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Canada's Paid Parental Leave Legislation: An Examination of its Ability to Eliminate
Women's Subordination at Home and at Work.

By

Karen Dawn Miller

A thesis Submitted to the Faculty of Graduate Studies and Research in Partial Fulfilment
of the requirements for the degree of

Master of Arts

Department of Law

Carleton University
Ottawa, Ontario

December, 1999.

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**Canada's Paid Parental Leave Legislation:
An Examination of its Ability to Eliminate
Women's Subordination at Home and at Work.**

**Submitted by Karen Dawn Miller, B.A. (Hons.)
in partial fulfilment of the requirements for
the degree of Master of Arts**

Thesis Supervisor

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**Carleton University
January 2000**

ABSTRACT

This study examines Canada's paid parental leave provisions, under the Employment Insurance Act, in an attempt to determine whether they are capable of eradicating the subordination of women within the home and the paid workplace. Central to this discussion is the introduction of a theoretical model which examines the decision making process between parents upon the birth of a child, with regards to the use of a period of paid leave. This model determines that the legislation's adherence to a liberal paradigm of equality renders it incapable of bringing about its shared usage by both mothers and fathers. This is because the legislation in its effect targets only women's subordination in the workplace. A discussion of Sweden's paid parental leave legislation highlights that it is equally problematic to target only women's subordination within the home. Instead what is needed are legal or extra-legal measures which simultaneously target women's subordination within both of these spheres. On this basis, it is concluded that Canada's leave legislation alone is incapable of achieving its goal of equality of parenthood.

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CHAPTER ONE

Introduction

Since the early 1960's, there has been a significant increase in the number of women within the Canadian paid labour force. In fact, as of 1991, 61% of all married women were employed in some form of paid work outside of the home.¹ At the same time, however, women continue to hold primary responsibility for most household and child care related tasks. According to the 1990 General Social Survey, it was found that women's share of these responsibilities tend to make up more than 78% of all home related tasks.² In this way, a large number of women return home at the end of their workday to what has been defined as the "second shift" or "double work day".³ This requires many women to try to balance their time between their work and home lives in an attempt to be successful at both.

A number of advanced industrial nations have recognized the existence of this extra burden experienced by women, and have attempted to address it through the use of family policies. Most commonly, this has taken the form of paid parental leave legislation.⁴ Although the intentions behind such legislation varies by country, what

¹ Statistics Canada, Women and the Canadian Labour Market: Transitions Towards the Future. (Ottawa: International Thomson Publishing, 1998), at 26.

² Statistics Canada, General Social Survey, Preliminary Data Cycle 5: Family and Friends, by Susan A. McDaniel. (Ottawa: Ministry of Industry, Science and Technology, 1994) at 64. The General Social Survey was initiated by Statistics Canada to reduce gaps in the socio-economic trends data. The Fifth Cycle was based on telephone surveys of 13,495 individuals over 15 years of age, throughout the country. The response rate was 76%. This cycle took place from January to March of 1990.

³ H. Wesley Perkins and Debra K. DeMeis, "Gender and Family Effects on The "Second Shift" Domestic Activity of College-Educated Young Adults," (1996) 10(1) Gender and Society, at 78.

⁴ See for example; Council of Europe. Steering Committee for Labour and Employment: From Work in the Family and Home to an Occupational Activity (1996), for discussion of paid parental leave legislation in Europe and for an overview of the legislation implemented in Sweden, Hungary, Germany and France

they have in common is that they provide, to both mothers and fathers, a period of paid leave during which they are able to care for their children while maintaining ties to the workplace. Canadian paid parental leave legislation was made available to all parents in 1989 under the Employment Insurance Act.⁵ This legislation was intended to be a means of "...equalizing the role of parents in the care of children as much as possible, for the benefit of the family in general and in particular for the achievement of greater equality in the workplace for women."⁶ The 'equality of parenthood' resulting from the implementation of the paid parental leave legislation, was intended to ensure that men and women share responsibilities encountered within the home. As such, women would be provided with equal access to the paid labour force as their responsibilities in the home would no longer interfere with their ability to participate and compete within the workplace.

The primary objective of this thesis is to examine Canada's paid parental leave legislation to determine whether or not it currently does, or ever can bring about such fundamental change to women's experiences within both the home and the workplace. In particular, the question that will be investigated is whether Canadian paid parental leave legislation can be an effective means by which to achieve its goal of equality of parenthood. The analysis necessary to answer this question will take place within the following three chapters.

Chapter Two will begin by examining the perspective from which the majority

see; Women's Bureau of Labour Canada, National System of Fully-Paid Parental Leave for Canada: Policy Choices, Costs and Funding Mechanisms, (Ottawa: Women's Bureau of Labour Canada, 1983) at 7 to 33.

⁵ This was formerly known as the Unemployment Insurance Act. With the introduction of Bill C-12 in July, 1996 the name was changed to the Employment Insurance Act, and it will be referred to as such throughout this thesis.

of Canadian family policies are written, namely a liberal paradigm of equality. Policies written from within this paradigm, are particularly resistant to the recognition of women's gender-based differences because they subscribe to the liberal principles of equality of opportunity and gender neutrality. As such, the liberal paradigm holds that equality is achieved when all individuals are treated in the same manner in those instances where they are the same. It was within this arena that many of the arguments regarding the need for gender equality were made in the early 1980's by Canadian women's groups, such as the National Action Committee on the Status of Women (NAC). Their perspectives in turn formed the foundation for calls put forth by government bodies responsible for women's issues, regarding the implementation of a paid parental leave scheme in Canada. This chapter will then discuss the ways in which this theoretical paradigm has had an impact upon the paid parental leave legislation contained in the Employment Insurance Act. Its effect can be seen through the adherence of the legislation to the principle tenets of liberalism. Lastly, it will be shown that the intention behind this legislation is the attainment of equality of parenthood between mothers and fathers. The underlying assumption is that to do so will be to improve the position of women within the paid workplace by giving them an opportunity to compete equally with men for even the most prestigious jobs.

Once it has been established that Canada's paid parental leave legislation was written from within a liberal paradigm of equality, Chapter Three will discuss the impact of this paradigm on the effectiveness of the legislation in achieving its intended goal. A theoretical model will be introduced to examine the decision making process of parents

⁶ Her Majesty the Queen and Canada Employment and Immigration Commission vs. Shalom Schachter (1989), 52 D.L.R. (4th), 525-553 (F.C.) at 542.

upon the birth of a child, regarding the use of parental leave provisions. It will reveal that even where men and women are equal within the home, the child care decision is tainted by women's subordination in the workplace. For the purpose of this thesis, women's subordination refers to their disadvantaged social position as compared to that of men. This can manifest itself in a number of ways and in various aspects of everyday life. However, the focus will be placed on two specific relationships which exist between men and women. The first of these is the parental relationship undertaken by many husbands and wives, where women's subordination takes the form of their being responsible for the majority of home and child care related responsibilities. The second relationship which will be examined is that which occurs within the workplace, whereby men and women function together as employers and employees. It is here that women make up the majority of those found within low paying and low status occupations. The model will serve to illustrate the ways in which both of these manifestations of women's subordination interact with, and reinforce one another.

In light of the existence of these forms of subordination and their interactions, it will be found that even in this 'best case scenario', when leave is offered to both men and women equally it continues to be women who are the majority of those using it. The liberal paradigm of equality in which the legislation is written, condones this erosion of the paid parental leave scheme by focusing on the principles of equality of opportunity and gender neutrality and thereby overlooking women's status within the paid labour force. Subordination of women in the workplace is therefore identified as a factor that when present, renders Canada's paid parental leave legislation ineffective in achieving the goal of equality of parenthood.

Chapter Four will show that key assumptions in the model, particularly the subordination of women in the workplace, are in fact in existence. This subordination can take different forms, but the result is that women are not on an equal footing with men. Women are also subordinate within the home, so it is clear that to be effective, family policy will need to target both of these spheres simultaneously. This is illustrated through an examination of the paid parental leave legislation of two representative countries within the context of the model set out in Chapter Three. Canada's legislation is examined as an example of a policy which in its effect targets only women's subordination within the workplace. This is because it assumes that once women have equal access to the paid labour force, they will be equal to men. Such an approach ignores the starting position of women, as well as their subordination within the home. In contrast, the paid parental leave legislation of Sweden is written within a social democratic paradigm. What this sets out to accomplish is the removal of both gender and class inequalities from all aspects of society.⁷ As such, it provides to parents an extremely generous income replacement scheme on a gender neutral basis, as well as a mandatory leave period for fathers. These provisions, though, overlook the complex relationship which exists between women's subordination within both the home and at work. Consequently the legislation serves to target in its effect only women's subordination within the home. Thus, Sweden's paid parental leave legislation is also rendered ineffective in achieving its goal of equality of parenthood.

This thesis concludes that existing Canadian paid parental leave legislation cannot itself be a useful tool by which to achieve the goal of equality of parenthood.

⁷ Rianne Mahon, "Child Care in Canada and Sweden: Policy and Politics," (1997) 4(3) Social Politics at 382.

Instead, it will be suggested that there needs to be implemented a system of family policies. To begin with, there needs to be put into place an effective pay equity program which would reduce the wage gap which currently exists between men and women. There is also the requirement for an effective employment equity legislation which would ensure that women are no longer subordinate within the workplace. Once effective forms of these two policies are put into place, Canada's paid parental leave legislation would have a greater potential to achieve the goal of equality of parenthood. This is because there would no longer exist factors which would render women unequal in the decision making process occurring in families following the birth or adoption of a child. The need also exists for the creation of a comprehensive and effective national child care program. On its own, a national day care system is incapable of bringing about meaningful change in the distribution of responsibilities between mothers and fathers. However, this initiative when implemented in conjunction with an effective system of family policies, would have a real potential to ensure that equality of parenthood is maintained long after the period of paid parental leave is over.

This is not to say, however, that the best remedy necessarily takes the form of an adherence to the law. The capability of legal measures to affect the cultural and social factors underlying women's subordination is called into question. On this basis, it is determined that there is a need for further discussion on the potential of the law to bring about social change, in terms of the stereotypes which exist regarding the role of men and women in parenting.

Methodology

A variety of sources were consulted in order to establish in Chapter Two that Canada's paid parental leave legislation adheres to a liberal paradigm of equality, and that the intention of the legislation was to achieve equality of parenthood. To begin with, several key documents released in the early 1980's by government bodies responsible for women's issues were examined in order to establish that their arguments for the implementation of paid parental leave were couched in a liberal conceptualization of equality. These documents include Child Care: The Employer's Role. Report of the Task Force on Child Care, released in 1985 by Status of Women Canada, and National System of Fully-Paid Leave For Canada: Policy Choices, Costs and Funding Mechanisms, released in 1983 by the Women's Bureau of Labour Canada. The most important document examined, however, was that of the Report of the Royal Commission on the Status of Women in Canada. Released in 1970, this report was the first real assessment that received input from Canadian women's groups with regards to the need for some form of parental leave provisions.

Also important to the discussion in this chapter is an examination of several Canadian judicial decisions, as well as several key pieces of legislation. The decisions rendered in the cases of Schachter v. Canada, and Brooks v. Canada Safeway Ltd. are valuable in establishing that the paid parental leave legislation falls within a liberal paradigm. As well, by revealing the position of the Canadian judicial system on issues surrounding child care related leave, these cases provide further evidence that the

intention of this legislation was to achieve equality of parenthood. The perspective of the Canadian government and hence Canadian society in general, is revealed through an examination of the legislation provided under the Employment Insurance Act, as well as unpaid parental leave provisions contained under the Canada Labour Code and in provincial employment standards acts. Lastly, Canada's commitment to the notion of equality of parenthood will be verified through an examination of an international document ratified by Canada in 1981. By signing the International Convention on the Elimination of All Forms of Discrimination Against Women, the Canadian government has agreed to adhere to all of its principles, including that of equality of parenthood for all mothers and fathers.

The theoretical model presented in Chapter Three has as its basis the use of a "best case scenario." This approach is founded on the assumption that parents are equal within the home with regard to their household and child care responsibilities. Although it is recognized that such a scenario does not in fact exist within the real world, it is nonetheless useful in identifying the interconnections which exist between women's subordination to men within the home and at work. This becomes especially evident when the "best case scenario" is applied to the decision making process undertaken by parents upon the birth or adoption of a child as to which parent should use the provisions of the paid parental leave legislation. What this serves to accomplish is to reveal the extent to which women's subordination within the workplace affects their bargaining power within this decision.

A similar approach has been taken by Nancy Fraser in her work dealing with the need for redistribution and recognition of the differences which exist between

individuals. She examines the cultural and the economic components of everyday life separately, in an attempt to determine under which circumstances the application of redistribution or recognition is best suited. She recognizes that in reality the cultural and economic components of everyday life cannot be analyzed in this way as they are inextricably interconnected. However, Fraser feels that such an approach is fruitful in that “...Only by abstracting from the complexities of the real world can we devise a conceptual schema that can illuminate it.”⁸ This notion also forms the basis of the “best case scenario” as it is set out in this thesis. By idealizing women’s status within the home while examining their subordination to men within the workplace, the model is then able to identify those factors which inhibit the effectiveness of Canada’s paid parental leave legislation in achieving its goal of equality of parenthood.

In Chapter Four the paid parental leave legislation of both Canada and Sweden is analyzed and discussed. These two countries were chosen for comparison due to the fact that they each target in their effect one form of women’s subordination, to the exclusion of the other. The discussion of Canada’s paid parental leave legislation relies upon statistical data which shows that women are indeed subordinate to men within the workplace and the home. As such, Canada’s legislation which affects only women’s subordination to men within the workplace is ineffective. This evidence provides support for the findings of the ‘best case scenario’ presented in the theoretical model within Chapter Three. As it would be outside of the scope of this thesis to examine primary sources for the discussion of Sweden’s paid parental leave legislation, secondary sources are relied upon. This evidence is analyzed to show that even though Sweden’s

⁸ Nancy Fraser, *Justice Interruptus: Critical Reflections on the ‘Post-Socialist’ Condition*, (New York: Routledge, 1997) at 13.

legislation is more generous in its provisions than that of Canada, it is still not effective in achieving equality of parenthood. This is because it targets in its effect women's subordination within the home to the exclusion of that which exists within the workplace.

The question examined in this thesis as to the effectiveness of Canada's paid parental leave legislation is an important one. An examination of Unemployment Insurance Statistics from the time period in which paid parental leave has been available under the Employment Insurance Act shows that its use is not being shared equally between mothers and fathers. In 1998 alone, only 3.8% of the 355 110 people using these provisions were men.⁹ Thus, it cannot be said that equality of parenthood has been reached through the existence of this legislation and so it is necessary to call its effectiveness into question.

CHAPTER TWO

Introduction

This chapter will set out to establish that Canada's paid parental leave legislation was created from within a liberal paradigm of equality. Liberalism's basic principle is that of equality of opportunity whereby all individuals, regardless of their fundamental differences, are treated alike to ensure that everyone has the same opportunities. The liberal perspective played a large role in the arguments made by women's groups in the 1970's and early 1980's for the achievement of gender equality. This in turn had an impact on government bodies responsible for women's issues, with regards to their calls for the creation of paid parental leave provisions at the national level. This becomes evident through an examination of documents published during this time period by such government based bodies as the Royal Commission on the Status of Women in Canada, the Women's Bureau of Labour Canada, and Status of Women Canada. It is perhaps unsurprising then, that when this legislation was finally made available to all parents in 1989 under the Employment Insurance Act, it embodied a liberal approach to equality.

It will further be shown that the intent behind the legislation was to alleviate women's dual burdens in the home and at work by bringing about equality of parenthood between mothers and fathers. By ensuring that responsibilities within the home were shared by men and women, it was believed that women would have unfettered access to

⁹ Statistics Canada, Unemployment Insurance Statistics, (Ottawa: Labour Division, 1990-1999). Unemployment Insurance Statistics pertaining to use of paid parental leave by gender were examined from

the same opportunities as men within the workplace. Establishing both the provisions of the legislation as well as the perspective in which it was written is important. It allows for an examination of the effect of a liberal paradigm of equality on the ability of Canada's paid parental leave legislation to achieve its intended goal.

Liberal Paradigm of Equality

The liberal conception of equality is comprised of three principle tenets: individualism, limited state intervention, and facially neutral law and policy.¹⁰

Individualism refers to the belief that all individuals require the chance to pursue their own life goals without any undue interference on the part of other individuals or the state.

In order to accomplish this, it is imperative that all individuals have "...certain basic rights that provide the basis for autonomously exercising preferences."¹¹ The shared nature of these rights lays the groundwork for what is commonly referred to as 'equality of opportunity.' This liberal concept proposes that equality between individuals is achieved once all individuals are provided with the same opportunities and resources.

A basic assumption of individualism, then, is that individuals are capable at some level of pursuing their own needs without conflicting with one another. This requires that the nature of individuals take a particular form, namely that of fully autonomous beings.¹²

In the opinion of Sherene Razack, "[u]nderlying liberalism...is a concept of self which

January 1990 through to March, 1999.

¹⁰ Colleen Sheppard, "Equality, Ideology and Oppression: Women and the Canadian Charter of Rights and Freedoms." in C. Boyle et al. (eds) Charterwatch: Reflections on Equality, (Toronto: Carswell, 1986), at 197.

¹¹ Jan Kainer, "Pay Equity Strategy and Feminist Legal Theory: Challenging the Bounds of Liberalism." (1993) 8(2) Canadian Journal of Women and the Law, at 446.

¹² Sheppard, supra note 10 at 254.

has an independent existence unconnected to other selves or defined by ends it chooses.”¹³ In other words, liberalism subscribes to the notion that the experiences of individuals are not affected by their interaction with those around them. Such a framework clearly precludes any recognition of differences in women’s experiences, because factors such as race and gender go unacknowledged in an attempt to treat everyone in the same manner.¹⁴

The second fundamental principle of a liberalist equality is that of non-intervention by the state. One of the cornerstones of liberalism is a belief that the state should have only a very limited role in the everyday lives of individuals. In fact, the only instance in which liberalism supports state intervention is when the pursuits of one individual collide with those of another. According to David Held, “Individuals must be free of political and social impediments to choose how to arrange their lives...”¹⁵ Along with this reluctance for state intervention comes the concomitant belief in the limited responsibilities of the state in terms of the achievement of equality. As Colleen Sheppard points out, the state

...does not assume responsibility for securing substantive or distributive equality. Its obligations encompass only the duty to treat “like” individuals alike in areas where it has chosen to intervene.¹⁶

A substantive or distributive form of equality, refers to the placement of individuals on an equal footing with one another in those aspects of society in which

¹³ Sherene Razack, Canadian Feminism and the Law, (Toronto: Second Story Press, 1991) at 14.

¹⁴ Kainer, supra note 11 at 447.

¹⁵ David Held, Models of Democracy, (Stanford: Stanford University Press, 1996) at 114.

there exists inequality. This perspective recognizes that oftentimes it is necessary to treat individuals differently in order to achieve this goal. By avoiding all responsibility for the attainment of substantive equality, however, the liberal state clearly rejects this notion of the recognition of difference. Instead, a liberal paradigm of equality insists that all individuals should be treated alike and not given any special treatment. As such, this perspective is based upon the underlying assumption that individuals will be able to achieve meaningful equality once they are provided with equal opportunities.

The third principle of liberal equality advocates that in anticipation of those instances where the interests of individuals do collide, "...it is necessary to put in place a structure of law or a set of ethical principles that establishes social order and provides equality and justice in society."¹⁷ When created within a liberal framework, this structure takes the form of facially neutral law and policy. Such an approach strictly adheres to the rule of law with its focus on equality before and under the law. According to Sherene Razack, this means that "...no longer is the formal application of the law to vary according to one's social class or position."¹⁸ In other words, there should not exist laws which aim to place all individuals on an equal footing by focusing on their fundamental differences. Instead, liberal equality holds that if laws and policies are written in a neutral manner and are therefore applicable to all, the end result will be the creation of equality of opportunity.

It can be seen that a liberal paradigm of equality subscribes to the three

¹⁶ Sheppard, *supra* note 10 at 254.

¹⁷ Kainer, *supra* note 11 at 446.

¹⁸ Razack, *supra* note 13 at 14. Here she is summarizing A.V. Dicey, an academic who in his work on constitutional law has identified that a key principle of the rule of the law is that everyone is equal before the law. See for example: Introduction to the Study of the Law of the Constitution, 10th ed., (New York: St. Martin's Press, 1965).

principle tenets of individualism, limited state intervention and facially neutral law and policy. It will now be shown that these principles have played a large role in feminist theory, and in particular that they have permeated the arguments made by government bodies responsible for women's issues in Canada, with regards to their calls for the creation of a system of paid parental leave. This is not to suggest that all aspects of the Canadian equality debate have been couched within a liberal paradigm of equality. On the contrary, the Supreme Court of Canada has advocated the use of a more substantive approach to equality in its decisions. The Andrews case is one such example. Here, Justice McIntyre put forth the opinion that there is a need to recognize that "...every difference in treatment between individuals under the law will not necessarily result in inequality and, as well, that identical treatment may frequently produce serious inequality."¹⁹ This is a clear rejection of the liberal notion that equality is achieved when all individuals are treated in the same manner. Though this stance is a progressive one, the overall response by Canadian governments at all levels has been to continue to write legislation within a liberal paradigm of equality, thereby leaving gender inequality unchanged. At the same time, liberalism continues to permeate and influence contemporary feminist theories.

Liberal Feminism in Canada

The principles of equality of opportunity and legal neutrality have carried over

¹⁹ Andrews v. Law Society of British Columbia [1989] 1 S.C.R. 143

into contemporary feminist theory in the form of liberal feminism.²⁰ According to Lorraine Code, modern liberal feminists consistently argue for the right of women to enjoy the "...freedom and equality of opportunity claimed by the autonomous liberal individual."²¹ She explains that this is seen as necessary for women as their ability to participate equally with men, and to compete for high status occupations is severely limited by bias and discrimination. As such, it is the fundamental belief of this theoretical perspective that the disadvantage which results from discrimination can be remedied once women receive the same treatment as men in law and policy. Code further states that liberal feminism is based upon the notion that "Justice and fairness require equal opportunities for each individual regardless of sex."²² What this advocates is the use of gender neutrality in terms of law and policy. This means that laws and policies would not single out one or the other gender, but rather would be equally available for use by both men and women. The underlying reasoning behind this principle is that gender neutrality avoids the creation of stereotypes by not subscribing men or women to any particular roles. Thus, it is believed that in this manner all individuals are treated alike and so equality is achieved.

The liberal feminist perspective and its guiding principles have had a significant impact on Canadian debates revolving around women's equality in employment and child care. This has become particularly important with the dramatic increase in the number

²⁰ See for example the work of such feminist theorists as; Alison Jagger, "On Sexual Equality," in Sex Equality, ed. Jane English (Englewood Cliffs: Prentice-Hall, 1977); Wendy Williams, "The Equality Crisis: Some Reflections on Culture, Courts and Feminism," in Women's Rights, Law Reporter 8 (1982; Shulamith Firestone, The Dialectic of Sex (New York: Bantam, 1970); Sylvia Law, "Rethinking Sex and the Constitution," University of Pennsylvania Law Review 133 (1984).

²¹ Lorraine Code, "Feminist Theory", in Sandra Burt et al.(eds) Changing Patterns: Women in Canada, (Toronto: McClelland & Stewart Inc., 1993) at 36. Code does not here subscribe to, nor refute the liberal position but rather provides an overview of its fundamental principles.

²² Ibid., at 37.

of women within the paid workforce, thereby creating the need for an increase in alternative forms of child care .²³ One of the first indications that this debate was taking place within a liberal paradigm of equality came in 1970 with the release of the recommendations made in the Report of the Royal Commission on the Status of Women in Canada. It states that in keeping with the terms of reference provided by the federal government, the Royal Commission felt that it was their "...duty to ensure for women equal opportunities with men."²⁴ When applied to issues respecting women's employment, the Royal Commission interpreted this to mean that it was necessary for women to have the same chance for jobs as the men with whom they were competing. The Royal Commission recommended that in order to achieve this goal it is imperative there be a full recognition that

...the care of children is a responsibility to be shared by the mother, the father and society. Unless this shared responsibility is acknowledged and assumed, women cannot be accorded true equality.²⁵

An underlying belief, then, held by the Royal Commission was that in order for women to achieve true equality of access to the paid labour force, there would need to be some form of policy or government initiative which would encourage men's participation in child care. Such a position clearly indicates an understanding on the part of the Royal Commission with respect to the fact that women's double burden acts as an impediment

²³ According to Statistics Canada data, 51% of all women aged fifteen years or more were working within the paid labour force in 1993. See *Women and the Canadian Labour Market*, supra note 1 at 5.

²⁴ *Royal Commission on the Status of Women in Canada, Report of the Royal Commission on the Status of Women in Canada*, (Ottawa: Minister of Supply and Services) at xi.

to their achievement of full equality within both the home and the paid workplace. At the same time, there is definitive recognition that the only way in which to truly overcome this disadvantage, is by ensuring that household and child care responsibilities are shared equally by fathers.

Government Provisions

The federal government responded to this argument with an arsenal of initiatives with the aim of facilitating women's ability to compete equally with men for employment.²⁶ To begin with, the government targeted the connection identified by the Royal Commission between women's responsibilities in the home and their status within the workplace, through the use of maternity leave. In 1970, a system of paid maternity leave was made available through the Canada Labour Code. This provided pregnant women with eleven weeks of paid leave. Also included was a guarantee of reinstatement to their previous job positions once their term of leave was completed.²⁷ This was the first piece of legislation of its kind to be offered at the federal level, although a similar guarantee existed under provincial employment standards acts.²⁸ Although the provisions under the Canada Labour Code were only applicable to approximately 10% of the paid labour force, the job reinstatement guarantee was indicative of federal

²⁵ Ibid., at xi.

²⁶ See for example; Susan Findlay, "Facing the State: The Politics of the Women's Movement Reconsidered," in H.J. Maroney and M. Luxton (eds.) Feminism and Political Economy: Women's Work, Women's Struggles, (Toronto: Methuen, 1987).

²⁷ Canada Labour Code, Part III R.S., 1985, c. L-2.

²⁸ For example, s. 43(1) of the Ontario Employment Standards Act guaranteed that: "The employer of an employee who has taken...parental leave shall reinstate the employee when the leave ends to the position the employee most recently held with the employer, if it still exists, or to a comparable position, if it does not."

government support for the notion that parents should not be punished for using a period of paid leave. However, by making child care related leave available only to women, this legislation left unacknowledged the recommendations made by the Commission regarding the need for the involvement of both parents in child rearing. As such, although this provision was an important one because it recognized the existence of women's 'double shift', it can be said that the government felt that its eradication lay only in making it easier for women to cope with both of their burdens rather than by bringing about fundamental change in the sexual division of labour.

At the same time, the government instigated several initiatives which focused on women's position within the labour force. Initially this took the form of affirmative action programs. In 1983, a program called Affirmative Action was put into place within the Public Service of Canada.²⁹ This initiative, which was primarily voluntary for employers, aimed to eliminate systemic barriers which hindered women from gaining certain forms of employment. These barriers take many forms, for example height and weight requirements. The underlying principle of these policies was that although men and women are indeed different in fundamental ways, these differences should not in any way disadvantage women in terms of their ability to compete for jobs on an equal basis with men. As such, under affirmative action schemes men and women are treated in a gender neutral manner so as to ensure their equal treatment. As will be shown, however, a gender neutral approach is just as problematic since it adheres to the first principle of a liberal paradigm of equality.

Affirmative action programs continued to be relied upon until the federal

²⁹ Government of Canada, Treasury Board of Canada, News Release, 1983.

enactment in 1986, of the Employment Equity Act.³⁰ This legislation was considered to be the “...most extensive affirmative action program yet embraced by a Canadian government.”³¹ This was because it provided to Crown Corporations and federally regulated industries a voluntary guideline regarding issues of equity in employment. It was believed that this would bring about necessary improvement in women’s status within the paid labour force.

The government also responded to the Commission’s recommendations through the implementation of the Canadian Human Rights Act, in 1978. Section 7 of this piece of legislation served to establish that it was wrong to discriminate against women in terms of their employment. The Act also brought about a recognition of the utility of pay equity strategies as a means by which to better equalize the position of women within the paid labour force. This notion was entrenched in Section 11, where the principle of equal pay for work of equal value was established for use within the confines of the federal public service and all federally chartered enterprises.³² Perhaps the most far-reaching equal pay strategy, however, was implemented at the provincial level. In 1987, the Ontario Pay Equity Act was established, and was seen as being the most progressive attempt to bring about equality in men’s and women’s wages as it “...applied the principle of comparable worth to both the public and private sectors of the Ontario economy.”³³ By broadening the impact of pay equity legislation, it was believed that women would soon have widespread equality in terms of their wages.

³⁰ Employment Equity Act S.C., 1986.

³¹ Lesley A. Jacobs, “Equity and Opportunity” in Francois-Pierre Gingras (ed.) Gender and Politics in Contemporary Canada, (Toronto: Oxford University Press, 1995) at 106.

³² Canadian Human Rights Act, 1976-77, c. 33, s.11.

³³ Jacobs, *supra* note 28 at 106. The term ‘comparable worth’ is the term utilized in the United States for what is referred to in Canada as ‘equal pay for work of equal value.’

Paid parental leave legislation was not a part of this initial arsenal. It was not until 1984 that such a provision was made available at the national level under Section 32 of the Employment Insurance Act.³⁴ However, this only provided a period of paid leave to adoptive parents. Natural parents were excluded from having access to this or to any other nationally enacted parental leave provisions. The fact that this legislation did not grant paid parental leave to all Canadian parents indicates that its implementation was not a recognition on the part of the government of the recommendations made by the Commission, but rather was only enacted in response to the unique circumstances faced by adoptive parents. As such, the majority of Canadian women continued to experience gender inequality.

Representation of Women Within the Federal Government

In the early 1980's, many women's groups such as the National Action Committee on the Status of Women (NAC) advocated that steps be taken to ensure the attainment of gender equality in Canada. However, these debates consistently revolved around liberal conceptualizations of equality. In other words, there continued to exist a fundamental belief that equality is achieved once women are treated in the same manner as men.³⁵ This perspective in turn had a significant impact on government bodies responsible for women's issues, with regards to their calls for the implementation of a national system of paid parental leave. Perhaps the most vocal of these bodies was the Task Force on Unemployment Insurance, Status of Women Canada, and the Women's

³⁴ Unemployment Insurance Act 1971, S.C. c. 48, s. 32.

³⁵ Razack, supra note 13 at 29.

Bureau of Labour Canada. They pinpointed the inadequacies of the policies to date in dealing with the problems outlined by the Royal Commission on the Status of Women in Canada. For the most part, these groups felt that the problem of ensuring shared responsibility for child care had gone unacknowledged in government initiatives due to the fact that a system of paid parental leave provisions had not been implemented. In July 1981, the Task Force on Unemployment Insurance stated that parental leave provisions were necessary in order to provide women with a "...period of postnatal care."³⁶ In this way, women would not be penalized for taking time off to care for their children through a loss of wages or employment. This opinion, however, again did not take into consideration the need for equality of parenthood in order to achieve true equality for women. Thus, the focus was again on creating a means by which women would be better able to cope with their responsibilities both within the home and at work. Such a perspective clearly makes no attempt to bring about a fundamental change in the gendered division of labour.

In 1983, the Women's Bureau of Labour Canada agreed with this perspective in their series entitled National System of Fully Paid Parental Leave for Canada.³⁷ The underlying assumption put forth in this document was that such a policy was imperative in order to aid women in coping with their economic and family related responsibilities. However, they went even further to suggest that the leave should be available not only to women, but to men also. They stated that it is an "...important question of principle that they be made available to both mothers and fathers and that it be made clear that fathers

³⁶ Unemployment Insurance in the 1980's: A Report of the Task Force on Unemployment Insurance, (Ottawa: Supply and Services Canada, 1981) at 12.

³⁷ Government of Canada, Women's Bureau of Labour Canada, supra note 4 at 33.

are expected and encouraged to make use of them.”³⁸ This view subscribes to the liberal notion of gender neutrality, whereby the provisions would not single out mothers but rather would be provided to both parents. As such, the assumption was made that this universal availability of parental leave legislation would in turn bring about equality in its usage.

Status of Women Canada also agreed with this position in their 1985 document entitled Child Care: The Employer’s Role-Report of the Task Force on Child Care, where they examined a number of different models of parental leave throughout the world in an attempt to determine what would work best in Canada . They concluded that

There appears to be a growing recognition that a national system of fully paid leave for childbirth and care of infants is a necessary part of any policy package to support women’s labour market participation on a full and equal basis with men.³⁹

They proposed that the best way in which to attain this goal was through the provision of the legislation to both men and women so that it could be used by either parent. The document states that “...to provide equal rights for fathers, and to enable the sharing of family responsibilities between both parents, the paid leave should be made available to either parent.”⁴⁰ This position provided further support for the implementation of a gender neutral parental leave policy, with the assumption that to do so would be to bring about equality for women in the workplace. Thus, although going further than other

³⁸ Ibid., at 121.

³⁹ Government of Canada, Status of Women Canada, Child Care: The Employer’s Role, Report of the Task Force on Child Care, (Ottawa: Ministry of Supply and Services, 1985) at 37.

⁴⁰ Ibid., at 38.

government bodies by proposing a substantive change be made in the condition of women, this argument is still couched in the principles of a liberal paradigm of equality.

Equality of Parenthood and the Canadian Court System

The need for paid parental leave legislation has been discussed within a liberal paradigm of equality by not only government bodies responsible for women's issues, but also by the Canadian court system. The decision rendered in the case of Schachter is one such example. This case first entered the court system in 1988 when it came before the Federal Court, Trial Division. Shalom Schachter attempted to use the paid parental leave provided under Section 32 of the Employment Insurance Act, however his application was denied on the basis that this provision was available only to adoptive parents. Schachter took his case to court arguing that Section 32 constituted a "...denial of the 'equal benefits' of the law."⁴¹ As such, he held that it was unconstitutional to provide adoptive parents with parental leave under the Employment Insurance Act since 1984, while natural parents were excluded from this option. Justice Strayer, of the Federal Court, Trial Division, agreed with this argument and found that Section 32 was indeed contrary to the equality provisions located within Section 15 of the Canadian Charter of Rights and Freedoms, on the grounds that it excluded natural fathers from its use.⁴² As such, he felt that it created for natural fathers a "...denial of the equal benefit

⁴¹ Schachter, *supra* note 6, at 534.

⁴² Canadian Charter of Rights and Freedoms (1982). Section 15(1) provides that: Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

of the law.”⁴³ He further stated that in denying natural parents an equal opportunity to use paid parental leave benefits, Section 32 in essence

...assumes that not only is it unnecessary that the natural father have the opportunity to receive partial compensation in lieu of employment income in order to stay home and be the principal care-giver, but also that the natural mother should not at least have the option, which his presence at home during this period would afford, to return to paid employment herself...⁴⁴

By advocating that paid parental leave legislation be made available to both mothers and fathers, Justice Strayer’s decision adheres to the liberal principle of equality of opportunity. Underlying this position is the belief that to provide both parents with the chance to take a period of paid leave will bring about its shared usage. He also subscribes to the notion of gender neutral law. This is apparent where he states that the existence of paid parental leave legislation

...indicate[s] a purpose and effect...based on the social importance of a parent or parents being able to spend time at home, without regard to the sex of the parent claiming benefits...”⁴⁵

Here he clearly advocates that Canada’s paid parental leave legislation should take a gender neutral form. In this way, the assumption is made that providing parental leave to either parent without singling out women for eligibility, will bring about equal usage of the provisions by both parents. In 1992, the Schachter case appeared before the

⁴³ Schachter v. The Queen et al., *supra* note 6 at 534.

⁴⁴ Ibid., at 539.

⁴⁵ Ibid., at 541.

Supreme Court of Canada where Justice Strayer's finding that Section 32 of the Employment Insurance Act was unconstitutional, was upheld.

The Supreme Court has also expressed an opinion on the matter of child care related leave in the case of Brooks v. Canada Safeway Ltd., in 1989.⁴⁶ Although the case was dealing with issues regarding maternity leave and benefits, the decision made reference to a clear position of the courts with regard to parents and their child care responsibilities. It was recognized that without a means by which to efficiently combine their work and family lives, women are unable to gain true and meaningful economic equality. At the same time, however, the court felt that this burden should not fall solely on the shoulders of women. Instead, the Supreme Court justices stated that in their opinion

...combining paid work with motherhood and accommodating the childbearing needs of women are ever-increasing imperatives. It is only women who bear children; no man can become pregnant...it is unfair to impose all the costs of pregnancy upon one-half of the population.⁴⁷

Implicit in this statement appears to be support for a form of equality of parenthood whereby men and women share the responsibilities encountered within the home, in an equal manner. This clearly recognizes, then, that women are fundamentally different from men in terms of their reproductive capabilities but that this should not become the basis for justifying the 'double shift' which exists within the home and the workplace.

⁴⁶ Brooks v. Canada Safeway Ltd., (1989), 59 D.L.R. 4th at 321.

⁴⁷ Ibid., at 321.

Paid Parental Leave Policy Under the *Employment Insurance Act*

The Supreme Court decision in the Schachter case did not advocate that Section 32 of the Employment Insurance Act be struck down, but rather provided Parliament with a period of time in which they were to amend the parental leave provisions. Justice Lamer stated that "...What Parliament is obliged to do, by virtue of the conceded s. 15 violation, is equalize the provision of that benefit. The benefit itself is not constitutionally prohibited; it is simply underinclusive..."⁴⁸ Parliament responded in 1989 by way of Bill C-21, which extended the eligibility for parental leave provisions to all Canadian parents.⁴⁹ This marked the first time that a system of paid parental leave was provided to both natural and adoptive parents at the national level. These provisions are contained in Section 23 of the Act where it is stated that

23(1)...benefits are payable to a major attachment claimant to care for one or more new-born children of the claimant or one or more children placed with the claimant for the purpose of adoption.⁵⁰

The Act also stipulates how much time off is provided to parents as is stated that

23(2) benefits are payable for each week of unemployment in the period:

⁴⁸ Schachter v. The Queen et al. [1992] 2 S.C.R. 679 (S.C.C.)

⁴⁹ Bill C-21 was introduced into the House of Commons on June 1st, 1989 and received Royal Assent on October 23rd, 1990

⁵⁰ Employment Insurance Act, (1996, c. 23), s. 23.1.

- a) beginning the week where the child(ren) are born or adopted
- b) ending 52 weeks after the week the child(ren) are born or adopted...⁵¹

What this provides, then, is that either the mother or the father can utilize this leave.

This distinguishes the policy from that of maternity leave where the aim is to provide leave for women only, due to their role in childbirth. As such, there is a clear recognition on the part of the federal government that men and women are different from one another but that this does not mean that women are to be the sole providers of child care. In order to reinforce this position, the provisions are written in a gender neutral manner so as to not be construed as implying that one or the other parent should utilize the period of paid leave.

There are also further sections within the Act which deal with issues related to parental leave. Section 23(4) indicates that this leave can be shared between two parents, but cannot "...be taken concurrently."⁵² It is also stated in Section 12.3(b) and 14.1 that parental leave under the Employment Insurance Act can be taken for a period of ten weeks at a remuneration rate of 55% of previous weekly earnings. Section 14.1(1.1) sets out that the maximum weekly insurable earnings for the period between 1997 and the year 2000 is set at \$750.⁵³ An eligible employee will begin to receive these benefits after a two week waiting period.⁵⁴ Through these provisions, both parents are provided with the opportunity to take a period of leave to care for their child without having to sever their ties to the paid labour force.

⁵¹ Ibid., s. 23.2.

⁵² Ibid., s. 23(4).

⁵³ Ibid., s. 12.3(b), 14.1 and 14.1(1.1).

Provisions of the Legislation

Now that it has been clearly established that Canada's paid parental leave legislation was written from within a liberal paradigm of equality, it is necessary to determine the provisions of this legislation in order to determine whether or not it is capable of achieving its goals. Justice Strayer suggested in his decision in the Schachter case that the goal of this legislation was to promote equality of parenthood. This was because "...equality between parents with respect to responsibility and opportunity to care for a new-born appears to be most consistent with the values of contemporary society."⁵⁵ Although not explicitly stated, the goals of the legislation can be discerned by looking at various commitments undertaken by both federal and provincial levels of government. The first of these takes the form of unpaid parental leave initiatives in Canada. At the provincial level, unpaid leave provisions are available under employment standards acts in every province except for Saskatchewan and Alberta.⁵⁶ In the remaining provincial jurisdictions, there exists labour standards legislation which determines the amount of parental leave available, and at the same time also guarantees the right to utilize these unpaid provisions.⁵⁷ Since 1990, Saskatchewan as well as Quebec have provided for six

⁵⁴ Laurie Schwartz, Parental and Maternity Leave Policies in Canada and Sweden, (Kingston: Industrial Relations Centre, Queen's University, 1988) at 42.

⁵⁵ Schachter v. The Queen et al., supra note 6 at 542.

⁵⁶ Women and Men in the Workplace: A Discussion of Workplace Supports for Workers with Family Responsibilities, 12th Annual Conference of Ministers Responsible for the Status of Women, (1993), p. 35.

⁵⁷ Ibid., at 36. (The provincial employment standards acts are as follows: British Columbia Employment Standards Act and Employment Standards Regulation; Alberta Employment Standards Code and Individual's Rights Protection Act; Manitoba Employment Standards Act; New Brunswick Employment Standards Act; Newfoundland Labour Standards Act; North West Territories Labour Standards Act; Nova Scotia Labour Standards Code and Regulation; Ontario Employment Standards Act and Employment Standards Regulations; Prince Edward Island Employment Standards Act; Quebec, An Act Respecting

weeks of paternity leave.

At the national level in Canada, unpaid parental leave legislation has existed since March of 1985, in Part III of the Canada Labour Code. At the time of its implementation, this provision was the most progressive of its kind in all of Canada. It provides under Section 206.1 that

206.1 (1) Every employee who has completed six consecutive months of continuous employment with an employer is entitled to and shall be granted a leave of absence from employment as follows:

- (a) ...where an employee has or will have the actual care and custody of a new-born child, the employee is entitled to and shall be granted a leave of absence from employment of up to twenty-four weeks in the fifty-two week period...⁵⁸

There are still further sections of the Canada Labour Code which deal with issues surrounding unpaid parental leave provisions. In Section 206(2), it is specified that this absence can be shared by both parents, but cannot exceed the stated period of twenty-four weeks. As well, it is set out in Section 209.1 that an employee who utilizes this leave cannot suffer from a reduction of wages or occupational position. They must be reinstated in their previous job or one which is comparable in stature. Lastly, Section

Labour Standards, Occupational Health and Safety Act; Saskatchewan Labour Standards Act; Yukon Employment Standards Act and General Exemption Regulations.

⁵⁸ Canada Labour Code, supra note 25 at s. 206.1.

209.2 provides that all benefits and seniority continue to be accrued during this period.⁵⁹ Although unpaid, the existence of these parental leave provisions, and in particular their comprehensive job protection components offered to both parents indicate a real commitment on the part of the Canadian government to the notion of equality of parenthood. This concept refers to the belief that to equalize the role of parents in the care of their children will be to benefit families, and at the same time will bring about greater equality for women in the workplace. As this principle was adhered to in the Canada Labour Code, it is likely that this continued to be the intention behind Canada's paid parental leave legislation under the Employment Insurance Act.

A commitment to the principle of equality of parenthood is also evident through an examination of an international document ratified by Canada. The International Convention on the Elimination of All Forms of Discrimination Against Women was adopted by the United Nations in December of 1979 and was ratified by Canada two years later.⁶⁰ The underlying principle of this Convention is the belief that all parents must be provided with equal rights while performing duties related to their children. Those countries whose governments have signed this document have agreed to

...encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life...⁶¹

⁵⁹ Ibid., Sections 206(2), 209.1 and 209.2.

⁶⁰ United Nations, International Convention on All Forms of Discrimination Against Women, (1979).

This document goes even further and takes a position on the need to alleviate the dual burden faced by women. It is stated that “...the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole.”⁶² In this way, the Convention is not advocating that policy be implemented merely to allow women to cope with their dual burdens, but rather it is saying that family policy should be instituted that would encourage the full participation of fathers in child care. This becomes evident where it states that “...a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women.”⁶³ That Canada has signed this agreement is a clear sign that the Canadian government and society in general is committed to these principles, and in instituting paid parental leave, is adhering to the goal of equality of parenthood.

It has been shown that the goal of Canadian paid parental leave legislation is to bring about equality of parenthood between mothers and fathers. The legislation itself has been shown to have been written from within a liberal paradigm of equality. What this means is adherence to the principles of equality of opportunity and gender neutrality in the belief that this will bring about substantive equality for women. The following chapter sets out to illustrate, however, that this theoretical perspective is problematic. In fact, it renders Canada’s paid parental leave legislation ineffective in achieving its goal.

⁶¹ Ibid., Article 11(c).

⁶² Ibid., Preamble of the Convention.

CHAPTER THREE

Introduction

In this chapter, the problems which exist with regard to Canada's paid parental leave legislation, are examined. There exists a number of problems with the legislation in its current form. First to be considered are those which comprise the surface problems. This refers to those aspects which render the policy inaccessible to all Canadian families. The requirement that an individual be employed with the same employer for a set period of time before utilizing the paid leave period, has an adverse effect on a parent's eligibility.⁶⁴ Therefore, access to the legislation is impeded for many and so they cannot benefit from the existence of paid parental leave. This requirement also adversely effects job reinstatement for those parents utilizing the leave period. Thus, parental leave legislation is only an attractive option to those families who can afford to lose a substantial amount of their weekly income. This further impedes its widespread use.

Though these problems clearly inhibit the effectiveness of the legislation, there exists a far more fundamental problem, namely that it is written within a liberal paradigm of equality. By focusing on the principles of equality of opportunity and gender neutrality, the existing subordination of women and its effect on their lives is ignored. This is due to the fact that these principles prohibit the recognition of women's differences in an attempt to ensure that they are on an equal footing with men. As such,

⁶⁴ Ibid.

the legislation has only the capacity to bring about formal equality rather than substantive equality. It is evident, then, that there is a need for a new framework through which to examine women's equality. An alternative perspective, namely the difference approach is subscribed to by a number of feminist theorists.⁶⁵ This approach holds that women's differences should be recognized and form the basis for family policy schemes. In this chapter, the difference debate is examined and also found to be problematic as it sets women apart by focusing on how they differ from men. This has as its effect the creation of a male standard or norm by which women are measured. Women are then forced to meet this standard in order to compete with men on an equal basis. It is concluded, then, that there is a need to base paid parental leave within an equality framework that would acknowledge the ways in which women are different, while rendering these differences costless to women and their opportunities.

In order to support the view that an alternative approach to a liberal paradigm of equality is necessary for the success of Canada's paid parental leave legislation, a theoretical model is discussed. This serves to identify those factors which render this legislation ineffective in achieving its goal. Until these impediments are addressed, Canada's legislation will be unable to bring about equality of parenthood.

Surface Problems of the Paid Parental Leave Legislation

Canada's paid parental leave legislation contains a number of surface problems.

⁶⁴ The time period required is set out in the provincial employment standards acts, and varies from province to province.

These problems impede the ability of all families to take advantage of its existence, following the birth or adoption of a child. Patricia Evans and Norene Pupo point out several of what they consider to be the most severe of these problems. Firstly, they criticize the requirement that a parent must have worked for at least six months with the same employer in order to be eligible to use paid parental leave legislation.⁶⁶ This has a debilitating effect on attempts made by many parents to utilize the leave period, and in particular it does not allow its use by those parents who are situated within part-time or contract based occupations. Evans and Pupo state that by relying on this problematic requirement, the legislation will "...generally exclude those whose employment may be irregular, whether full or part-time."⁶⁷ For the most part, this tends to be women. In 1993, 26% of all women working within the paid labour force were employed in part time jobs, as compared to only 10% of all men.⁶⁸ Thus, women's preponderance within these types of occupations causes them to bear the brunt of this negative effect. Since the purpose of the legislation has been established as ultimately being to make it easier for women to compete with men on an equal basis in the workplace, these problematic components seem to limit the legislation in terms of its ability to achieve its goal.

Also identified as being an important surface problem is the guarantee of job reinstatement. Although not covered under the legislation contained under the Employment Insurance Act, job reinstatement is made available under the federal and

⁶⁵ See for example: Ann C. Scales, "Towards a Feminist Jurisprudence," (1980-81) 56(3) Indiana Law Journal, and Marie Ashe, "Mind's Opportunity: Birthing a Poststructuralist Feminist Jurisprudence," (1987) 38 Syracuse Law Review.

⁶⁶ This is not the case in British Columbia, New Brunswick, and Quebec. As well, Ontario now stipulates only 13 weeks continuous employment with the same employer is necessary in order to qualify.

⁶⁷ Patricia Evans and Norene Pupo, "Parental Leave: Assessing Women's Interests," (1993) 6 Canadian Journal of Women and the Law, at 409.

provincial employment standards legislation as well as under collective agreements for unionized employees. These provisions protect the right of an employee who takes a period of paid parental leave to return to their employment once the leave has been completed. In general, this protection provides for the individual's return to their previous job or one which is similar in nature with comparable earnings. However, in order to retain this right, a parent must first meet the labour code requirements of continuous employment for a set period of time with the same employer. This is not always an easy requirement to meet, and so those who participate in part-time work and other alternative work arrangements face losing their workplace status. On top of this difficulty, nowhere is there provided a right to the retention of seniority or employment related benefits previously accrued. This inadequacy has the potential to affect the ability as well as the inclination of many parents to utilize this leave.⁶⁹

Critique of the Liberal Paradigm of Equality

Though the surface problems are important, they are not nearly as debilitating as the fact that the legislation is written within a liberal paradigm of equality. This is because by adhering to the principles of gender neutrality and equality of opportunity, women's subordination at home and at work is ignored. The provisions within the Employment Insurance Act are made available to both mothers and fathers. As such, neither parent is singled out as being solely eligible for a period of paid leave. Carol Geller concludes that this was done on the basis of the liberal notion that to single women

⁶⁸ Women and the Canadian Labour Market, supra note 1 at 5.

⁶⁹ Evans and Pupo, supra note 63 at 411.

out for parental leave provisions would be to imbue the leave with the meaning that women should be solely responsible for child care.⁷⁰ The underlying assumption, then, is that to recognize the ways in which women's experiences are fundamentally different from those of men is to automatically reinforce discrimination. As such, the legislation is provided to all individuals irrespective of their gender on the belief that to do so will be to bring about equality.

The principle of equality of opportunity is also extremely problematic. This is due to the fact that under such a scheme, the differences which exist between men's and women's life experiences are not taken into consideration. Kainer argues that this causes policies which are based on a liberal paradigm of equality to become problematic, because "...to treat all individuals as if they are equal denies the social circumstances in which individual rights are, in fact exercised."⁷¹ This has important repercussions for the utility of Canada's paid parental leave legislation, as it assumes that equal access to the legislation on the part of both mothers and fathers will bring about an equal gender distribution in its use.

What this fails to acknowledge, however, is that women are subordinate to men within both the home and the workplace. In this thesis, women's subordination refers to their disadvantaged social position as compared to that of men. This can manifest itself in any number of ways and in various aspects of everyday life. However, the focus here will be placed on two specific relationships. The first of these is the parental relationship undertaken by many husbands and wives, where women's subordination takes the form of their being responsible for the majority of home and child care related responsibilities.

⁷⁰ Carole Geller, "Equality in Employment for Women: The Role of Affirmative Action", (1990-91) 4 Canadian Journal of Women and the Law at 380.

The second relationship is that which occurs within the workplace, whereby men and women function together as employer and employee. It is here that women make up the majority of those found within low paying and low status occupations. The evidence needed to prove the existence of both of these forms of women's subordination will be presented and discussed in Chapter Four.

Therefore, it can be said that women's subordination is beyond the scope of a liberal paradigm of equality because it is incapable of addressing these systemic forms of disadvantage.⁷² In fact, Kainer states that "Liberalisms weakest link is its inability to acknowledge systemic or structural forms of discrimination."⁷³ This is because this paradigm of equality rejects the notion of the recognition of women's differences as a necessary component to the full realization of women's equality.

Sheppard suggests that even more problematic is that "...treating those who are unequal in terms of their access to power and resources as though they are the same allows economic and social disparities to persist, while an illusion of fairness is created."⁷⁴ In other words, the existence of paid parental leave legislation creates the appearance that women's subordination is being addressed while in reality it is permitted to go unchanged. Thus, all that is achieved for women is the formal appearance of equality. Under the liberal paradigm, women's continued subordinate status is then presented as the result not of discrimination, but rather of women's choices.⁷⁵ This position is misleading as it suggests that women's choices are made without any interference by the circumstances in which their decisions are made. As such, it can be

⁷¹ Kainer, supra note 11 at 1.

⁷² Ibid., at 449.

⁷³ Ibid., at 448.

⁷⁴ Sheppard, supra note 10 at 254.

seen that by ignoring women's subordination within both the home and the paid labour force, Canada's paid parental leave legislation is rendered ineffective in achieving its goal of equality of parenthood.

The Difference Approach

Many feminist theorists believe that the principles of equality of opportunity and gender neutrality merely provide to all individuals an opportunity to be unequal.⁷⁶ In other words, they feel that treating everyone alike regardless of their differences, actually allows inequality to continue unquestioned as it appears that the problem has already been addressed. In response to the deficiencies of a liberal paradigm of equality, suggestions are made revolving around the idea of recognizing the ways in which women's experiences vary from those of men. This is known as the difference approach. It is founded on the notion that all women have different constraints and experiences from that of men, and that they should be fully acknowledged. In other words, this approach advocates the provision of special treatment for women through the mechanisms of law and policy in order to place women on an equal footing with men.⁷⁷

This approach, however, is not embraced by all, and is not without its faults. Catherine MacKinnon points out several of these problematic aspects. She feels that both this approach as well as a liberal equality approach, position the masculine identity as the norm to which women are compared. In the context of paid parental leave legislation, the focus is erroneously placed on women's inability to meet male defined

⁷⁵ Kainer, *supra* note 11 at 453.

⁷⁶ Jacobs, *supra* note 28 at 109.

standards, as opposed to an examination of the ways in which men shirk their responsibilities within the home.⁷⁸ Carol Smart also questions the utility of examining women's equality within the context of either of these debates. She states that

Neither approach can guarantee that it will not ultimately be deleterious for women. The difference approach ultimately nourishes a crude socio-biology, the equality approach can be used as easily by men as women and often to the detriment of women.⁷⁹

In other words, Smart suggests that a reliance upon the difference approach would tend to associate women too greatly with child bearing and rearing. It would accomplish this by focusing on child birth as the fundamental way in which women's lives differ from that of men. She also suggests, however, that the equality approach is potentially disadvantageous for women as it would allow men to argue for the same rights as women. This could destroy many of the gains already made by women in their struggle for equality.⁸⁰

What this suggests is that there is a need to find a new theoretical framework in which to examine paid parental leave legislation and its ability to achieve the goal of equality of parenthood. It appears clear that there is a need in some circumstances to recognize women's differences in order to achieve substantive equality. At the same time, one cannot completely adhere to the difference approach, as it has the potential to

⁷⁷ Razack, *supra* note 13 at 23.

⁷⁸ Catherine MacKinnon, *Feminism Unmodified: Discourses on Life and Law*, (London: Harvard University Press, 1987), at 42.

⁷⁹ Carol Smart, *Feminism and the Power of Law*, (London: Routledge, 1989), at 83.

create a male definition of equality. Thus, it is necessary that a new theoretical framework be created in order to establish a balance between all of these important elements.

Development of a Theoretical Framework for Equality

Iris Marion Young presents a theoretical framework from which to begin the task of creating a new definition of equality. She proposes a 'politics of difference' whereby true equality would be achieved through the occasional provision of special treatment to certain subordinate groups in society. In this way, she adheres to the fruitful aspects of the difference approach. She feels that the recognition of difference is necessary as a society which does not contain any recognition of group differences is not only undesirable, but is also extremely difficult to achieve.⁸¹ Thus, Young critiques a liberal paradigm of equality, because she feels that "...ignoring group differences in public policy does not mean that people ignore them in everyday life and interaction...oppression continues even where law and policy declare that they are all equal."⁸² Although she recognizes that the liberal approach to equality has attempted to achieve a society devoid of difference, she points out that it has been unsuccessful in this task as it has been incapable of erasing the existence of difference and its effect on the lives of individuals.

⁸⁰ See for example: Gwen Brodsky and Shelagh Day, "Canadian Charter Equality Rights for Women: One Step Forward or Two Steps Back?" (Ottawa: Canadian Advisory Council on the Status of Women, 1989). Here they discuss the use of the equality provisions under the Charter by men to the detriment of women.

⁸¹ Iris Marion Young, Justice and the Politics of Difference, (New Jersey: University of Princeton Press, 1990) at 158.

⁸² Ibid., at 167.

Thus, it is on this basis that Young advocates the need for a recognition of differences so as to ensure that they will no longer be able to form the basis of women's subordination. She holds that "...the assertion of a positive sense of group differences provides a standpoint from which to criticize prevailing institutions and norms."⁸³ What this means is that a lack of recognition of difference allows subordination to continue and the existence of biased institutions to go unchecked. Acknowledging difference, on the other hand, creates the possibility for change to be made to those aspects of society which perpetuate discrimination.

Young realizes that the difference approach is not infallible. She addresses the concerns put forth by MacKinnon regarding the male norm implicit in any recognition of women's differences. Young admits that the acknowledgment of difference is always couched in terms which derive their value from being in opposition to something or someone else.⁸⁴ Her politics of difference perspective, however, addresses this flaw by redefining the very essence of difference as a term of reference. Difference under this scheme no longer refers to women's otherness as compared to men. Rather, it refers to a positive assertion by individuals of their own social identity. In this way, it acts as a "function of the relations between groups and the interaction of groups within institutions."⁸⁵ Thus, a recognition of women's differences under this approach focuses on their common experiences with other social groups rather than on those experiences which are unshared.

When looking at paid parental leave legislation, Young does not find the politics of difference approach a fruitful one. Instead, she states that many feminists

⁸³ Ibid., at 167.

⁸⁴ Ibid., at 170.

...demand that parental leave from a job ...should be gender neutral, in order not to perpetuate the connection of women with the care of children, and in order not to penalize those men who choose more than average childbearing responsibilities. I myself agree with gender-neutral policy on this issue.⁸⁶

Thus, she clearly subscribes to the notion that gender neutrality is symbolically significant in ensuring that stereotypes regarding women's roles are not perpetuated. Regardless of her position on this matter, however, Young's theoretical framework is useful for an examination of the potential of Canada's leave provisions. This is because it provides a way in which to recognize difference through group conscious policy, while at the same time ensuring that women's attributes are costless to their experiences and opportunities. In other words, unlike a liberal paradigm of equality, it does not require women to meet male standards or requirements in order to gain meaningful employment in the workplace. Thus, there is the potential for fundamental change to occur without the creation of further discrimination against women. When applied to Canada's paid parental leave legislation, this approach would continue to allow for the existence of leave provisions available to both mothers and fathers. At the same time, however, it would be ensured that its use was shared rather than disproportionately taken by women. It appears evident, then, that there needs to be a way in which to exert group conscious policy while rendering women's attributes costless to their experiences and opportunities. The existence of this necessity will be shown even more convincingly through the use of the following theoretical model.

⁸⁵ *Ibid.*, at 171.

⁸⁶ *Ibid.*, at 176.

A Theoretical Model

An examination of the failings of a liberal paradigm of equality as well as the fruitful aspects of the difference approach, indicate that there is a need to question the utility of the former when attempting to achieve the goal of equality of parenthood. Presented here is a theoretical model which will examine the decision making process encountered within families once a child is born or adopted. For the purpose of this thesis, the term 'family' will be defined as consisting of two adults committed to the care of their child or children. While this definition can encompass both heterosexual as well as alternative relationships, the problem which will be examined within this thesis is the subordination of women within the dynamics of the family. This model serves to illustrate the ways in which women's subordination at home and at work reinforce and interact with one another. What is shown is that when one or both of these manifestations of inequality are present, paid parental leave policy is rendered ineffective in attaining its goal even where the liberal notion of equality of opportunity is achieved.

When a couple gives birth to or adopts a child, there are a multitude of decisions that must be made. This is because the introduction of the first child to the home creates an unsurpassed increase in the amount of time and commitment required by the family.⁸⁷ Perhaps most importantly, it must be determined how the child will be cared for. There are a number of options to be considered, although not each of these is

available to every family. Some parents have the opportunity to place their child in the care of an extended family member, thereby allowing them to return to the paid workforce. Many others will decide that one of the parents will remain at home permanently to care for the child. Still others will utilize day care programs once the woman's period of maternity leave is completed. Finally, many parents will decide that one or both of them will take a period of paid parental leave in order to care for their child. It is this latter decision which will be analyzed further by this model.

In order to illustrate the complexity of the issues involved in reaching this decision, the decision making process can be examined from the perspective of a 'best case scenario.' This 'best case scenario' assumes that prior to the presence of the child, the couple is completely equal within the workplace. What this means, is that both the man and the woman are employed on a full-time basis and hold job positions at the same career level. This scenario further assumes that the couple is completely equal within the home. In this way, all domestic responsibilities and tasks are equally shared. While the economic disparities between men and women are factored out of this scenario, so too are the cultural and social stereotypes which exist with regards to the role of women in parenting. Due to the absence of these debilitating factors under this scenario, it can be assumed that the decision would not result in an imbalance of mothers or fathers taking this leave. Rather, one would expect to see an equal amount of men and women using paid parental leave provisions.

⁸⁷ Sue Newell, "The Superwoman Syndrome: Gender Differences in Attitudes Towards Equal Opportunities at Work and Towards Domestic Responsibilities at Home," (1993) 7(2) Work, Employment and Society, at 279.

As is illustrated in Figure 1, however, there do in fact exist economic

Figure 1: The Vicious Circle

disparities between men and women, and these are in turn reinforced by cultural and social attitudes regarding child rearing. Thus, it is necessary to examine the same decision making process from yet another perspective. In this 'real world' scenario, it will be assumed that women are on an unequal footing with men in the paid workplace. It will also be assumed once again that women and men share the household responsibilities and tasks prior to the presence of the first child. Under this scenario, the decision making process will have very different results.

Before examining this decision making process, though, it is first necessary to fully comprehend the connection which exists between women's position within the workforce and that at home. This discussion is important as it is this interconnection which influences the outcome of the parental leave decision. There are many who are of the opinion that women's subordination within the home is the cause of women's

subordination within the workplace.⁸⁸ Such a viewpoint, however, misunderstands the complex nature of the relationship which exists between both of these spheres. As is indicated by the arrows in Figure 1, the subordination which women experience in the workplace in all actuality creates their subordination within the home, which consequently reinforces their subordination at work. As a result, a vicious circle of causation is formed.

As will be shown, women's subordination within both of these spheres is fundamentally the result of the interplay between economic factors, and the existence of cultural and social stereotypes regarding women's role in child care and in the workplace. In the home, women's subordination takes the form of their holding the primary responsibility for the majority of household and child care related tasks. When taken in conjunction with their responsibilities within the paid labour force, women experience a 'second shift' or 'double work day.' In order to cope with this dual demand on their time, many women choose occupations and job positions which are flexible in nature or that are less demanding.⁸⁹ These employment opportunities, however, tend to be found within female dominated work ghettos and part-time employment. As these positions tend to receive lower remuneration, the wage gap which exists between men and women is also perpetuated. As such, it can be said that women's position within the home in fact reinforces their subordinate status within the workplace.

However, women's coping is not the sole reason for their subordinate status within the workplace. Many employers also see women as having a closer tie to their

⁸⁸ See for example: Catherine Hakim, Key Issues in Women's Work: Female Heterogeneity and the Polarisation of Women's Employment, (London: Athlone, 1996).

⁸⁹ Ann Duffy and Norene Pupo, Part-Time Paradox: Connecting Gender, Work and Family, (Toronto: McClelland and Stewart, 1992) at 39.

home responsibilities than they have to their employment. As such, they anticipate women's coping strategies and place them within subordinate employment positions so as to protect themselves from future loss of employees.⁹⁰ This translates into a disproportionate number of women who are hired into part-time positions or other forms of irregular employment. Pat and Hugh Armstrong point out that this has in turn allowed for the continuation of the wage gap as "...Women's responsibilit[ies] for domestic work [have] provided a convenient justification for women's wages..."⁹¹ Thus, it can be seen that women's subordination within the home plays a large role in the determination of their status within the paid labour force.

The vicious circle is completed when women's subordinate status within the workplace reinforces their position within the home. Due to the fact that the majority of women earn much less than men within the paid labour force and are disproportionately found within lower status occupations, women tend to hold less bargaining power within the home. This then inhibits their ability to change the distribution of domestic responsibilities. As a result, the 'double work day' experienced by women is seen as justifiable as they are working less and earning less within the workplace.

The decision making process as set out in the 'real world' scenario, can now be discussed within the context of the vicious circle. In this situation, the couple will weigh their options when faced with the opportunity for paid parental leave, and will base their decision upon the situation of both parents. It is expected, then, that the woman would take the leave in the majority of families. There are several reasons for anticipating this outcome. To begin with, as was illustrated in the vicious circle women's occupations are

⁹⁰ Pat and Hugh Armstrong, The Double Ghetto: Canadian Women and Their Segregated Work, (Toronto: McClelland and Stewart, 1994) at 187.

of lower status than those of men and so this reduces her bargaining power in the decision. As well, it is assumed that women receive lower remuneration for their work, thereby rendering it financially unfeasible for the father to utilize the leave provisions. These circumstances place the woman on an unequal footing when the decision making takes place.

Thus, although the decision appears to be derived in a rational and equal manner, in reality it is not. The subordinate position of women within the workplace in effect taints the decision making process by placing them on an unequal basis with their partners. What is seen as a mutual decision is in fact an imposed outcome. While the attitude of the couple continues to be one that is committed to a belief in a shared equality within the home, their behaviour is seriously marred by the inequality which exists within the sphere of paid work.

What this model has indicated, then, is that there is a close link between women's experiences at home and those at work. It also shows that the existence of women's subordination within the paid workforce renders the paid parental leave legislation ineffective in attaining its goal of equality of parenthood. This is clearly due to its adherence to the principles of the liberal paradigm of equality. All that is necessary to solidify the findings of this model, is adequate proof that women are indeed subordinate within the workplace. This will be shown in the following chapter.

⁹¹ Ibid., at 190.

CHAPTER FOUR

Introduction

The previous chapter discussed a theoretical model which shows that at the level of women's everyday lives, a liberal paradigm of equality renders Canada's paid parental leave legislation ineffective in achieving the goal of equality of parenthood. Later in this chapter, all of the evidence needed to support the findings of this model, is presented. This evidence shows that women are indeed subordinate to men within the workplace. It is also found that women in general are subordinate to men within the home. As is shown by the model, both of these forms of subordination reinforce and interact with one another.

Each advanced industrial nation has its own particular set of objectives behind the implementation of paid parental leave legislation. As such, this legislation when put into practice can in its effect target either women's subordination within the home or within the workplace. Here is examined the legislation of Canada, which in practice has the effect of targeting women's subordination within the workplace. It does so as it is written from within a liberal paradigm of equality which assumes that once women are provided with equal access to the workplace, they will by extension become equal to men. The other legislation examined is that of Sweden. This country's paid parental leave was chosen as it is an excellent example of a policy which in its effect targets women's subordination within the home. It accomplishes this through its extremely generous provisions and by making a period of the leave mandatory for fathers. The underlying belief is that to do so, is to ensure that men and women will utilize the leave

provisions equally. However, this overlooks the findings illustrated in the model whereby women's subordination at work can actually undermine any gains made within the home.

As a result, it is concluded that the paid parental leave legislation of both Canada and Sweden are incapable of achieving the goal of equality of parenthood. What is needed instead is a means by which to target both women's subordination within the home and at work simultaneously. This is necessary in order to address those factors shown in the model to be debilitating to the effectiveness of Canada's legislation.

Women's Subordination at Work

Presented here is the evidence needed to show that the subordination of women within the workplace, as was assumed in the model, does in fact exist. The period from the late 1960's through to the present has seen a significant increase in the participation rates of women in the paid labour force, and perhaps nowhere has this increase been more apparent than in Canada. As of 1961, only 29% of all Canadian women were employed in the paid labour force. However, as of 1991, this figure had doubled to an unprecedented 60%.⁹² While this increase is spectacular in its own right, even more unprecedented is the rise in the number of married women with young children, working for wages outside of the home. According to the Average Labour Force Participation rates for 1991, in this year 61% of married women were employed.⁹³ Numerous studies suggest that the primary reason for this increase is economic need, although the desire for

⁹² Women and the Canadian Labour Market, *supra* note 1 at 23.

⁹³ Average Labour Force Participation Rates, (1991)

company, and the boredom of housework were also given as important considerations for women.⁹⁴ Whatever the reason, though, the movement seems to be very much towards the family being comprised of dual earners. This was clearly the case in November of 1995 where of the over seven million paid workers in families, 75% were in a dual-earner family.⁹⁵

This increase in the number of women found within the paid workplace, however, has not brought with it a concomitant change in their employment status and position. Rather, women continue to face segregation at work in two very distinct yet equally detrimental ways. The first of these takes the form of horizontal segregation, whereby women are filtered disproportionately into female dominated 'job ghettos'⁹⁶ As of 1990, the total share of women in the ten highest paid occupations in Canada was a mere 19.9%, while at the same time they represented 72.8% of the ten lowest paid occupations.⁹⁷ Relative to men, though, women work disproportionately in white collar administrative and clerical jobs, and sales and service work.⁹⁸ These occupations are more often than not undervalued and not only receive insufficient remuneration, but also provide little or not prospect for career advancement.⁹⁹ As these areas of the labour market are female dominated, it is therefore primarily women who bear the brunt of this disadvantage.

⁹⁴ Pat and Hugh Armstrong, *supra* note 87 at 192.

⁹⁵ Statistics Canada, Balancing Work and Family: Work Arrangements in the 1990's, by Katherine Marshall (Ottawa: Statistics Canada, 1995) at 73. This finding is as a result of the Survey of Work Arrangements carried out in November 1995. This survey was the first of its kind to gather detailed information on the weekly, hourly and daily work routines of paid employees in Canada. For the purposes of this study, the term 'family' referred to children living with two parents in the same home.

⁹⁶ Bettina Berch, The Endless Day: The Political Economy of Women and Work, (1982), p. 79.

⁹⁷ Canadian Advisory Council on the Status of Women, Work in Progress: Tracking Women's Equality in Canada, (1994), at 8.

⁹⁸ Women and the Canadian Labour Market, *supra* note 1 at 150.

While some suggest that the sole or primary reason for women's subordination in the workplace is their relegation to these job ghettos, this is not necessarily the case.¹⁰⁰ Instead, it is important to recognize that women continue to also be disadvantaged as a result of vertical segregation. What this entails is that within a particular business or occupation, women are found for the most part within the lower echelons. As well, even where a woman performs the same job as her male counterpart on a full-year and full-time basis, she still receives only 71.4% of his earnings, as of 1990. This has risen from 61.6% in 1970 and 66.6% in 1980.¹⁰¹ Although this is indeed a slight increase, women have still not achieved a situation of full pay equity. This inequality prevails even where the necessary adjustments are made on the basis of education and experience.¹⁰² Thus, it can be seen that it is not only the nature of the work which women carry out that renders them unequal in terms of wages and benefits, but also that there exists some other force which helps to create and maintain women's subordinate position in the workplace.

The disadvantage experienced by women is even further exacerbated by the fact that regardless of the occupation, they are found primarily in those areas where work tends to be short term in nature or is part-time.¹⁰³ This coincides with women's overall situation in employment, in that they comprise almost three-quarters of the part-time labour force.¹⁰⁴ What this means for women is not just less working hours in the workplace, but for the most part their part-time work is also situated within the female

⁹⁹ Susan B. Boyd, "Can Law Challenge the Public/Private Divide? Women, Work, and Family," 15 *Windsor Yearbook of Access to Justice*, (1996), at 172.

¹⁰⁰ See for example: Paul Phillips and Erin Phillips, *Women and Work: Inequality in the Canadian Labour Market*, (Toronto: James Lorimer and Company, 1993).

¹⁰¹ *Women and the Canadian Labour Market*, *supra* note 1 at 116.

¹⁰² Boyd, *supra* note 96 at 172.

¹⁰³ *Women and the Canadian Labour Market*, *supra* note 1 at 5.

dominated ghettos.¹⁰⁵ Their labour market opportunities are even more limited in this way.

Women's Subordination at Home

Presented here is the evidence needed to show that women are in fact subordinate to men within the home, and that this subordination has a significant impact on the ability of women to compete equally within the workplace. Household and child care related tasks are not divided equally between parents in the home, as women tend to bear the brunt of these responsibilities. The 1990 General Social Survey indicates that the division of these tasks tends to follow traditionally-based patterns. In other words, women's responsibilities are more often than not those which are routine in nature, such as meal preparation, meal clean-up, grocery shopping, and laundry. Men's tasks, on the other hand, tend to be those which are carried out on a much more infrequent basis, such as repairs, maintenance and yard work.¹⁰⁶ Due to this disparity, it is perhaps unsurprising that women's tasks comprise approximately 78% of all household work.¹⁰⁷ On average, 83% of all women employed within the paid labour force carry out 2.3 hours a day of housework while only 51% of employed men carry out 1.7 hours a day of home related tasks. For women who do not hold any form of outside employment, this translates into approximately 50 hours a week of unpaid work in the home.¹⁰⁸

¹⁰⁴ Canadian Advisory Council on the Status of Women, supra note 94 at 8.

¹⁰⁵ Ann Duffy and Norene Pupo, supra note 86 at 36.

¹⁰⁶ Norene Pupo, "Always Working, Never Done: The Expansion of the Double Day," in Ann Duffy et al. Good Jobs, Bad Jobs, No Jobs: The Transformation of Work in the 21st Century, (1997), p. 147.

¹⁰⁷ Statistics Canada, supra note 2 at 2.

¹⁰⁸ Statistics Canada, General Social Survey Analysis Series N. 4. Where Does Time Go, (Ottawa: 1991) at 5.

One would expect these circumstances to be more equal where both partners are employed on a full time basis, and especially where the woman works in an occupation that is designated as professional. However, this is not the case. In fact, 52% of employed women retain full responsibility for the majority of these tasks, and 28% of them have responsibility for most of these tasks.¹⁰⁹ This translates to anywhere between 26 and 33 hours a week in addition to the responsibilities associated with their paid employment. While men do engage in slightly more housework where their wives are employed on a full time basis, it is not significant enough of a contribution to reduce this extra burden.¹¹⁰ This is because it is more in the capacity of “helping” than taking on their share of the tasks. Thus, it is evident that women’s employment, regardless of the actual job, is not enough to make a significant change in women’s status within the home with regard to the division of domestic labour.

Canadian Paid Parental Leave Legislation Within the Model

Canada’s paid parental leave legislation in practice targets women’s subordination within the workplace, to the exclusion of that which exists at home. Its gender neutral nature assumes that once men and women have equal access to the leave provisions, that it will be shared equally between parents. As soon as this is accomplished, it is believed that equality of parenthood will have been achieved and as such women will have equal access to the workplace. However, by ignoring the interconnection between the two sources of women’s subordination to men, Canada’s

¹⁰⁹ Canadian Advisory Council on the Status of Women, supra note 94 at 16.

paid parental leave legislation is rendered ineffective in attaining its goal.

As can be seen through an examination of the provisions of Canada's leave legislation, the emphasis in its creation was placed on ending women's subordination within the workplace. Such a perspective subscribes to the notion that women's subordinate status at work is the underlying cause of their status at home. However, it fails to acknowledge that there exists a simultaneous reinforcement of women's subordination at work by their low status in the home. The arrows in Figure 2 below serve to illustrate the effect of Canada's legislation when it is put into practice.

Figure 2: Canada's Paid Parental Leave Legislation

Here it can clearly be seen that the paid parental leave legislation fails to address the interconnection that exists between women's placement within the home and that at work. As the aforementioned model has shown, there needs to be a concomitant emphasis placed on the effect of the home on the workplace. To only target half of the vicious circle, as is the case here, does not alleviate the problem. Thus, Canada's paid

¹¹⁰ Maureen Baker, Canadian Family Policies: Cross-National Comparisons, (Toronto: University of

parental leave legislation is inhibited in the amount of change that it can bring to women's subordinate status within both of the spheres. In all reality, it is capable only of providing women with equal access to the paid labour force, without rectifying in any way the power balances found therein. This limitation becomes even more evident through a discussion of Canada's parental leave legislation within the context of the model set out in Chapter Three.

As was previously discussed, upon the birth or adoption of a child, families are faced with making a decision as to how to provide for its care. In Canada, parents have available to them paid parental leave legislation under the Employment Insurance Act. Upon choosing this option, it is then in the hands of the parents to establish which of them will utilize the period of paid leave. In making this decision, the couple inevitably weighs the financial feasibility of each of them taking the leave in order to determine the most advantageous scenario. In the majority of cases, the couple will decide that it is more economically feasible for the lower paid parent to use the legislation so as to ensure that the family does not suffer from a large decrease in their weekly and monthly income. Due to the subordinate status of women within the workplace, more often than not the lower paid parent is the mother. It is then the woman who takes a period of paid leave from her employment.

Although the couple feels that this decision has been made on the basis of equality, this is not in fact the case. In all actuality, the legislation renders itself unlikely to be used by men. This is primarily because it has been written within a liberal paradigm of equality, and as such subscribes to the notion of gender neutrality. In this way, it does not single out either parent for its eligibility but rather is applicable to both

mothers and fathers. The idea behind this approach is that not targeting either gender in the legislation will lead to its equal usage by both genders. However, it is precisely its neutral income replacement scheme which renders it disadvantageous for women. As it stands now, the remuneration rate for a parent using the paid parental leave legislation under the Employment Insurance Act, is a mere 55% of their weekly income. According to Patricia Evans and Norene Pupo, what this serves to accomplish is that "...At such low levels of earnings replacement, parental leave can only be used by mothers and fathers who are able to absorb a significant drop in income."¹¹¹ As such, it is highly likely that the lower paid partner in the marriage will use the leave period so that the family will not suffer a large financial loss. Since this tends more often than not to be the woman, it can be said that the principle of gender neutrality in fact renders the legislation ineffective in attaining its goal of equality of parenthood.

The ineffectiveness of Canada's paid parental leave legislation in achieving the goal of equality of parenthood can be proven not only in theory, but also through the use of statistical data. An examination of Unemployment Insurance Statistics from the period of January 1990, when parental leave legislation was first made available to all parents, through to December 1998 gives a clear indication of its usage by both men and women. The overall number of parents using the provisions in 1990 was a mere 4160. This low usage rate can perhaps be attributed to the newness of the legislation and a lack of widespread knowledge as to its existence. By 1998, however, this number had grown significantly to 355, 110 users.¹¹² At first glance this appears to signal an increased interest on the part of parents for paid parental leave provisions. However, a closer

¹¹¹ Ibid., at 410.

¹¹² Unemployment Insurance Statistics, supra note 9.

examination reveals that its usage is not divided equally between mothers and fathers. Although the number of men using the legislation has risen slightly from 2.9% in 1990 to 4.1% in 1998, it can be seen that it is still disproportionately women who are using the provisions under the Employment Insurance Act.¹¹³ This suggests that the existence of Canada's paid parental leave legislation provides only the appearance of the attainment of equality of parenthood, due to the fact that it is available to both men and women. In reality, though, it does not manage to achieve this goal.

Swedish Paid Parental Leave Legislation

According to Rianne Mahon, Sweden's paid parental leave legislation is couched in the social democratic perspective underlying the Swedish welfare state. Within the context of gender related policies, this perspective strives to simultaneously find remedies for both the inequalities of class and gender.¹¹⁴ This is accomplished through an emphasis on the attainment of cross-class solidarity amongst women wage earners in an attempt to strengthen worker solidarity.¹¹⁵ It is believed that once this is accomplished, women will have easier access to the paid labour force and will hold higher positions therein.

An adherence to the social democratic perspective translates into an emphasis on equality of outcome in Sweden's paid parental leave legislation. What this means is that by focusing on the ways in which women differ from men rather than how they are the same, this legislation aims for the attainment of women's substantive equality as

¹¹³ Unemployment Insurance Statistics, supra note 9.

¹¹⁴ Mahon, supra note 7 at 382.

opposed to formal equality.¹¹⁶ In order to realize this goal, it was hoped that the implementation of a system of paid parental leave would do more than merely accommodate women's dual roles, but instead would bring about a change in the dynamics of child care.¹¹⁷

The primary means by which it was hoped that this goal would be accomplished is through the provision of an extremely generous rate of income remuneration for those parents using the leave period, as well as a mandatory leave period for fathers. The idea behind this approach is that by forcing fathers to use at least part of the provisions and making the rest extremely generous as well as available to either parent, it will bring about equality of parenthood. However, when Sweden's legislation is examined within the context of the theoretical model, it is shown to be ineffective in achieving its goal. As will be discussed, this is because its generous, gender neutral provisions and the period of mandatory male usage serve to place the focus of the legislation on women's subordination within the home. By ignoring the other half of the vicious circle, the legislation is actually detrimental to women as it brings about the appearance of the eradication of the double shift when in reality it is permitted to persist. This discussion will rely primarily upon secondary data, as it is outside of the scope of this thesis to examine primary data on Sweden.

In keeping with its stated goal of bringing about radical social change in terms of men's and women's equality, Swedish parental leave is extremely generous in

¹¹⁵ *Ibid.*, at 396.

¹¹⁶ Jane Lewis and Gertrude Astrom, "Equality, Difference, and State Welfare: Labor Market and Family Policies in Sweden," (1992) 18(1) *Feminist Studies*, at 64.

¹¹⁷ *Ibid.*, at 72.

nature.¹¹⁸ Swedish parents are given a maximum of fifteen months of job-guaranteed paid leave to share between them. This leave is partly in the form of full time leave and partly in the form of a reduction in working hours. In the former, the parents themselves are able to decide how to divide the time that they will take from work. For the first twelve months of this time period, the pay is compensated at approximately 90% of the leave taking parent's usual salary. The remaining three months is compensated at a minimum parental payment of 60 Swedish Kronar or 10 US dollars per day. This full time leave provision is available until the child or children reach the age of one and a half years.¹¹⁹

The reduced work time option offers parents the opportunity to work up to three quarters less than their normal working hours. Parents utilizing this leave are entitled to half or one quarter of the normal full parental allowance while reducing work hours by one half or three quarters respectively. This leave is available to parents until such time as the child or children have reached the age of eight years, or once they have completed their first year of schooling.¹²⁰

Further evidence of the generosity of Swedish parental leave is provided by the fact that leave is also available for the care of sick children. When a child is sick and a parent must stay home to care for them, they have available to them a maximum of 90 days per year as long as the child is twelve years of age or younger.¹²¹ Also provided for under this scheme is leave for parents to visit their children's teachers and schools.

¹¹⁸ Janet Shibley Hyde et al., "Fathers and Parental Leave: Attitudes and Experiences," (1993) 14(4) *Journal of Family Issues* at 617.

¹¹⁹ *Ibid.*, at 620.

¹²⁰ Jon Kosich, "Swedish Parental Leave Policy and Its Lessons to the U.S.," (1992) 11(1) *Dickinson Journal of International Law*, at 166.

¹²¹ *Ibid.*, at 167.

Parents with children between the ages of four and twelve are entitled to two days off from work per child per year for this purpose. When taking this leave, they receive full compensation in terms of income.¹²² The existence of this provision indicates a recognition on the part of the Swedish government as to the difficulty faced by parents with regards to balancing child care and paid work.

Both of these forms of leave are written from a gender neutral perspective and so are available to both mothers and fathers. There are several conditions, though, which serve to limit either parent from fully enjoying these provisions. To begin with, parents cannot both receive compensation at the same time. Thus, parents must decide to divide the time period if both parents are interested in taking leave. As well, entitlement for parental leave is contingent on employees having been in the service of their employer for either the preceding six months, or for not less than twelve months during the preceding two years.¹²³ Much like that of parental leave in Canada, it is not easy to qualify for parental leave in Sweden.

Use of the Leave Provisions

When it was first implemented, Sweden's paid parental leave legislation did not bring about a significant change in the number of men utilizing this legislation, irrespective of its gender neutrality and generous nature. Initially, only 3% of eligible fathers used the provisions. As of two years later, this number had only risen to a

¹²² *Ibid.*, at 167.

¹²³ *Ibid.*, at 166.

meager 5%.¹²⁴ This resistance to change is perhaps understandable as the policy was new and cultural and social attitudes regarding the appropriate roles of men and women were still firmly embedded in Swedish society. In 1978, as the policy gradually became more and more generous, there was a slight increase in men's usage of these provisions. By 1980, 23% of all eligible fathers were taking parental leave during the first twelve months of their children's lives. This increased to 27% in 1986, and rose dramatically to 44% by 1989.¹²⁵

At first glance, these percentages appear to be impressive. However, when examined in comparison to leave taken by women, the numbers are less than spectacular. In her work, Linda Haas found that the actual amount of leave that fathers take was much less than that of mothers. In fact, those fathers who took leave used only an average of 53 days compared with 225 days for mothers. The most typical pattern of leave taking was that where the mother stayed home with the child for the first five to six months of their life, and fathers took the next month and a half. This allowed women to return to the workplace, but for the most part they returned to the home after the father's period finished.¹²⁶ As such, there was no real change made to the pre-existing parenting dynamics. Clearly, then, Swedish parental leave was not fully encouraging men to take an equal portion of the available provisions.

Due to the fact that Swedish father's participation was less than satisfactory, the government made it mandatory in 1994 for new fathers to take at least a month off from

¹²⁴ Hyde, *supra* note 111 at 617.

¹²⁵ *Ibid.*, at 617.

¹²⁶ *Ibid.*, at 617.

work after the birth of a child.¹²⁷ This change to the legislation signals that there existed an underlying notion that men should be sharing parenting responsibilities with women. Although there does not exist much statistical data on its efficiency, it can be said that this amendment to the parental leave provisions is equally problematic. This is primarily because it relies upon the idea that forcing men to take a period of paid leave will bring about long-term change in the distribution of child-care within the home. Such a perspective is doomed to failure as it clearly ignores the relationship identified within the model, regarding the effect of women's subordination in the workplace on the ability for paid parental leave legislation to achieve equality of parenthood.

The Limitations of Swedish Paid Parental Leave Legislation

Linda Haas has identified in her work a number of other factors which she feels should perhaps be looked upon as an explanation for the non-participation of men in the Swedish parental leave scheme. They are also useful in projecting the continuation of this trend despite the aforementioned amendment made to the provisions. To begin with, she sees that part of the problem is that Swedish culture, much like that in Canada, places a great deal of belief in the supremacy of mothers in child care. Thus, there is external pressure for women to stay at home to care for their children. Supplementing this, is the belief embedded in the culture and institutions that men should be the primary breadwinners while women are their dependents.¹²⁸ As such, men are encouraged to

¹²⁷ Mikel A. Glavinovich, "International Suggestions for Improving Parental Leave Legislation in the United States," (1996) 13(1) *Arizona Journal of International and Comparative Law*, at 172.

¹²⁸ Linda Haas, *Equal Parenthood and Social Policy: A Study of Parental Leave in Sweden*, (New York: University of New York Press, 1992) at 24.

refrain from taking parental leave from work, and tend to be punished more severely by their employers when they do take advantage of the provisions. Perhaps most important, however, is her identification of the problematic aspects of the income replacement scheme. In 1989, Swedish women earned approximately 77% of men's wages.¹²⁹ Although this figure is quite high, it overlooks the large number of women in Sweden who participate in atypical forms of employment. In fact, over 50% of all Swedish women who are employed in the paid labour force hold part-time jobs.¹³⁰ Once this factor is taken into account, the wage gap which exists between men and women widens substantially. Haas believes that the system of pay reimbursement favours leave taking by the lower paid parent, which tends more often than not to be the mother. As well as this economic disparity, Swedish women also have the decision making process tainted to a large extent by the highly segregated nature of the paid workplace.¹³¹ Women are found primarily within occupations with the lowest status, and this in turn weakens their position in the decision making process regarding the use of parental leave provisions. As was discussed within the context of the theoretical model, these detrimental factors inevitably cause the decision to take leave to disproportionately favour the mother.

Haas' research also shows that whether or not a father takes parental leave does not seem to make much difference in the situation of women. In fact, job ghettos and the proliferation of women within part-time employment continue even where men utilize

¹²⁹ Lewis and Astrom, supra note 116 at 73.

¹³⁰ Rianne Mahon, "Women Wage Earners and the Future of Swedish Unions," (1996) 17(4) Economic and Industrial Democracy: An International Journal, at 555.

¹³¹ Lewis and Astrom, supra note 116 at 72.

paid parental leave provisions.¹³² This is due in large part to the fact that even where parental leave is used by fathers, it brings about only a temporary change in the pre-existing distribution of child care responsibilities. Thus, it is perhaps unsurprising that Haas has found that while parental leave did have an impact on men's greater involvement in child care after the leave was over, 60% of women were still more responsible for child care, and several child care related tasks remained the domain of women.¹³³ As such, it appears evident that Sweden's paid parental leave legislation is not an effective means by which to achieve equality of parenthood.

Sweden's Paid Parental Leave Legislation Within the Model

The primary factor which inhibits Sweden's paid parental leave legislation from attaining its goal, is that it targets in its effect only women's subordination within the home. Whereas Canada's legislation focuses on the need to provide equality of opportunity for both men and women in the workplace, that of Sweden emphasizes the need for an equal division of labour within the home. It does this through the gender neutral and extremely generous remuneration provisions, as well as the period of mandatory leave for fathers. The inclusion of each of these aspects signal that the underlying intention behind Sweden's parental leave is to reinforce the need for parents to share the role of child care. As is illustrated in Figure 3 below, then, this perspective sees women's subordination within the workplace as flowing from their subordination within the home.

¹³² Linda Haas, "Gender Equality and Social Policy: Implications of a Study of Parental Leave in Sweden," (1990) 11(4) Journal of Family Issues, at 414.

Figure 3: Home as the Target

Such an analysis of the interaction between these two spheres, though, is problematic as it clearly does not recognize the existence of the other half of the vicious circle. As was shown by the theoretical model, women's subordination within the workplace can in all actuality undermine any gains made within the home. In fact, the addition of a period of mandatory leave for fathers acts as evidence that the decision making process was still disproportionately favouring women's use of the legislation, regardless of the generous remuneration provisions. As has been discussed, the addition of this mandatory element for men will not bring about effective and long-term change in the gendered division of labour, as the decision will continue to be tainted by women's subordination. This can best be seen through an examination of Sweden's paid

¹³³ *Ibid.*, at 412.

parental leave legislation in practice within the context of the model.

When a couple gives birth to or adopts a child in Sweden, they must make a decision as to how to provide for the child's care. Swedish mothers and fathers have available to them a system of paid parental leave legislation. The couple must then decide which parent will utilize these provisions and take a period of leave from their employment. Although this legislation has a high rate of remuneration, it is still disproportionately women who are chosen. This is due to their subordinate status within the workplace, as well as their lower pay and prevailing attitudes regarding child care. These factors also influence the decision that occurs after the father has utilized his one month of mandatory leave. In most cases it is the woman who is selected to use the remainder of the leave, rather than the father. In this way it can be seen that women's position within the workplace undermines the decision making process. By not taking this into account, Sweden's paid parental leave legislation renders itself ineffective in achieving the goal of equality of parenthood.

Recommendations

An examination of the paid parental leave provisions of Canada and Sweden has revealed both systems to be problematic. There are a number of authors who also agree that Canada's paid parental leave is incapable of achieving its goal of equality of parenthood, and that the Swedish model is not a fruitful one for making Canada's provisions more effective. Patricia Spakes agrees by stating that policies such as that found within both Canada and Sweden, "...allow egalitarian relationships in families,

however they do not promote true equality in society.”¹³⁴ In other words, there is a reliance on the notion that the mere existence of a paid parental leave scheme will be enough to bring about equality. Patricia Evans and Norene Pupo also point out the problems with such a scheme. However, their recommendations for change are equally problematic. They suggest that the way in which to deal with the inadequacies of Canada’s paid parental leave legislation is to move the responsibility for child care from being a private concern, to being one that is more public in nature. This is because “...Privatizing the issue of caregiving in individual families thereby leaves intact traditional divisions between men and women...”¹³⁵ Implicit in this suggestion is the notion that to make caregiving a more public issue is to bring about greater equality amongst men and women within the home.

Their suggestion for change takes the form of a national day care system. It is their belief that such a system would alleviate the double shift experienced by women by allowing them to have equality within the home as well as be provided with the ability to compete on an equal basis within the workplace. Such a suggestion, however, is extremely problematic. It ignores the relationship shown by the theoretical model with regards to women’s subordination to men within the workplace and within the home. When examined in conjunction with the findings of the model, it becomes evident that the removal of child care from the private home to the public arena would merely be a surface remedy. This is because it would not rectify in any way the power imbalance which exists between men and women within both the home and in the paid workplace. As such, women would continue to hold the primary responsibility for child care at the

¹³⁴ Patricia Spakes, “A Feminist Approach to National Family Policy,” in Elaine Anderson et al. (eds) The Reconstruction of Family Policy, (New York: Greenwood Press, 1991).

end of the day or on occasions when day care was not available. A national day care system on its own, then, would not be an effective means by which to achieve equality of parenthood.

In light of this discussion it appears clear that there is a need for a means by which to address women's subordinate status within the workplace as well as within the home. In order to accomplish this task using the law, there is a requirement for the implementation of an intricate system of policies. To begin with, there needs to be an effective means of pay equity and employment equity put into place. An effective pay equity scheme would help to bring women's wages to an equal level with those of men, thereby eliminating the economic criteria in the decision making process which tends to favour mothers' use of parental leave. This is because there would no longer be one parent earning substantially less than the other. As such, it would be expected that an equal number of men and women would begin to use Canada's paid parental leave legislation. There also needs to be put into place an effective employment equity program. This would aid in improving women's status within the workplace so as to ensure that they are able to compete equally with men for prestigious employment opportunities. Finally, there needs to be implemented an effective national child care initiative. What this would serve to accomplish is to ensure that equality of parenthood once achieved, continues long after the period of paid leave is over.

However, there does not exist full agreement on the use of law as an effective means by which to bring about equality of parenthood. According to Carol Smart, it is extremely necessary in instances where women's issues are concerned to "...think of non-legal strategies and to discourage a resort to law as if it holds the key to unlock women's

¹³⁵ Evans and Pupo, supra note 63 at 418.

oppression...”¹³⁶ In the context of Canada’s paid parental leave legislation, this can be construed to mean that an over reliance on the law creates the potential for the causes of women’s subordination to go unaddressed. As such, only the economic discrepancies between men and women would be rectified without any focus placed on the cultural and social factors which create this situation of subordination. What this suggests, then, is that any attempt to bring about equality of parenthood by means of legislation will be successful only in its educative function. This would slowly chip away at the attitudes of society, through a gradual change in their behaviour. However, this method would be highly unsuccessful in bringing about long-term change in the gendered division of labour as it would not directly and expediently target the stereotypes which exist with regards to parenting roles.

While the means by which Canada’s paid parental leave legislation should be supplemented is open to debate, what is clear is that the legislation in and of itself is ineffective in achieving equality of parenthood between mothers and fathers. Until changes are made to address the economic as well as the cultural and social factors which create women’s subordination to men, the legislation will have only the ability to provide women with the opportunity to balance their home and work lives. This does not in any way call into question the existence of the ‘double shift’, and as such is detrimental to women and their attempts to achieve equality.

¹³⁶ Smart, supra note 78 at 5.

CHAPTER FIVE

Conclusion

This thesis has shown that Canada's paid parental leave legislation under the Employment Insurance Act is not by itself an effective means by which to achieve the goal of equality of parenthood. This is primarily due to the fact that it is written within a liberal paradigm of equality. As has been discussed in Chapter Two, this theoretical perspective subscribes to several problematic principle tenets namely individualism, limited state intervention and facially neutral law and policy. That Canada's leave legislation is written from within this paradigm and embodies these principles is made clear through an examination of the arguments put forth by government bodies responsible for women's issues, regarding the need for a national paid parental leave system. Their arguments strongly adhered to the liberal notion that equal treatment for all individuals brings about meaningful equality. This liberal ideal is also embedded in court decisions on these issues, as well as in the actual provisions of the parental leave legislation itself.

The intention of Canada's paid parental leave legislation is revealed as being that of equality of parenthood. This becomes evident through an examination of Canada's national and international commitments to this principle of equality. Equality of parenthood holds that in order for women to achieve true and meaningful equality within the workplace, there is a need for household and child care related responsibilities

to be shared between both mothers and fathers. Canada's paid parental leave legislation subscribes to this notion through gender neutrality, whereby both men and women are eligible to use its provisions. The underlying assumption in this approach is that equality of access will in some way bring about its shared usage. It is shown, however, that the legislation is in fact rendered incapable of achieving its goal of equality of parenthood due to its adherence to such liberal principles. This is because gender neutrality and equality of opportunity do not allow for the recognition of the ways in which women hold subordinate status to men within both the home and the workplace. As such, there is the appearance that a solution to women's inequality has been found while in reality their subordinate status remains unchanged.

In light of the inefficiencies of the equality approach, the difference approach is examined. What this perspective holds is that there are times in which certain subordinate groups need to have their differences recognized in order to be placed on an equal playing field with the rest of society. In terms of gender equality, this approach would allow for the recognition of the ways in which women differ from men as opposed to treating them in the same manner. Both Catherine MacKinnon and Carol Smart, however, criticize the difference approach for its reliance on the idea of a male norm or standard against which women are measured. They also find problematic the notion that to focus on women's differences is to potentially perpetuate the stereotypes which exist with regard to women's role in child bearing and rearing.

The work of Iris Marion Young, then, is looked to as an alternative to the difference approach. Young suggests that there needs to exist a means by which to recognize the differences of women as compared to men, while at the same time ensuring

that this does not lead to women's further disadvantage. She suggests that this could be accomplished through what she refers to as a 'politics of difference,' whereby the focus is placed on a positive assertion of group differences. This approach is a useful one for the purpose of highlighting the need for Canada's paid parental leave legislation to allow women's differences to be costless to them.

The need for a change to be made to Canada's leave legislation is highlighted even further in Chapter Three through the use of a theoretical model. This has as its basis a "best case scenario," whereby women's subordination to men within the home is assumed away and replaced with a situation of equality. The scenario is then applied to the decision making process which occurs within families upon the birth or adoption of a child. The result of this analysis is that even where this "best case scenario" is achieved, the subordination of women undermines the decision making process thereby causing more women than men to use the leave provisions. In using this theoretical approach, those factors which render Canada's paid parental leave legislation ineffective in achieving its goal are revealed.

In order to solidify the findings of the model even further, the factual evidence necessary is provided in Chapter Four. Women are found to be subordinate within both the home and the workplace, and so it can be said that the conditions necessary for the model to be a true reflection of reality are met. As such, Canada's paid parental leave legislation is in fact undermined by its reliance on the principle tenets of a liberal paradigm of equality. That the factors identified in the model do in fact render the legislation ineffective in practice is illustrated through an examination of the paid parental leave legislation in Canada, as well as in Sweden. Canada's legislation is

examined as an example of a policy which targets in its effect only women's subordination within the workplace. As such, it assumes that once men and women have equal access to the paid labour force that equality will have been achieved. What this approach ignores is the interconnection which exists between the home and work as is illustrated in the theoretical model. Sweden's legislation, in contrast, is examined as an example of a policy where the effect is to target only women's subordination within the home. As has been identified by the model, such an approach is problematic as it allows the subordinate status of women in the paid labour force to undermine any gains made within the home.

From this discussion it becomes evident that there is a need to simultaneously target both women's subordinate status to men within the home and at work. The advantages and disadvantages of using law for this undertaking are examined. It is suggested in this thesis that a reliance on the law would necessitate the existence of an effective system of employment equity as well as an effective system of pay equity. A pay equity scheme would aim to bring women's wages on an equal par with those of men. This would then aid in alleviating the tendency for the decision to be in favour of women using the leave provisions, as there would not be one parent earning substantially less than another. Employment equity, on the other hand, would help to improve women's status within the workplace so as to ensure that they are able to compete on an equal basis with men. At the same time, there is a need for the implementation of an effective child care system. This is necessary so as to ensure that equality of parenthood continues long after the period of paid leave has been used.

However, the use of legislation is also called into question due to its limitations

in addressing the cultural and social stereotypes underlying women's subordination within both spheres. It is not enough to merely address the economic disparities which undermine the decision making process, as such a focus ignores the root causes of this disadvantage. It is outside of the scope of this thesis to attempt to reach a definitive answer as to what means should be used to supplement the current Canadian paid parental leave scheme. However, the findings presented here suggest that this is a fruitful area for future research. There is a definite need for an in-depth examination of the ability of the law to eliminate the stereotypes which exist with regards to parenting roles. This is because it has been shown that such cultural and social factors exist and that they act to create as well as perpetuate women's subordination, both within the home and the workplace.

In terms of the stated intent of this thesis, though, it can be said that Canada's paid parental leave legislation in and of itself is not and can never be an effective means by which to achieve its goal of equality of parenthood.

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