donald Wightman, 2010 BCHRT 93.

Canada (Attorney General) v Stuart, [1983] 1 FC 651 (Federal Court of Appeal).

Central Alberta Dairy Pool v. Alberta (Human Rights Commission), [1990] 2 SCR 489.

Central Okanagan School District No. 23 v. Renaud, [1992] 2 SCR 970.

CN v. Canada (Canadian Human Rights Commission), [1987] 1 SCR 1114.

Commission des Droits de la Personnel v Aristocrat Apartment Hotel, [1978] C.S. 1073.

Darlene Munro v I.M.P. Aerospace Components, 2014 CanLII 41257 (NS Bd of Inq).

Evelyn Nye v Robert Burke, [1981] 2 C.H.R.R. D/538 (Qc Prov Ct).

France Breton v Canadian Reynolds Metals Ltd., [1981] 2 C.H.R.R. D/532 (Qc Prov Ct).

Gibbs et al. v Board of School Trustees, School District No. 36 (Surrey) et al. (11 July 1978), British Columbia (BC Bd of Inq).

Hotel Dieu of St. Joseph Hospital, London v. Ontario Nurses Association, (1976), 13 LAC (2d) 177.

Insurance Corporation of British Columbia v Heerspink et al., [1982] 2 SCR 145.

Juanita Crook v Ontario Cancer Treatment and Research Foundation and Ottawa Regional Cancer Centre, [1996] 30 C.H.R.R. D/104.

Julie Lord v Haldimand-Norfolk Police Services Board and Lee Stewart, [1995] 23 C.H.R.R. D/500 (Ont Bd of Inq).

June Purres v London Athletic Club (South) Inc., 2012 HRTO 1758.

Kathy Hansen v Big Dog Express Ltd. and Jonathan Grant, 2002 AHRC 18.

Kimberly LaCouvee v Alchemy Studios Ltd. and Christopher Castle, 2013 BCHRT 126.

Kulvinderpal Sidhu v Broadway Gallery, 2002 BCHRT 9.

Michelle Holmes v Dr. James Findlay Inc., 2014 BCHRT 178.

Mira Heincke v Kenneth Brownell & Emrick Plastics, [1990] 14 C.H.R.R. D/68.

Natalya Golovaneva v Atkinson Schroeter Design Group Inc., 2015 HRTO 1471.

Natasha Williams v Hudson's Bay Company/Zellers Inc., Brian Harrison and Derek Sampath, 2009 HRTO 2168.

Nathalie Nadeau v Grievor and Deputy Head (Correctional Service of Canada) (2014), 121 C.L.A.S. 88 (Canada Public Service Labour Relations Board).

Ontario Human Rights Commission and Theresa O'Malley (Vincent) v Simpson-Sears Limited, [1985] 2 SCR 536.

Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Center), 2015 SCC 39.

R v Pacific Western Airlines, [1975] BCJ No. 58.

Re Culley et al. and Canadian Pacific Airlines et al., [1977] 1 WWR 393.

Re International Brotherhood of Electrical Workers, Local 530 & Sarnia Broadcasting Ltd., (1961), 11 LAC 355.

Reference Re Employment Insurance Act (Can.), ss. 22 and 23, [2005] 2 SCR 669.

Sashy Arunachalam v Best Buy Canada Ltd., Carl Cacheiro and Romielyn Navasero, 2010 HRTO 1880.

U.A.W. v. Essco Stamping Products Ltd., (1957), 8 LAC 26.

United Electrical, Radio & Machine Workers of America, Local 504 v Canadian Westinghouse Co. (1954), 5 LAC 1824.

United Packinghouse Workers, Local 293 v Quaker Oats Co. (1960), 11 LAC 87.

Winnipeg School Division No. 1 v Craton, [1985] 2 SCR 150.

Wong v Hughes Petroleum Ltd., [1983] 4 C.H.R.R. D/1488 (ABQB).

Secondary Material: Articles

Abella, Rosalie. "Foreword by Rosalie Abella" (2012) 1 Canadian Journal of Human Rights 1.

Abner, Erika, Mary Jane Mossman & Elizabeth Pickett. "No more than simple justice: Assessing the Royal Commission Report on Women, Poverty and the Family" (1990) 22:3 Ottawa Law Review 573.

Adams, Eric M. “Human rights at work: Physical standards for employment and human rights law” (2016) 41 Applied Physiology, Nutrition and Metabolism S63.

Aguilera, Elizabeth L. “The best interests of families and employers: Why the family and medical insurance leave act is the best hope for easing work-family tension for American parents and children” (2015) 84:1 UMKC Law Review 155.

Alwis, Rangita DSD. “Examining gender stereotypes in new work/family reconciliation policies: The creation of a new paradigm for egalitarian legislation” (2011) 18 Duke Journal of Gender Law & Policy 305.

Bacchi, Carol L. “‘First wave’ feminism in Canada: The ideas of the English-Canadian Suffragists, 1877-1918” (1982) 5:6 Women’s Studies International Forum 575.

Backhouse, Constance. “‘We don’t hire a woman here’: Claire L’Heureux-Dubé and the career prospects for early female law graduates from Laval University” (2014) 39:2 Queen’s Law Journal 355.

—. “Racial Segregation in Canadian Legal History: Viola Desmond’s Challenge, Nova Scotia, 1946” (1994) 17 Dalhousie Law Journal 299.

Baines, Beverley. “Section 28 of the *Canadian Charter of Rights and Freedoms*: A purposive interpretation” (2005) 17 Canadian Journal of Women and the Law 45.

Berger, Lawrence M., Jennifer Hill & Jane Waldfogel. “Maternity leave, early maternal employment and child health and development in the US” (2005) 115 The Economic Journal F29.

Bergquist, David E. “Who’s bringing up baby: The need for a national uniform parental leave policy” (1987) 5:2 Law and Inequality: A Journal of Theory and Practice 227.

Blau, Francine D. & Lawrence M. Kahn. "Female labor supply: Why is the United States falling behind?" (2013) 103:3 American Economic Review: Papers & Proceedings 251.

Browne-Wilkinson. "Race and sex discrimination in English Law" (1993) 19:4 Commonwealth Law Bulletin 1647.

Byron, Reginald A. & Vincent J. Roscigno. "Relational power, legitimation and pregnancy discrimination" (2014) 28:3 Gender & Society 435.

Cabrera, Natasha J., Jacqueline D. Shannon & Catherine Tamis-LeMonda. "Fathers' influence on their children's cognitive and emotional development: From Toddlers to Pre-K" (2007) 11:4 Applied Developmental Science 208.

Clément, Dominique. "Legacies and implications of human rights law in Canada" (Spring 2013) Canadian Issues/Thèmes Canadiens 46.

Collins, Hugh. "The vanishing freedom to choose a contractual partner" (2013) 76:71 Law and Contemporary Problems 71.

Cook, Jerry L. et al. "Revisiting men's role in father involvement: The importance of personal expectations" (2005) 3:2 Fathering: A Journal of Theory, Research, and Practice about Men as Fathers 165.

Cossman, Brenda. "A Matter of Difference: Domestic Contracts and Gender Equality" (1990) 28:2 Osgoode Hall Law Journal 303.

Cunningham-Parmeter, Keith. "(Un)equal protection: Why gender equality depends on discrimination" (2015) 109 Northwestern University Law Review 1.

Dagher, Rada K. Patricia M. McGovern & Bryan E. Dowd. "Maternity leave duration and postpartum mental and physical health: Implications for leave policies" (2014) 39:2 Journal of Health Politics, Policy and Law 369.

Dickerson, Lindsay RB. "'Your wife should handle it': The implicit messages of the Family and Medical Leave Act" (2005) 25 Boston College Third World Law Journal 429.

Dickson, Brian. "A life in the law: The process of judging" (2000) 63 Saskatchewan Law Review 373.

Doucet, Andrea. "Dad and baby in the first year: Gendered responsibilities and embodiment" (2009) 624 The Annals of the American Academy of Political and Social Science 78.

Dowd, Nancy E. "Maternity leave: Taking sex differences into account" (1986) 54 Fordham Law Review 699.

—. "Race, gender, and work/family policy" (2004) 15 Washington University Journal of Law & Policy 219.

—. "Women's, men's and children's equalities: Some reflections and uncertainties" (1997) 6 South California Review of Law and Women's Studies 587.

—. "Work and family: Restructuring the workplace" (1990) 32 Arizona Law Review 431.

Dupper, Ockert. "Maternity protection in South Africa: An international and comparative analysis (Part One)" (2001) 12 Stellenbosch Law Review 421.

—. "Maternity protection in South Africa: An international and comparative analysis (Part Two)" (2002) 13 Stellenbosch Law Review 83.

Etherington, Brian. “An assessment of judicial review of labour laws under the *Charter*: Of realists, romantics and pragmatists” (1992) 24 Ottawa Law Review 685.

—. “Central Alberta Dairy Pool: The Supreme Court of Canada’s Latest Word on the Duty to Accommodate” (1992) 1 Canadian Labour Law Journal 311.

—. “The enforcement of harsh termination provisions in personal employment contracts: The rebirth of freedom of contract in Ontario” (1990) 35 McGill Law Journal 459.

Evans, Patricia. “Comparative perspectives on changes to Canada’s paid parental leave: Implications for class and gender” (2007) 16 International Journal of Social Welfare 119.

Evans, Patricia & Norene Pupo. “Parental leave: Assessing women’s interests” (1993) 6 Canadian Journal of Women and the Law 402.

Findlay, Sue. “Feminist Struggles with the Canadian State: 1966-1988” (1988) 17:3 Resources for Feminist Research 5.

Finley, Lucinda M. “Transcending equality theory: A way out of the maternity and the workplace debate” (1986) 86 Columbia Law Review 1118.

Fudge, Judy. “The Public/Private Distinction: The possibilities of and the limits to the use of Charter litigation to further feminist struggles” (1987) 25:3 Osgoode Hall Law Journal 485.

Galovan, Adam M. et al. “Father involvement, father-child relationship quality, and satisfaction with family work: Actor and partner influences on marital quality” (2014) 35:13 Journal of Family Issues 1846.

Ganiee, Farooq Ahmed. “Education as an instrument of social change” (2014) 2:1 International Journal of English Language, Literature and Humanities 18.

Gardner, Lara M. “A step toward true equality in the workplace: Requiring employer accommodation for breastfeeding women” (2002) 17 Wisconsin Women’s Law Journal 259.

Geller, Carole. “Equality in Employment for Women: The Role of Affirmative Action” (1990-91) 4 Canadian Journal of Women and the Law 373.

Gold, Marc E. “Equality before the law in the Supreme Court of Canada: A case study” (1980) 18:3 Osgoode Hall Law Journal 336.

Gornick, Janet C. & Marcia K. Meyers. “Creating gender egalitarian societies: An agenda for reform” (2008) 36:3 Politics & Society 313.

Greene, Linda S. “Feminism, Law, and Social Change: Some reflections on unrealized possibilities” (1993) 87:4 Northwestern University Law Review 1260.

Grossman, Joanna L. “Job security without equality: The Family and Medical Leave Act of 1993” (2004) 15 Washington University Journal of Law & Policy 17.

—. “Pregnancy, work, and the promise of equal citizenship” (2010) 98 The Georgetown Law Journal 567.

Hall, Emmett M. “Law reform and the judiciary’s role” (1972) 10:2 Osgoode Hall Law Journal 399.

Hawkins, Jenna. “Canadian parental benefits program: Challenging or supporting the gendered organization?” (2012) 3:1 Journal of the Motherhood Initiative for Research & Community Involvement 53.

Hunter, I.A. “Human Rights Legislation in Canada: Its origin, development and interpretation” (1976) 15 University of Western Ontario Law Review 21.

Hyde, Janet S. et al. “Parental leave: Policy and research” (1996) 52:3 Journal of Social Issues 91 at 103.

Issacharoff, Samuel & Elyse Rosenblum. “Women and the workplace: Accommodating the demands of pregnancy” (1994) 94 Columbia Law Review 2154.

Jablczynski, Lori. “Striking a balance between the “parental” wall and workplace equality: The male caregiver perspective” (2010) 31 Women’s Rights Law Reporter 309.

Jain, Harish C. “Employment Equity and Visible Minorities: Have the Federal Policies worked?” (1992) 1 Canadian Labour Law Journal 389.

Kernochan, John M. “Statutory interpretation: An outline of method” (1976) 3:2 Dalhousie Law Journal 333.

Knobbe, Alisa. “Beyond Cal Fed: Parenting leave possibilities” (1987) 10 Harvard Women’s Law Journal 294.

L’Heureux-Dubé, Claire. “It takes a vision: The constitutionalization of equality in Canada” (2002) 14:2 Yale Journal of Law and Feminism 363.

—. “Making a difference: The pursuit of a compassionate justice” (1997) 31 University of British Columbia Law Review 1.

Larche, Spencer H. “Pink-shirting: Should the NCAA consider a maternity and paternity waiver?” (2008) 18:2 Marquette Sports Law Review 393.

Lepofsky, MD. “Understanding the concept of employment equity: Myths and Misconceptions” (1994) 2 Canadian Labour Law Journal 1.

Lockwood, Thomas J. “A History of Royal Commissions” (1967) 5:2 Osgoode Hall Law Journal 172.

Loewy, Karen L. “Lawyering for social change” (2000) 27:6 Fordham Urban Law Journal 1869.

Luxton, Meg. “On Feminism and the Labor Movement in Canada: A Response to Dan Clawson” (2004) 45:3 Labor History 370.

Lynk, Michael. “The duty to accommodate in the Canadian workplace: Leading principles and recent cases” (21 June 2008), online: <http://ofl.ca/wp-content/uploads/2008.06.21-Report-DutytoAccommodate.pdf>.

MacKinnon, Catharine A. “Substantive equality revisited: A reply to Sandra Fredman” (2016) 14:3 International Journal of Constitutional Law 739.

Madsen, Lene. “Citizen, worker, mother: Canadian women’s claims to parental leave and childcare” (2002) 19 Canadian Journal of Family Law 11.

Mahoney, Kathleen E. “The Constitutional Law of Equality in Canada” (1992) 44 Maine Law Review 229.

—. “*Vriend v. Alberta*: A Victory for Discrimination”, Case Comment, (1996) 4 Canadian Journal of Women and the Law 389.

Majury, Diana. “The Charter, Equality Rights, and Women: Equivocation and Celebration” (2002) 40:3/4 Osgoode Hall Law Journal 297.

Malin, Martin H. “Fathers and Parental Leave Revisited” (1998) 19 Northern Illinois University Law Review 25.

Marks, Lynne et al. “‘A job that should be respected’: contested visions of motherhood and English Canada’s second wave women’s movements, 1970-1990” (2016) Women’s History Review 25:5 771.

Martin, Sheilah L. “Canada’s Abortion Law and the Canadian Charter of Rights and Freedoms” (1986) 1 Canadian Journal of Women and the Law 339.

—. “Sex Equality and Biological Difference: Some Preliminary Observations” (Paper delivered at the Discrimination in the Law and the Administration of Justice, Kananaskis, Alberta, October 1989) at 344, online: Canadian Institute for the Administration of Justice <https://ciaj-icaj.ca/wp-content/uploads/documents/import/1989/Martin.pdf?id=1607&1481407659>.

McKay, Lindsey & Andrea Doucet. “‘Without taking away her leave’: A Canadian case study of couples’ decisions on fathers’ use of paid parental leave” (2010) 8:3 Fathering: A Journal of Theory, Research, and Practice about Men as Fathers 300.

Meehan, Kathryn. “Falling through the cracks: The law governing pregnancy and parental leave” (2004) 35:2 Ottawa Law Review 211.

Michels, Kevin H. “Our hidden value” (2014) 53:1 University of Louisville Law Review 1.

Miles, Angela R. “Feminism, Equality, and Liberation” (1985) 1 Canadian Journal of Women and the Law 42.

Neave, Marcia. “From Difference to Sameness – Law and Women’s Work” (1992) 18 Melbourne University Law Review 768.

Nyberg, Anita. “Parental leave, public childcare and the dual earner/dual carer-model in Sweden” (Discussion Paper delivered at the Peer Review meeting, Stockholm, 19-20 April 2004), online: <http://pdf.mutual-learning-employment.net/pdf/sweden04/disspapSWE04.pdf>.

Pal, Leslie A. “Maternity Benefits and Unemployment Insurance: A question of policy design” (1985) 11:3 Canadian Public Policy 551.

Pal, Leslie A. & F.L.Morton. “Bliss v. Attorney General of Canada: From Legal Defeat to Political Victory” (1986) 24:1 Osgoode Hall Law Journal 141.

Papalexandris, Nancy & Robin Kramar. “Flexible working patterns: Towards reconciliation of family and work” (1997) 19:6 Employee Relations 581.

Paterson, Hilary M.G. “The justifiability of biblically based discrimination: Can private Christian schools legally refuse to employ gay teachers?” (2001) 59:1 University of Toronto Faculty of Law Review 59.

Patnaik, Ankita. “Reserving time for daddy: The short and long-run consequences of fathers’ quotas” (Paper delivered at the Department of Economics, Cornell University, 29 September 2014), online: <http://www.economics.illinois.edu/seminars/documents/Ankita.pdf>.

Price, Sandy. “Accommodating women in employment: The limitations of a traditional approach” (1992) 1 Canadian Labour Law Journal 140.

Pulkingham, Jane & Tanya Van Der Gaag. “Maternity/Parental Leave Provisions in Canada: We’ve come a long way, but there’s further to go” (2004) 23:3/4 Canadian Woman Studies/Les Cahiers de la Femme 116.

Réaume, Denise G. “Of pigeonholes and principles: A reconsideration of discrimination law” (2002) 40 Osgoode Hall Law Journal 113.

Reuter, Alison A. “Subtle but Pervasive: Discrimination against mothers and pregnant women in the workplace” (2005) 33:5 Fordham Urban Law Journal 100.

Rossin, Maya. "The effects of maternity leave on children's birth and infant health outcomes in the United States" (2011) 30 Journal of Health Economics 221.

Sangster, Joan. "Invoking experience as evidence" (2011) 92:1 The Canadian Historical Review 135.

—. "Women Workers, Employment Policy and the State: The Establishment of the Ontario Women's Bureau, 1963-1970", (1995) 36 Labour/Le Travail.

Sarra, Janis. "Protecting workers' reproductive health: Lessons from Québec and other statutory regimes" (1995) 53:2 University of Toronto Faculty of Law Review 272.

Schönberg, Uta & Johannes Ludsteck. "Maternity leave legislation, female labor supply, and the family wage gap" (March 2007) online: <http://ftp.iza.org/dp2699.pdf>.

Schoppe-Sullivan, Sarah J. et al. "Maternal gatekeeping, coparenting quality, and fathering behavior in families with infants" (2008) 22:3 Journal of Family Psychology 389.

Sheppard, Colleen. "Of Forest Fires and Systemic Discrimination: A Review of *British Columbia (Public Service Employee Relations Commission) v B.C.G.S.E.U.*", Case Comment, (2001) 46 McGill Law Journal 533.

Sheppard, Colleen. "Recognition of the disadvantaging of women: The Promise of *Andrews* v. *Law Society of British Columbia*", Case Comment, (1989) 35 McGill Law Journal 206.

Swinton, Katherine. "Accommodating equality in the unionized workplace" (1995) 33:4 Osgoode Hall Law Journal 703.

Tarnopolsky, W.S. "Discrimination and Equality Rights in Canada" (1993) 19 Commonwealth Law Bulletin 1700.

—. “Legislative jurisdiction with respect to anti-discrimination (human rights) legislation in Canada” (1980) 12:1 Ottawa Law Review 1.

Tie, Chantal. “Immigrant Selection and the Canadian Human Rights Act” (1994) 10 Journal of Law and Social Policy 81.

Townson, Monica & Kevin Hayes. “Women and the Employment Insurance Program: The Gender Impact of Current Rules on Eligibility and Earnings Replacement” (March 2007), online: <http://ywcacanada.ca/data/research_docs/00000051.pdf>.

Tremblay, Diane-Gabrielle. “More Time for Daddy – Québec leads the way with its new parental leave policy” (2009) 18:3 Our Schools Our Selves (The Canadian Centre for Policy Alternatives) 223.

Tsun, Tiffany. “Overhauling the Ontario Human Rights System: Recent developments in case law and legislative reform” (2009) 67 University of Toronto Faculty of Law Review 115.

Tunstall, Lee & Sarah E. Eaton, “Women’s rights: An overview” (2016) Canadian Points of View 1.

Turnbull, Lorna. “The Promise of *Brooks v. Canada Safeway Ltd*: Those who bear children should not be disadvantaged” (2005) 17 Canadian Journal of Women and the Law 151.

Vineberg, Philip F. “Report and Procedures of The Royal Commission on Canadian Tax Reform” (1966) 20:1 Bulletin of the Section of Taxation 23.

Wallace, Jean E. “Can women in law have it all? A study of motherhood, career satisfaction and life balance” (2006) 24 Research in the Sociology of Organizations 283.

Werdegar, Kathryn M. "Why a woman on the bench?" (2001) 16 Wisconsin Women's Law Journal 31.

Wilson, Bertha. "Will women judges really make a difference" (1990) 28:3 Osgoode Hall Law Journal 507.

York, Andrea. "The inequality of emerging *Charter* jurisprudence: Supreme Court interpretations of Section 15(1)" (1996) 54:2 University of Toronto Faculty of Law Review 327.

Secondary Material: Newspapers

"'Swaddled in mink', women demand equality", *The Globe and Mail* (12 June 1968) 10.

"2 men named to commission on women", *The Globe and Mail* (17 February 1967) 11.

"Bill on maternity leave, equal pay introduced", *The Globe and Mail* (10 March 1971) 3.

"Cabinet received brief on status of women", *The Globe and Mail* (11 November 1966) 13.

"Cabinet to re-examine UIC maternity benefits", *The Globe and Mail* (1 November 1978) 14.

"Canadian laws lag in maternity leave", *The Globe and Mail* (28 August 1963) 11.

"Claims Canada lagging in promoting women", *The Globe and Mail* (4 June 1968) 13.

"CNR may hire stewardesses in miniskirts", *The Globe and Mail* (19 May 1971) 13.

"Commission members include a journalist, engineer, academics", *The Globe and Mail* (8 December 1970) 11.

"CUPE chief admits discrimination", *The Globe and Mail* (1 October 1968) 13.

"Dream world: Lacks view of poor, grandmother tells probe", *The Globe and Mail* (17 April 1968) 10.

"Equality for women wanted: Royal commission on women's status demanded", *The Globe and Mail* (29 June 1966) W2.

"Federal rules, union penalize pregnancy: pilot", *The Globe and Mail* (14 July 1979) 13.

"Fewer Canadian mothers work outside home than those in many rich countries", *CBC News* (4 August 2016) online: CBC News <http://www.cbc.ca/news>.

"Forceful law to end sex bias in employment urged by CLC", *The Globe and Mail* (2 October 1968) 9.

"Government details actions to reduce bias: Journeywoman title dropped, Ottawa says", *The Globe and Mail* (3 April 1973) 13.

"Health Insurance Commission here", *The Cranbrook Herald* (18 December 1919) 2.

"High price for a job", *The Globe and Mail* (3 November 1980) 6.

"Hostess fights airline regulation", *The Globe and Mail* (4 April 1963) 19.

"Judge of all things", *The Globe and Mail* (10 May 1969) 6.

"Labour minister eyes dedicated time for fathers in new parental leave rules", *The Globe and Mail* (17 April 2016) online: The Globe and Mail <http://www.theglobeandmail.com/>.

"Male says housework is denied to men", *The Globe and Mail* (8 June 1968) 31.

"Maternity benefits called not enough", *The Globe and Mail* (11 September 1975) F6.

"Maternity leave rule attacked by trustee", *The Globe and Mail* (6 February 1969) W3.

"Maternity pay boost opposed", *The Globe and Mail* (28 February 1964) 5.

"Minister investigates stewardess age rules", *The Globe and Mail* (4 August 1965) 8.

"More rights for women in changes to charter", *The Globe and Mail* (12 January 1981) 1.

"Mother can't be policewoman: Home is not on the beat", *The Globe and Mail* (9 May 1969) 5.

"NDP to ask for equal pay for women", *The Globe and Mail* (7 July 1967) 9.

"New maternity benefits proposed", *The Globe and Mail* (6 December 1978) 15.

"Nurse asks unions to seek equal pay", *The Globe and Mail* (25 June 1970) W3.

"Ottawa reviewing maternity scheme", *The Globe and Mail* (3 February 1981) 14.

"Pregnancy discrimination complaints on rise", *CBC News* (7 March 2012) online: CBC News <http://www.cbc.ca/news>.

"RC women's group wants students to hear a lot more about heroines", *The Globe and Mail* (22 March 1968) 9.

"Real need", *The Globe and Mai*l (2 May 1968) 6.

"Recommends probe into women's rights", *The Globe and Mail* (13 September 1966) 10.

"Robarts plans no maternity leave laws", *The Globe and Mail* (3 December 1964) W11.

"Some unions planning clauses on day-care", *The Globe and Mail* (5 June 1968) 12.

"Statement expected on women's rights", *The Globe and Mail* (1 February 1967) 9.

"Stewardesses aren't bunny girls, inquiry on bloomer protest told", *The Globe and Mail* (9 December 1971) W8.

"Stewardesses to be grounded if pregnant", *The Globe and Mail* (4 December 1974) 13.

"Take marriage out of church, state: brief", *The Globe and Mail* (4 October 1968) 12.

"Teachers' brief accuses Ottawa of bias in hiring women over 40", *The Globe and Mail* (18 November 1967) 13.

"Teachers' brief says women are held back", *The Globe and Mail* (21 January 1971) W2.

"The limit: 3-1/2 months of pregnancy", *The Globe and Mail* (20 August 1975) 6.

"Use of 'sex-typed' schoolbooks discourages girls, report says", *The Globe and Mail* (8 December 1970) 11.

"Wants to change maternity benefits", *The Globe and Mail* (22 June 1977) 12.

"What do you think?: Should a mother work? Opinion mostly negative", *The Globe and Mail* (20 February 1954) 15.

"Woman charges trustees biased", *The Globe and Mail* (24 April 1972) 13.

"Women must adjust views, hearing told", *The Globe and Mail* (23 April 1968) 11.

"Women must be freed from children, brief says", *The Globe and Mail* (5 June 1968) 12.

"Women's charter-of-rights campaign may be close to success", *The Globe and Mail* (17 March 1981) 14.

"Women's glass ceiling remains", *CBC News* (31 August 2011) online: CBC News <http://www.cbc.ca/news>.

"Women's status topic of brief to Pearson", *The Globe and Mail* (3 November 1966) W6.

"York may fight ruling on maternity leave", *The Globe and Mail* (7 December 1971) 15.

Aarts, Deborah. "The subtle ways taking maternity leave still hurts women's careers", *Canadian Business (Blogs & Comment)* (14 December 2015) online: Canadian Business <http://www.canadianbusiness.com/>.

Anderson, Ronald. "For one in five, woman's place no longer in the home", *The Globe and Mail* (23 April 1965) B5.

Beattie, Helen. "Careers for women: Marriage 'casualties' high in air stewardess group", *The Globe and Mail* (24 April 1946) 11.

Bell, Patricia. "Lalonde reintroduces bill aimed at removing sex bias", *The Globe and Mail* (9 October 1974) 11.

Best, John. "One-third of trades are now open: Roles widening for women in Canadian armed forces", *The Globe and Mail* (15 August 1974) W6.

Brockbank, Nicole. "Toronto woman hid pregnancy for fear of losing out on promotion", *CBC News* (7 June 2016) online: CBC News <http://www.cbc.ca/news>.

Brown, Jennifer. "Study shows law firm senior leadership still largely white and male", *Canadian Lawyer* (17 January 2017) online: Canadian Lawyer <http://www.canadianlawyermag.com/>.

Bungay, Jessica. "Pregnancy quips perpetuate gender discrimination", *Canadian Employment Law Today* (1 February 2017) online: Canadian Employment Law Today <http://www.employmentlawtoday.com/>.

Carman, Tara. "Glass ceiling still in place for public sector employees", *Vancouver Sun* (17 October 2016) online: Vancouver Sun <http://vancouversun.com/>.

Carson, Jo. "Armed forces woo women, including artisans", *The Globe and Mail* (10 January 1974) W7.

Catto, Helen. "The working mother's dilemma", *The Globe and Mail* (22 December 1966) W1.

Connelley, Patricia. "Maternity leave available to women in civil service", *The Globe and Mail* (2 April 1942) 10.

Craig, Barry. "Women's march may back call for rights probe", *The Globe and Mail* (5 January 1967) 1.

Eichler, Leah. “Like it or not, maternity leave hurts your career”, *The Globe and Mail* (14 October 2011) online: The Globe and Mail <http://www.theglobeandmail.com/>.

Evans, Pete. “‘It’s either overt or covert hostility’: Why only 2 women made list of 100 highest-paid CEO’s”, *CBC News* (4 January 2017) online: CBC News <http://www.cbc.ca/news>.

Glogovac, Marina. “The challenge for women to smash the glass ceiling”, *The Globe and Mail* (7 March 2016) online: The Globe and Mail <http://www.theglobeandmail.com/>.

Goldblatt, Murray. “Transportation, bank workers: Maternity leave planned in legislation next year”, *The Globe and Mail* (9 December 1970) 1.

Gray, Malcolm. “Sex discrimination charged: Manpower office closed during sit-in”, *The Globe and Mail* (17 September 1975) 45.

Hamilton, Grey. “Jobless law said unfair in cases of pregnancy”, *The Globe and Mail* (10 May 1955) 3.

Israel, Solomon. “StatsCan on gender pay gap: Women earn 87¢ to men’s $1”, *CBC News* (8 March 2017) online: CBC News <http://www.cbc.ca/news>.

Johnson, William. “Traditional role rejected: The wave of feminism opposes motherhood, marriage”, *The Globe and Mail* (1 May 1969) W5.

Kirkwood, Leone. “Attitude changed after marriage: Physics professor believes in equality in the kitchen”, *The Globe and Mail* (10 June 1968) 13.

—. “Commission asks easier abortions and paid leaves for childbearing”, *The Globe and Mail* (8 December 1970) 1.

—. “Confused teachers never get around to maternity leave”, *The Globe and Mail* (16 August 1969) 11.

—. “Discrimination study urged: Laid-off women say unions won’t aid them”, *The Globe and Mail* (6 June 1968) W2.

—. “Housewife’s role ‘must be abolished’: Father must share responsibility for raising children, Royal Commission told”, *The Globe and Mail* (4 June 1968) 13.

—. “Social disgrace to be single, commission told: Women ‘expected to act like Cinderella waiting for Prince’”, *The Globe and Mail* (7 June 1968) 13.

—. “Teacher row on pregnancy”, *The Globe and Mail* (6 March 1969) W8.

Lipovenko, Dorothy. “Group sees inequities in charter”, *The Globe and Mail* (24 November 1980) 15.

List, Wilfred. “Outgrew her uniform when pregnant, woman wins claim over forced leave”, *The Globe and Mail* (6 June 1978) 1.

Lowman, Josephine. “Why grow old?: Follow doctor’s advice when baby expected”, *The Globe and Mail* (3 January 1953) 11.

Lublin, Daniel. “Employers need to heed recent human rights decisions”, *The Globe and Mail* (26 July 2013) online: The Globe and Mail <http://www.theglobeandmail.com/>.

Manthorpe, Jonathan. “Fight sex bias, PM urges; 13 demonstrators seized”, *The Globe and Mail* (3 March 1971) A1.

McGregor, Janyce. “EI for self-employed costs $40M to administer, pays only $21M in benefits”, *CBC News* (17 August 2015) online: CBC News <http://www.cbc.ca/news>.

McMahon, Tamsin. "Is maternity leave a bad idea?", *Maclean's* (20 January 2014) online: Macleans.ca <http://www.macleans.ca/>.

Michael, Gillan. " Problems of working wives' pay, taxation will be covered: Pearson names woman writer to head Royal Commission on equality", *The Globe and Mail* (4 February 1967) 16.

Mironowicz, Margaret. "Women mount campaign against charter", *The Globe and Mail* (21 November 1981) 14.

—. "Women says men workers resented her promotions" *The Globe and Mail* (7 September 1979) 13.

Moore, Holly. "Cleaning company accused of pregnancy discrimination", *CBC News* (23 July 2015) online: CBC News <http://www.cbc.ca/news>.

—. "Lawyer locked in pregnancy discrimination battle with UManitoba", *CBC News* (3 May 2015) online: CBC News <http://www.cbc.ca/news>.

—. "Pregnancy not a factor in firing, ruling disappoints Human Rights Commission", *CBC News* (22 May 2015) online: CBC News <http://www.cbc.ca/news>.

—. "Winnipeg cleaning company discriminated against pregnant ex-employee, adjudicator finds", *CBC News* (5 May 2016) online: CBC News <http://www.cbc.ca/news>.

Morris, Eileen. "Family Sitter – Grandma's new role: As mothers go to work, children are left with her", *The Globe and Mail* (14 November 1963) 15.

Ndandala, Saturnin. "Breaking through the glass ceiling in Canadian Higher Ed", *Inside Higher Ed* (13 September 2016) online: Inside Higher Ed <https://www.insidehighered.com/>.

Patri, Angelo. “Our children: No universal answer to career for mother”, *The Globe and Mail* (3 September 1952) 9.

Platiel, Rudy. “‘The Prime Minister and Cabinet are men as other men’: Stop harping about a royal commission, Judy LaMarsh warns women’s group”, *The Globe and Mail* (9 January 1967) 13.

Rowan, Mary Kate. “Bias against women supported in Québec”, *The Globe and Mail* (6 March 1975) W8.

Sheppard, Robert. “Charter would enshrine bias, NAC says”, *The Globe and Mail* (21 November 1980) 9.

Speirs, Rosemary. “Commission ends western tour: Demands from women may result in re-examination of laws, chairman says”, *The Globe and Mail* (6 May 1968) 13.

Thompson, Elizabeth. “Elizabeth Thompson advises: Ashamed of briefs to Commission”, *The Globe and Mail* (12 June 1968) 10.

—. “Elizabeth Thompson advises: Ignore smokescreen and fight for rights, woman says”, *The Globe and Mail* (24 June 1968) 13.

—. “Mrs. Thompson advises: Young mother seeks job to do at home”, *The Globe and Mail* (19 June 1961) 12.

Tiel, Jane. “5, 6 or 7 months: Expectant mothers hold many jobs”, *The Globe and Mail* (1 June 1957) 20.

—. “On being a woman: A difficult transition: Career to motherhood”, *The Globe and Mail* (3 May 1958) 10.

—. “Women and Ontario Law: Adjust man’s world for the modern woman”, *The Globe and Mail* (28 December 1957) 11.

Tucker, Helen & Cecelia Wallace. “Women’s rights”, Letter to the Editor, *The Globe and Mail* (2 February 1967) 6.

Waterland, L. “Mothers at work”, *The Globe and Mail* (1 March 1954) 6.

Weiers, Margaret. “In 1968, most men still believe a woman’s place is in the home”, *Toronto Daily Star* (26 March 1968) 52.

—. “The status of women: What the men say”, *Toronto Daily Star* (26 March 1968) 51.

West, Bruce. “Ghastly thoughts”, *The Globe and Mail* (12 June 1968) 29.

Weygang, Peter. “A call for women to leave the office and return to homemaking”, Letter to the Editor, *The Globe and Mail* (10 October 1970) 7.

Worth, Ruth. “Board rejects plea of fired stewardess”, *The Globe and Mail* (15 June 1965) 9.

Zacharias, Yvonne. “Women execs believe glass ceiling still an impediment in Canada: study”, *Vancouver Sun* (12 December 2012) online: Vancouver Sun <http://vancouversun.com/>.

Zeidler, Maryse. “Pregnant waitress allegedly forced to quit an all too common issue, says lawyer”, *CBC News* (18 February 2017) online: CBC News <http://www.cbc.ca/news>.

Secondary Material: Monographs

Aggarwal, Arjun P. *Sex Discrimination: Employment Law and Practices* (Toronto: Butterworths, 1994).

Backhouse, Constance. "'A Revolution in Numbers': Ontario feminist lawyers in the formative years 1970s to the 1990s" in Constance Backhouse & W. Wesley Pue, eds, *The Promise and Perils of Law: Lawyers in Canadian History* (Toronto: Irwin Law, 2009) 265.

Baker, Maureen. *Canadian Family Policies: Cross-National Comparisons* (Toronto: University of Toronto Press, 1995).

Campeau, Georges. *From UI to EI: Waging war on the welfare state* (Vancouver: UBC Press, 2005).

Clément, Dominique. *Equality Deferred: Sex Discrimination and British Columbia's Human Rights State, 1953-84* (Vancouver: UBC Press for the Osgoode Society for Canadian Legal History, 2014).

—. *Human Rights in Canada: A History* (Waterloo, Ontario: Wilfrid Laurier University Press, 2016).

Huang, Daniel, Shannon L. Wagner & Henry G. Harder. *Disability Management and Workplace Integration: International Research Findings*, ed by Thomas Geisen & Henry Harder (New York: Routledge, 2016).

Kenschaft, Lori, Roger Clark & Desirée Ciambrone. *Gender Inequality in our Changing World: A Comparative Approach* (New York, USA: Routledge, 2016).

LeGault, Anneli. *Fairness in the Workplace*, 3rd ed (Toronto: CCH Canadian Limited, 2002).

Nemiroff, Greta H. *Women's Changing Landscapes: Life Stories from Three Generations* (Toronto: Second Story Press, 1999).

Porter, Ann. *Gendered States – Women, Unemployment Insurance, and the Political Economy of the Welfare State in Canada, 1945-1997* (Toronto: University of Toronto Press, 2003).

Sangster, Joan. "Doing two jobs: The wage-earning mother, 1945-70" in Joy Parr, ed, *A Diversity of Women: Ontario, 1945-1980* (Toronto: University of Toronto Press, 1995) 98.

Strayer, Barry L. "The Evolution of the Charter" in Lois Harder & Steve Patten, eds, *Patriation and its consequences: Constitution making in Canada* (Vancouver: UBC Press, 2015) 72.

Timpson, Annis M. *Driven apart: Women's Employment Equality and Child Care in Canadian Public Policy* (Vancouver: UBC Press, 2001).

Other Materials

"Employment Insurance Coverage Survey, 2014", *The Daily* (23 November 2015) online: Statistics Canada <http://www.statcan.gc.ca/daily-quotidien/151123/dq151123b-eng.pdf>.

Anxo, Dominique et al. *Parental leave in European companies: Establishment Survey on Working Time 2004-2005* (Luxembourg: Office for Official Publications of the European Communities, 2007).

Birenbaum, Joanna, Jo-Ann Kolmes & Marcia Tait. "Submission of LEAF and LEAF-Edmonton on the length of service requirement for maternity and parental leave

under the *Canada Labour Code*" (19 May 2009), online: Women's Legal Education and Action Fund <http://www.leaf.ca/legal/reform-and-analysis/>.

Canadian Advisory Council on the Status of Women, "Women, Human Rights & The Constitution: Submission of the Canadian Advisory Council on the Status of Women to the Special Joint Committee on the Constitution" (18 November 1980) online: <http://historyofrights.ca/wp-content/uploads/committee/cacsw.pdf>.

Cox, Rachel. "The recent Québec appeal court decision on the constitutionality of maternity and parental benefits as employment insurance benefits: Some feminist reflections" (Ottawa: National Association of Women and the Law, 2004), online: <https://www.nawl.ca/ns/Pub_Brief_MPBenefits04_en.doc>.

Davidoff, Avra et al. *Making it Work! – How to effectively manage maternity leave career transitions – An Employer's Guide* (Toronto: Canadian Education and Research Institute for Counselling, 2016).

Findlay, Leanne C. & Dafna E. Kohen. "Leave practices of parents after the birth or adoption of young children" (30 July 2012), online: Canadian Social Trends (Statistics Canada) <http://www.statcan.gc.ca/pub/11-008-x/2012002/article/11697-eng.pdf>.

Health Canada. online: <http://www.hc-sc.gc.ca/fn-an/nutrition/infant-nourisson/recom/recom-6-24-months-6-24-mois-eng.php#a3>.

International Labour Office. *Equality of Opportunity and Treatment for Women Workers* (Report VIII) (1974) online: <http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/74b09_727.pdf>.

International Labour Office, *Social Security Planning in Canada: The Marsh Report and Proposed Health Insurance Legislation* (Montreal: ILO Office, 1943).

International Labour Organization. *Maternity and paternity at work: Law and practice across the world* (2014) online: <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_242615.pdf>.

Marshall, Katherine. "Fathers' use of paid parental leave" (June 2008), online: Statistics Canada <http://www.statcan.gc.ca/pub/75-001-x/2008106/pdf/10639-eng.pdf>.

Morissette, Rene. "Canadian Megatrends – The surge of women in the workforce, 1950 to 2014" (17 December 2015) online: Statistics Canada <http://www.statcan.gc.ca/pub/11-630-x/11-630-x2015009-eng.htm#def1>.

Prowse, Deborah E. *Workplace Review – Calgary Police Service* (November 2013) online: Calgary Police Service <http://www.calgary.ca/cps/Pages/Our-commitment-to-gender-equality.aspx>.

Pylkkänen, Elina & Nina Smith. *Career interruptions due to parental leave: A comparative study of Denmark and Sweden* (Paris, OECD Publications Service, 2003).

Reich, Carol. *The Effect of a Teacher's Sex on Career Development* (Toronto: Toronto Board of Education for the City of Toronto, 1975).

Robson, Jennifer. "Parental benefits in Canada: Which way forward?" (March 2017), online: Institute for Research on Public Policy <http://irpp.org/wp-content/uploads/2017/03/study-no63.pdf>.

Statistics Canada. "Portrait of families and living arrangements in Canada: Families, households and marital status, 2011 Census of Population" (September 2012),

online: <http://www12.statcan.gc.ca/census-recensement/2011/as-sa/98-312-x/98-312-x2011001-eng.pdf>.

Symons, Thomas H. B. & James E. Page. *Some Questions of Balance: Human Resources, Higher Education and Canadian Studies (Volume III of "To know ourselves: The Report of the Commission on Canadian Studies")* (Ottawa: Association of Universities and Colleges of Canada, 1984).

World Health Organization. online: <http://www.who.int/nutrition/topics/exclusive_breastfeeding/en/>.